

Tab 1	CS/SB 588 by CM, Hutson (CO-INTRODUCERS) Bradley; (Similar to CS/H 00603) Preemption of Local Regulations					
225460	D	S	RCS	CA, Hutson	Delete everything after	04/09 04:56 PM
355162	AA	S	RCS	CA, Flores	btw L.21 - 22:	04/09 04:56 PM
Tab 2	SB 696 by Hutson; (Compare to CS/H 00267) Budgets of County Constitutional Officers					
169744	D	S	WD	CA, Hutson	Delete everything after	04/08 09:38 AM
192866	SD	S	WD	CA, Hutson	Delete everything after	04/08 09:39 AM
911578	D	S		CA, Hutson	Delete everything after	04/08 09:39 AM
Tab 3	CS/SB 616 by IT, Perry (CO-INTRODUCERS) Hutson; (Similar to CS/H 00827) Engineering					
142010	A	S	RCS	CA, Perry	Delete L.79 - 327:	04/10 08:02 AM
822442	AA	S	RCS	CA, Perry	Delete L.14 - 18.	04/10 08:02 AM
Tab 4	CS/SB 668 by CJ, Perry; (Similar to CS/H 00551) Public Nuisances					
Tab 5	CS/SB 816 by EN, Perry; (Similar to CS/H 00771) Environmental Regulation					
Tab 6	SB 1752 by Perry; (Identical to H 01139) Inspections and Permits					
462060	D	S	RCS	CA, Perry	Delete everything after	04/09 04:54 PM
Tab 7	CS/SB 718 by MS, Gruters; (Similar to CS/H 00427) Honor and Remember Flag					
Tab 8	SB 854 by Gruters; (Similar to CS/H 00691) Special Neighborhood Improvement Districts					
Tab 9	SB 1036 by Gruters; (Similar to CS/H 00715) Florida Building Code					
802848	D	S	RCS	CA, Gruters	Delete everything after	04/09 04:54 PM
Tab 10	SB 1512 by Diaz; Fees for Enforcing the Florida Building Code					
Tab 11	SB 1694 by Flores; (Identical to H 01019) Takings Claims Within Areas of Critical State Concern					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Flores, Chair
Senator Farmer, Vice Chair

MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

MEMBERS: Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 588 Commerce and Tourism / Hutson (Similar CS/H 603, Compare CS/H 1299)	Preemption of Local Regulations; Prohibiting local government entities from adopting or enforcing local ordinances or regulations relating to single-use plastic straws before a specified date; requiring the Department of Environmental Protection, or an entity designated by the department, to conduct a study evaluating the environmental impact of single-use plastic straws; providing penalties for violations of the moratorium by a local government entity; preempting the regulation of over-the-counter proprietary drugs or cosmetics to the state, etc. CM 03/04/2019 Fav/CS CA 04/02/2019 Not Considered CA 04/09/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 0
2	SB 696 Hutson (Compare CS/H 267)	Budgets of County Constitutional Officers; Including property appraisers to the list of county constitutional officers who must submit a tentative budget to the board of county commissioners; requiring the tentative budget of a county constitutional officer to be separately identified from the tentative budget of the county as a whole when posted to the county's website, etc. CA 04/02/2019 Not Considered CA 04/09/2019 Temporarily Postponed FT AP	Temporarily Postponed
3	CS/SB 616 Innovation, Industry, and Technology / Perry (Similar CS/H 827, Compare CS/CS/H 27, CS/H 7103, CS/S 1640)	Engineering; Deleting a provision requiring a delinquent status licensee to apply for active or inactive status; revising licensure certification requirements to include active engineering experience and a minimum age; providing requirements for qualifying agents who terminate an affiliation with or cease employment with qualified business organizations; decreasing the amount of time a local building official has to take certain actions after receiving a permit application and affidavit from a private provider, etc. IT 03/26/2019 Fav/CS CA 04/09/2019 Fav/CS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 9, 2019, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 668 Criminal Justice / Perry (Similar CS/H 551)	Public Nuisances; Revising notice requirements for the filing of temporary injunctions relating to the enjoinder of certain nuisances; providing that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance; declaring that any place or premises that has been used on more than two occasions within a certain period as the site of specified violations is a nuisance and may be abated or enjoined pursuant to specified provisions, etc. CJ 04/01/2019 Fav/CS CA 04/09/2019 Favorable RC	Favorable Yeas 5 Nays 0
5	CS/SB 816 Environment and Natural Resources / Perry (Similar CS/H 771)	Environmental Regulation; Requiring counties and municipalities to address the contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors, etc. EN 03/26/2019 Fav/CS CA 04/09/2019 Favorable AP	Favorable Yeas 5 Nays 0
6	SB 1752 Perry (Identical H 1139)	Inspections and Permits; Requiring a county or municipality that imposes inspection fees to establish an expedited inspection process that provides priority processing for such inspections; requiring a local government that imposes permit fees to establish an expedited permitting process that provides priority processing for such permits; specifying that certain procedures apply to building permit applications for any nonresidential buildings, instead of nonresidential buildings less than a specified size, etc. CA 04/09/2019 Fav/CS IT RC	Fav/CS Yeas 5 Nays 0
7	CS/SB 718 Military and Veterans Affairs and Space / Gruters (Similar CS/H 427)	Honor and Remember Flag; Designating the Honor and Remember flag as an emblem of the state; authorizing the display of the flag at specified locations, on specified days, and in a specified manner, etc. MS 04/03/2019 Fav/CS CA 04/09/2019 Favorable AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, April 9, 2019, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 854 Gruters (Similar CS/H 691, Compare H 1081, S 1508)	Special Neighborhood Improvement Districts; Revising the number of directors allowed for the boards of special neighborhood improvement districts; requiring local planning ordinances to specify director term lengths and provide for staggered terms; requiring that directors be landowners in, rather than residents of, the proposed area and be subject to certain taxation, etc. CA 04/09/2019 Favorable IT RC	Favorable Yeas 5 Nays 0
9	SB 1036 Gruters (Similar CS/H 715)	Florida Building Code; Prohibiting local governments from carrying forward balances resulting from its enforcement of the Florida Building Code which exceed a specified amount; requiring local governments to use any excess funds for specified purposes, etc. CA 04/09/2019 Fav/CS IT RC	Fav/CS Yeas 5 Nays 0
10	SB 1512 Diaz	Fees for Enforcing the Florida Building Code; Revising the definition of the phrase "enforcing the Florida Building Code" to include certain costs; revising specified activities that, unless otherwise provided by law, may not be funded with fees adopted for enforcing the code, etc. CA 04/09/2019 Favorable CM RC	Favorable Yeas 5 Nays 0
11	SB 1694 Flores (Identical H 1019)	Takings Claims Within Areas of Critical State Concern; Providing for the apportionment of awards of damages for takings claims within areas of critical state concern, etc. JU 03/25/2019 Favorable CA 04/02/2019 Not Considered CA 04/09/2019 Favorable AP	Favorable Yeas 5 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 588

INTRODUCER: Community Affairs Committee; Commerce and Tourism Committee; and Senators
Hutson and Bradley

SUBJECT: Preemption of Local Regulations

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 588 prohibits a local government entity from adopting or enforcing an ordinance or regulation relating to over-the-counter proprietary drugs and cosmetics before July 1, 2021. The bill provides for the imposition of a fine and assessment of attorney fees and costs for violation of the moratorium by a local government entity.

The bill preempts the establishment of requirements for alternate generated power sources for motor fuel dispensing facilities, including transfer switches, to the state and the Division of Emergency Management.

The bill takes effect July 1, 2019.

II. Present Situation:

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general¹ or special law, and may enact county ordinances not inconsistent with general law.² Counties operating under county charters shall have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.³ General law authorizes counties “the power to carry on county government”⁴ and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”⁵

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,⁶ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.⁷ Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.⁸

Section 166.221, F.S., authorizes municipalities to levy 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.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.⁹ Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁰ Express preemption of a field by the Legislature must be accomplished by clear

¹ Chapter 125, Part I, F.S.

² FLA. CONST. art. VIII, s. 1(f).

³ FLA. CONST. art. VIII, s. 1(g).

⁴ Section 125.01(1), F.S.

⁵ Section 125.01(1)(w), F.S.

⁶ Section 166.011, F.S.

⁷ Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (last visited March 1, 2019).

⁸ Section 166.021(4), F.S.

⁹ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹⁰ 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).

language stating that intent.¹¹ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹²

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹³ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.¹⁴ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁵ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁶

The Florida Drug and Cosmetic Act

The Florida Drug and Cosmetic Act (Act) is found in part I of ch. 499, F.S.¹⁷ The Act's purpose is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics.¹⁸ The Department of Business and Professional Regulation is responsible for administering and enforcing efforts to prevent fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics.¹⁹ Administration of the Act must conform to the Federal Food, Drug, and Cosmetic Act²⁰ and the applicable portions of the Federal Trade Commission Act,²¹ which prohibit the false advertising of drugs, devices, and cosmetics.²²

Division of Emergency Management

The Division of Emergency Management (DEM) is established within the Executive Office of the Governor as a separate budget entity.²³ The director of DEM is appointed by and serves at the pleasure of the Governor. DEM is responsible for administering programs to rapidly apply all available aid to communities stricken by an emergency²⁴ and is the liaison with federal agencies and other public and private agencies.²⁵ DEM is responsible for carrying out the State Emergency Management Act,²⁶ which includes creating a statewide comprehensive emergency

¹¹ *Mulligan*, 934 So. 2d at 1243.

¹² *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

¹³ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

¹⁴ *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

¹⁵ *Id.*

¹⁶ *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

¹⁷ Section 499.001, F.S., provides that ss. 499.001-499.94 is the Florida Drug and Cosmetic Act.

¹⁸ Section 499.002(1)(a), F.S.

¹⁹ Section 499.002(2), F.S.

²⁰ 21 U.S.C. ss. 301 *et seq.*

²¹ *See* 15 U.S.C. §§ 41-58, as amended.

²² Section 499.002(1)(b), F.S.

²³ Section 14.2016(1), F.S.

²⁴ "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.

²⁵ Sections 14.2016(1) and 252.35(1), F.S.

²⁶ Sections 252.31-252.60, F.S., are known as the "State Emergency Management Act."

management plan (CEMP).²⁷ The CEMP serves as the master operations document for Florida and is the framework through which the state handles emergencies and disasters. The CEMP must contain provisions to ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters.²⁸

Alternate Generated Power Capacity for Motor Fuel Dispensing Facilities

Section 526.143, F.S., requires certain motor fuel dispensing facilities to have alternate generated power capacity to operate in the event of a power disruption following a disaster.²⁹ Each motor fuel terminal facility³⁰ and each wholesaler³¹ which sells motor fuel in this state must be capable of operating its distribution loading racks using an alternate generated power source for a minimum of 72 hours. The facility must have such alternate generated power source available for operation no later than 36 hours after a major disaster.³² Installation of appropriate wiring, including a transfer switch, must be performed by a certified electrical contractor.³³

A transfer switch is used to supply power to an electrical circuit from multiple sources, and is part of the back-up system installed with a back-up generator. Transfer switches can be automatic or manual. An automatic transfer switch engages the generator as soon as it senses that one of the sources has lost or gained power. A manual transfer switch requires someone to manually turn on and turn off the generator as needed.³⁴

Each facility subject to these requirements must keep a copy of the documentation of such installation on site or at its corporate headquarters.³⁵ Also, each facility must keep a written statement attesting to the periodic testing and ensured operational capacity of the equipment. The required documents must be made available, upon request, to the DEM and the director of the county emergency management agency.³⁶

All newly constructed or substantially renovated³⁷ motor fuel retail outlets,³⁸ with a certificate of occupancy on or after July 1, 2006, must also have an appropriate transfer switch capable of

²⁷ Section 252.35(2)(a), F.S.

²⁸ *Id.*

²⁹ “Disaster” means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the U.S. Section 252.34(2), F.S.,

³⁰ Section 526.303(16), F.S., defines “motor fuel terminal facility” as any inland, waterfront, or offshore appurtenance on land used for the purpose of storing, handling, or transferring motor fuel, but does not include bulk storage facilities owned or operated by a wholesaler.

³¹ Section 525.303(17), F.S., defines “wholesaler” as a person, other than a refiner or dealer, who purchases motor fuel at terminal facility and supplies motor fuel to retail outlets.

³² “Major disaster” means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. Section 252.34(2)(b), F.S.

³³ Section 526.143(1), F.S.

³⁴ Cooling Power Emergency Power Solutions, *Generator Transfer Switch Options: Manual Vs. Automatic*, <https://coolingpowercorp.com/news/generator-transfer-switch-options-manual-vs-automatic/> (last visited April 9, 2019).

³⁵ Section 526.143(1), F.S.

³⁶ *Id.*

³⁷ “Substantially renovated” is defined as a renovation that results in an increase of greater than 50 percent in the assessed value of the motor fuel retail outlet. Section 525.143(2), F.S.

³⁸ “Retail outlet” means a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public. Section 526.303(14), F.S.

operating all fuel pumps, dispensing equipment, lifesafety systems, and payment-acceptance equipment using an alternate power source.³⁹ All motor fuel retail outlets located within one-half mile to an interstate highway or state or federal designated evacuation route must be prewired with an appropriate transfer switch and be capable of operating all required equipment using an alternate power source with the following specifications based on population:

- 16 or more fueling positions located in a county with a population of 300,000 or more;
- 12 or more fueling positions located in a county with a population of 100,000 or more, but fewer than 300,000; or
- 8 or more fueling positions located in a county with a population of fewer than 100,000.⁴⁰

Installation of appropriate wiring, including a transfer switch, must be performed by a certified electrical contractor.⁴¹ The motor fuel retail outlet must also maintain a copy of the documentation of such installation on site or at its corporate headquarters, keep a written statement attesting to the periodic testing and ensured operational capacity of the equipment, and make available, upon request, these records to the DEM and the director of the county emergency management agency.⁴²

Corporations owning 10 or more motor fuel retail outlets located within a single county must maintain at least one portable generator that is capable of providing an alternate generated power source.⁴³ If a corporation owns more than 10 outlets or a multiple of 10 outlets plus an additional 6 outlets, the corporation must provide one additional generator to accommodate such additional outlets.⁴⁴ Each portable generator must be stored within this state, or may be stored in another state if located within 250 miles of this state, and must be available for use in an affected location within 24 hours after a disaster.

A corporation or other entity that owns 10 or more motor fuel retail outlets located within a single domestic security region⁴⁵ that does not own any outlets outside of this region must have a written agreement with at least one similarly equipped entity for the use of portable generators located in the state but outside the affected region.⁴⁶ This agreement must guarantee the availability of generators to the affected location within 24 hours after a disaster.

The Department of Agriculture and Consumer Services (DACS)⁴⁷ is authorized to temporarily waive requirements for maintaining generators if the generators are to be used in preparation for, or in response to, an emergency or major disaster in another state.⁴⁸ The waiver must be in

³⁹ Section 526.143(2), F.S.

⁴⁰ Section 526.143(3)(a), F.S.

⁴¹ Section 526.143(3)(b), F.S.

⁴² Section 526.143(2) and (3)(b), F.S.

⁴³ Section 526.143(5)(a), F.S.

⁴⁴ *Id.*

⁴⁵ Section 943.0312(1), F.S. The Florida Department of Law Enforcement (FDLE) has established 7 operational regions. *See* FDLE, Regional Domestic Security Task Forces, *available at* <http://www.fdle.state.fl.us/Domestic-Security/Organization> (last visited April 8, 2019).

⁴⁶ Section 526.143(5)(b), F.S.

⁴⁷ Section 526.09, F.S., provides that DACS enforces the provisions of ch. 526, F.S.

⁴⁸ Section 526.143(5)(c), F.S.

writing and include a beginning and ending date. The waiver may be modified or terminated by DACS if the Governor declares an emergency in this state.⁴⁹

III. Effect of Proposed Changes:

Section 1 creates s. 499.072, F.S., to prohibit a county, municipality, or another local governmental entity from adopting or enforcing an ordinance or other local regulation relating to over-the-counter proprietary drugs and cosmetics before July 1, 2021.

Any attempt by a county, municipality, or another local government entity to adopt or enforce an over-the-counter proprietary drugs and cosmetics regulations before July 1, 2021, will result in the imposition of \$25,000 fine imposed on the offending local government entity. Additionally, the bill provides that the offending local government entity will be responsible for the attorney fees and costs of any party filing a civil action to enforce the terms of the moratorium.

Section 2 amends s. 526.143, F.S., to preempt the establishment of requirements for alternate generated power sources for motor fuel dispensing facilities, including transfer switches, to the state and the Division of Emergency Management.

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁹ *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local government entities who adopt or enforce over-the-counter proprietary drugs and cosmetics regulations before July 1, 2021, may have to pay fines and attorney fees and costs if found in violation of the moratorium.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 499.072 of the Florida Statutes. The bill amends section 526.143 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 9, 2019:

The committee substitute:

- Deletes all provisions regarding local regulation and enforcement of single-use plastic straws;
- Deletes the proposed amendment to s. 499.002, F.S., regarding preemption for over-the-counter proprietary drugs and cosmetics;
- Prohibits a local government entity from adopting or enforcing an ordinance or regulation relating to over-the-counter proprietary drugs and cosmetics before July 1, 2021, and provides penalties for violations of the moratorium by a local government entity; and
- Preempts the establishment of requirements for alternate generated power sources for motor fuel dispensing facilities, including transfer switches, to the state and the Division of Emergency Management.

CS by Commerce and Tourism on March 4, 2019:

The committee substitute:

- Establishes a moratorium on the local regulation and enforcement of single-use plastic straws;

- Requires the DEP, or an entity designated by the DEP, to conduct a study to evaluate the environmental impact of single-use plastic straws and to report the results of the environmental impact study to the Legislature by January 1, 2024;
- Provides that the moratorium is lifted, effective July 1, 2024, if the Legislature does not enact a general law specifying a statewide policy regarding single-use plastic straws or a law preempting local regulation of single-use plastic straws;
- Provides that it is a violation of local government that attempts to adopt or enforce single-use plastic straw regulations before July 1, 2024, which shall result in a fine to the offending local government entity in the amount of \$25,000; and
- Preempts the regulation of over-the-counter proprietary drugs and cosmetics to the state, notwithstanding any other law or local ordinance to the contrary.

B. Amendments:

None.



225460

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 499.072, Florida Statutes, is created to
read:

499.072 Local regulation of over-the-counter proprietary
drugs and cosmetics; moratorium; penalties.—

(1) Before July 1, 2021, a county, a municipality, or
another local governmental entity may not adopt or enforce an



225460

ordinance or other local regulation relating to over-the-counter
proprietary drugs and cosmetics.

(2) An attempt by a county, a municipality, or another
local governmental entity to adopt or enforce over-the-counter
proprietary drugs and cosmetics regulations before July 1, 2021,
is a violation of this chapter and shall result in a fine of
\$25,000 imposed on the offending county, municipality, or other
local governmental entity. Further, the offending entity is
responsible for the attorney fees and costs of any party filing
and prevailing in a civil action to enforce the terms of the
moratorium.

Section 2. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to preemption of local regulations;
creating s. 499.072, F.S.; prohibiting certain
governmental entities from adopting or enforcing local
ordinances or regulations relating to over-the-counter
proprietary drugs and cosmetics before a specified
date; providing penalties for violations of the
moratorium by a local governmental entity; providing
an effective date.



355162

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Flores) recommended the following:

Senate Amendment to Amendment (225460) (with title amendment)

Between lines 21 and 22
insert:

Section 2. Subsection (6) is added to section 526.143, Florida Statutes, to read:

526.143 Alternate generated power capacity for motor fuel dispensing facilities; preemption.—

(6) The establishment of requirements for alternate



355162

generated power sources, including transfer switches, is
preempted to the state and the Division of Emergency Management.

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

And the title is amended as follows:

Delete line 35

and insert:

moratorium by a local governmental entity; amending s.
526.143, F.S.; preempting the establishment of the
requirements for alternate generated power sources to
the state and to the Division of Emergency Management;
providing

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

4-9-18

Bill Number (if applicable)

225460

Amendment Barcode (if applicable)

588

Topic

LEGISLATIVE COUNSEL REEMPLOYMENT OF LOCAL REAS

Name

LUKEA YOUNGANS

Job Title

LEGISLATIVE COUNSEL

Address

100 N. MONROE ST

Street

Phone

251-1830

City

TAL

State

FL

Zip

32301

Email

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/09/19

588

Meeting DateBill Number (if applicable)

225460

Topic Preemption of Local RegulationsAmendment Barcode (if applicable)Name Rebecca O'HaraJob Title Deputy General CounselAddress PO Box 1757Phone 222-9684Street

Tallahassee

FL

32302

Email rohara@flcities.comCityStateZipSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida League of CitiesAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/09/19

588

Meeting Date

Bill Number (if applicable)

225460

Topic Preemption of Local Regulations

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222-9684

Street

Tallahassee

FL

32302

Email rohara@flcities.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4/9/19

588

Bill Number (if applicable)

225460

Amendment Barcode (if applicable)

Topic Plastic Straws / OTC

Name Deborah Foote

Job Title Gov't Affairs Director

Address 3254 Newberry Blvd

City Tallahassee FL State 32311 Zip

Phone 251 533 1798

Email deborah.foote@senateclub.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Seniors Club FL

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4/9/19

Bill Number (if applicable) 588

Topic Plastic Straws /OTC

Amendment Barcode (if applicable) _____

Name Deborah Foote

Job Title Gov't Affairs Dir.

Address 3254 Newberry Blvd

Phone 251-5331798

City Tallahassee, FL State FL Zip 32311

Email deborah-foote@gsrmaclub.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Sierra Club FL

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4-9-19

Bill Number (if applicable) 588

Topic Preemption of local Regulation

Amendment Barcode (if applicable) _____

Name JAKE FARMER

Job Title Director of Government Affairs

Address 227 S Adams St.

Phone 387.559.6838

Street Tallahassee State FL Zip 32301

Email Jake@Fla.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4.9.2019

Bill Number (if applicable) 588

Amendment Barcode (if applicable) _____

Topic Preemption of Local Regulations

Name Christopher Emmanuel

Job Title Policy Director

Address 130 S. Bronough St

City TLH State FL Zip 32301

Phone _____ Email _____

Speaking: ☐ For ☐ Against ☐ Information ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

4-9-19

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 588

Meeting Date

Bill Number (if applicable)

Topic

Preemption of Local Control

Amendment Barcode (if applicable)

Name

Susan Aether

Job Title

Volunteer

Address

Street

Jacksonville FL 32257

Phone

904-262-5124

City

State

Zip

Speaking:

☐ For

☐ Against

☐ Information

Waive Speaking:

☐ In Support

☒ Against

(The Chair will read this information into the record.)

Representing

League of Women Voters

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☐ Yes

☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

4/9/19

Bill Number (if applicable)

SR0588

Amendment Barcode (if applicable)

Topic

Preemption of Local Reg

Name

Nicolethe Springer

Job Title

Legislative Analyst

Address

Street

Orlando

City

State

FL

Zip

32832

Phone

Email

Speaking:

☐ For

☐ Against

☐ Information

Waive Speaking:

☐ In Support

☒ Against

(The Chair will read this information into the record.)

Representing

League of Women Voters

Appearing at request of Chair:

☐ Yes

☐ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

588

Bill Number (if applicable)

Amendment Barcode (if applicable)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By the Committee on Commerce and Tourism; and Senators Hutson
and Bradley

577-02659-19

2019588c1

1 A bill to be entitled
2 An act relating to preemption of local regulations;
3 creating s. 403.7034, F.S.; prohibiting local
4 government entities from adopting or enforcing local
5 ordinances or regulations relating to single-use
6 plastic straws before a specified date; requiring the
7 Department of Environmental Protection, or an entity
8 designated by the department, to conduct a study
9 evaluating the environmental impact of single-use
10 plastic straws; providing qualifications for the
11 designated entity; specifying requirements for the
12 environmental impact study; requiring the department
13 to submit a report on the environmental impact study
14 results to the Legislature by a specified date;
15 providing that, under certain circumstances, the
16 moratorium on local regulation is lifted by a
17 specified date; providing penalties for violations of
18 the moratorium by a local government entity; amending
19 s. 499.002, F.S.; preempting the regulation of over-
20 the-counter proprietary drugs or cosmetics to the
21 state; providing an effective date.

23 WHEREAS, single-use plastic straws comprise less than 1
24 percent of waste and litter, and

25 WHEREAS, alternatives to single-use plastic straws may have
26 equivalent environmental drawbacks or have reduced utility in
27 certain beverage types, and

28 WHEREAS, reducing the availability of single-use plastic
29 straws may negatively impact persons with disabilities who

577-02659-19

2019588c1

30 require single-use plastic straws for feeding and hydration, and
31 WHEREAS, businesses should be free to decide the best
32 manner in which to serve their customers, free from unnecessary
33 governmental intrusion or regulation, and
34 WHEREAS, the prudent deliberation regarding materials usage
35 and the development of policy based on sound research and
36 science will result in better long-term solutions for this
37 state, NOW, THEREFORE,

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Section 403.7034, Florida Statutes, is created
42 to read:

43 403.7034 Local regulation of single-use plastic straws;
44 moratorium; environmental impact study; penalties.—

45 (1) Before July 1, 2024, a county, a municipality, or
46 another entity of local government may not adopt or enforce an
47 ordinance or other local regulation relating to single-use
48 plastic straws.

49 (2) In the interim, the department, or an entity designated
50 by the department, shall conduct a study to evaluate the
51 environmental impact of single-use plastic straws. A designated
52 entity must be competent, knowledgeable, and unbiased regarding
53 environmental impact studies.

54 (3) The environmental impact study must focus on scientific
55 data regarding the environmental impact of single-use plastic
56 straws and the potential impact on the environment of this state
57 of a reduction in the number of, or a prohibition on the use of,
58 single-use plastic straws. The study may consider single-use

577-02659-19

2019588c1

59 plastic straw regulations adopted in other jurisdictions in the
 60 United States and the actual effectiveness of such regulations
 61 in those jurisdictions in terms of environmental impact. The
 62 study must also consider the usefulness and environmental impact
 63 of potential alternatives to single-use plastic straws and the
 64 potential impact of reducing or eliminating single-use plastic
 65 straws on the quality of life of persons with disabilities who
 66 may rely on single-use plastic straws for feeding and hydration.

67 (4) The department shall report the results of the
 68 environmental impact study to the Legislature by January 1,
 69 2024. If, upon evaluating the results of the study, the
 70 Legislature does not enact a general law specifying a statewide
 71 policy regarding single-use plastic straws or a law preempting
 72 local regulation of single-use plastic straws, the moratorium on
 73 local regulation and enforcement under this section is lifted,
 74 effective July 1, 2024.

75 (5) An attempt by a county, a municipality, or another
 76 entity of local government to adopt or enforce single-use
 77 plastic straw regulations before July 1, 2024, is a violation of
 78 this chapter and shall result in a fine to the offending local
 79 government entity in the amount of \$25,000. Further, the
 80 offending local government entity is responsible for the
 81 attorney fees and costs of any party filing and prevailing in a
 82 civil action to enforce the terms of the moratorium.

83 Section 2. Subsection (7) is added to section 499.002,
 84 Florida Statutes, to read:

85 499.002 Purpose, administration, and enforcement of and
 86 exemption from this part.—

87 (7) Notwithstanding any other law or local ordinance to the

577-02659-19

2019588c1

88 contrary, the regulation of over-the-counter proprietary drugs
 89 and cosmetics is preempted to the state to be uniformly
 90 administered.

91 Section 3. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: CS/SB 588
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 696

INTRODUCER: Senator Hutson

SUBJECT: Budgets of County Constitutional Officers

DATE: March 23, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 696 adds property appraisers to the list of county constitutional officers who must submit a tentative budget to the board of county commissioners, provides criteria for these officers to submit their tentative and final budgets, and requires the tentative budgets to be separately identified from the tentative budget of the county as a whole when posted to the county's website.

II. Present Situation:

Constitutional County Officers

Article VIII, Section 1(d) of the Florida Constitution provides there shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. These officers have duties prescribed in general law.¹

County Budget Systems and Information

Chapter 129, F.S., establishes a budget system that controls the finances of the boards of county commissioners of Florida counties. Pursuant to s. 129.01, F.S., each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year. The budget must show for each fund, as required by law and sound financial practices, budgeted revenues and

¹ See ch. 30, F.S., (setting forth certain duties of the sheriff as a constitutional officer); ch. 197, F.S., (setting forth certain duties of the tax collector as a constitutional officer); ch. 193, Part I, F.S., (setting forth certain duties of the property appraiser as a constitutional officer); ch. 102, F.S., (setting forth certain duties of the supervisor of elections as a constitutional officer); and ch. 28, F.S., (setting forth certain duties of the clerk of the circuit court as a constitutional officer).

expenditures by organizational unit.² The budget is approved by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.³ Notwithstanding other provisions of law, the budgets of all county officers must be in sufficient detail and contain such information as the board of county commissioners may require in furtherance of their powers and responsibilities.⁴

Each board of county commissioners may designate a county budget officer to carry out the duties prescribed by statute as to county budgets.⁵ If such board fails to designate a different officer, the clerk of the circuit court or the county comptroller, if applicable, will be the budget officer.⁶ County fee officers are defined in Florida Statutes as those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though their budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.⁷ County fee officers are also subject to reporting requirements.⁸ For example, the county constitutional officers of sheriff, clerk of the circuit court, property appraiser, tax collector, and supervisor of elections have budget reporting requirements of their own in addition to the budget reporting requirements of the county.⁹

Preparation and Adoption of County Budgets

On or before June 1 of each year, the sheriff, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections each must submit to the board of county commissioners a tentative budget for their respective offices for the ensuing fiscal year.¹⁰ Upon receipt of the tentative budgets and any revisions, the board prepares a summary of the adopted tentative budgets.¹¹ Public hearings are held to explain tentative and final budgets and to entertain community requests and complaints prior to budget adoption.¹² The tentative budget must be posted on the county's official website at least two days before a public hearing. The final budget must be posted on the website within 30 days after adoption. The tentative budgets, adopted tentative budgets, and final budgets are filed in the office of the county auditor as a public record.

² Section 129.01(1), F.S. The level of detail for the budget must meet level of detail requirements for annual financial reports under s. 218.32, F.S.

³ Section 129.01(2), F.S.

⁴ Section 129.021, F.S. *See* ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b), F.S. for more on these county powers and responsibilities.

⁵ Section 129.025, F.S.

⁶ *Id.*

⁷ Section 218.31(8), F.S.

⁸ *See* s. 218.35, F.S.

⁹ *See* ss. 30.49, F.S., (sheriffs' budgets), 218.35(2), F.S., (clerks of the court reporting requirements), 195.087, F.S., (property appraisers and tax collectors budget reporting requirements), 129.201, F.S., (supervisor of elections budgets).

¹⁰ Section 129.03(2), F.S. The county elected property appraiser is not included in this list of office holders required to submit budget information to the board of county commissioners.

¹¹ Section 129.03(3)(b), F.S.

¹² Section 129.03(3)(c), F.S., also outlines public hearing practices and subsequent budget website posting and public record requirements.

Sheriff Budget Process and Requirements

Section 30.49, F.S., requires each sheriff to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The proposed budget must show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail, excluding the cost of construction, repair, or capital improvement of county buildings occupied by the sheriff's office during the fiscal year.¹³ The sheriff must itemize expenditures in accordance with the uniform chart of accounts prescribed by the Department of Financial Services (DFS), as: personnel services, operating expenses, capital outlay, debt service, grants and aids and other uses.¹⁴

The board of county commissioners may amend, modify, increase, or reduce any or all items of expenditure in a sheriff's proposed budget at the hearings held pursuant to s. 200.065, F.S., to fix ad valorem tax millage rates. The sheriff may file an appeal of such board action by petition to the Administration Commission (the Governor and Cabinet).¹⁵ The sheriff's budget as approved, amended, or modified by the Administration Commission is final.¹⁶

Clerk of the Circuit Court Budget Process and Requirements

Section 218.35(2) F.S., provides that the clerk of the circuit court, functioning in his or her capacity as clerk of the circuit and county courts and as clerk of the board of county commissioners, shall prepare his or her budget in two parts. The first of these is the budget for funds necessary to perform court-related functions specified by s. 28.36, F.S.

On or before June 1, a proposed budget for these court-related functions must be prepared, summarized, and submitted by the clerk in each county to the Florida Clerks of Court Operations Corporation (Corporation), a public corporation charged with approving the proposed budgets of all clerks of the court in the state.¹⁷ The proposed budget must provide detailed information on the anticipated revenues available and expenditures necessary for the performance of the court-related functions.¹⁸ The Corporation ensures that the total combined budgets of the clerks of the court do not exceed the total estimated revenues available for court-related expenditures as determined by the most recent Revenue Estimating Conference.¹⁹ The Corporation may amend an individual clerk of the court budget to ensure compliance with the combined budget requirements.²⁰

¹³ Section 30.49(2)(a), F.S.

¹⁴ Section 30.49(2)(c), F.S.

¹⁵ Section 30.48(4)(a), F.S.

¹⁶ Section 30.48(5), F.S.

¹⁷ See ss. 28.36(2) and 28.35, F.S. The Corporation is considered a political subdivision of the state and is not subject to ch. 120, F.S. All clerks of the circuit court are members of the Corporation and hold their positions and authority in an ex officio capacity.

¹⁸ Section 28.36(2)(a), F.S.

¹⁹ Section 28.35(2)(f), F.S.

²⁰ *Id.* Before modifying a budget, the Corporation must consider performance measures, workload performance standards, workload measures, and expense data.

The second part of the clerk of circuit court budget process relates to the requirements as clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties.²¹ This budget is annually prepared and submitted to the board of county commissioners pursuant to s. 129.03(2), F.S., for each fiscal year.²² Expenditures must be itemized in accordance with the uniform chart of accounts prescribed by the DFS as: personnel services, operating expenses, capital outlay, debt service, grants and aids and other uses.²³ The final approved budget of the clerk of the circuit court must be posted on the county's official website within 30 days after adoption and may be included in the county's budget.²⁴

Tax Collector Budget Process and Requirements

Section 195.087, F.S., requires tax collectors to submit their respective budgets to the Department of Revenue (DOR). On or before August 1 of each year, each tax collector simultaneously submits a budget for the operation of the office for the ensuing fiscal year to the DOR and the board of county commissioners.²⁵ Upon review, the DOR either approves the budget and certifies it back to the tax collector or, if it finds the budget inadequate or excessive, returns the budget to the tax collector for revisions and resubmission.²⁶ After the final approval of the budget by the DOR, there can be no reduction or increase by any officer, board, or commission without the approval of the department.²⁷ These DOR reporting provisions in s. 195.087 F.S., do not apply to a county where the office of the tax collector has been abolished and office duties have been reassigned or in a charter county where the charter specifically provides a different method for the submission of the tax collectors budget.²⁸ Section 195.087(6), F.S., provides website posting requirements for a tax collector's final approved budget.

Supervisor of Elections Budget Process and Requirements

Pursuant to ss. 129.01 and 129.03(2), F.S., each supervisor of elections prepares and submits to the board of county commissioners a proposed budget for carrying out the powers, duties, and operations of the office for the next fiscal year.²⁹ The fiscal year of the supervisor of elections commences on October 1 of each year and ends on September 30 of the following year.³⁰ Like sheriffs and clerks of the circuit court, supervisors of elections must itemize expenditures in accordance with the uniform chart of accounts prescribed by the DFS as: personnel services, operating expenses, capital outlay, debt service, grants and aids and other uses.³¹ Similar to sheriffs, the board of county commissioners may amend, modify, increase, or reduce any or all items of expenditure in a supervisor of elections' proposed budget at the hearings held pursuant

²¹ Section 218.35(2) F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Section 195.087(2) F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 129.201(1), F.S.

³⁰ *Id.*

³¹ Section 129.201(2), F.S.

to s. 200.065, F.S., to fix ad valorem tax millage rates.³² Unlike sheriffs, supervisors of elections do not have the ability to appeal board budget changes to the Administration Commission.

Section 129.202, F.S., specifies certain budget requisition procedures a supervisor of elections must follow to access the office's budget funds from the board of county commissioners. These procedures do not impede a supervisor's independence concerning the purchase of supplies and equipment; the selection of personnel; and the hiring, firing, and setting of salaries of such personnel.³³

Property Appraiser Budget Process and Requirements

Section 195.087(1) F.S., outlines the budget process for property appraisers in the state. On or before June 1 of each year, property appraisers simultaneously submit a budget for the operation of their offices for the ensuing fiscal year to the DOR and the board of county commissioners.³⁴ The DOR may amend or change the budget requests as it deems necessary but must notify the property appraiser and board of any such changes by July 15.³⁵ The appraiser and board have the opportunity to respond to such notification with additional budget information or testimony.³⁶ On or before August 15, the DOR makes any final budget amendments or changes after which the budget is deemed final and is funded by the county commission.³⁷

The property appraiser or presiding officer of the county commission may appeal the DOR's final action to the Administration Commission no later than 15 days after the hearings held to fix ad valorem tax millage rates.³⁸ The filing of an appeal does not relieve the county commission of its obligation to fund the department-approved final budget during the pendency of the appeal.³⁹ A budget approved by the DOR, and as amended by the Administration Commission, becomes the operating budget of the property appraiser for the ensuing fiscal year beginning October 1.⁴⁰ Section 195.087(6), F.S., provides website posting requirements for a property appraiser's final approved budget.

State Local Government Financial Reporting

There are numerous provisions in Florida Statutes related to local government financial reporting many of which relate to counties and may therefore shape the budgeting processes of county constitutional officers. For example:

- Section 218.32(1), F.S., requires local governmental entities to submit to the DFS an annual financial report (AFR) and, if the local governmental entities meet the audit threshold specified, a copy of their audit report. A county AFR must be a single document that covers each county agency.

³² Section 129.201(4), F.S.

³³ Section 129.202(2), F.S.

³⁴ Section 195.087(1)(a), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See ss. 195.087(1)(b) and 200.065, F.S.

³⁹ Section 195.087(1)(b), F.S.

⁴⁰ *Id.* This approved budget may subsequently be amended under the same procedure.

- Section 218.32(2), F.S., requires the DFS to annually file, by December 1, a verified report with certain statutorily specified entities showing the total revenues, expenditures, and outstanding long-term debt of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation entity that is required to submit an AFR.
- Section 218.39, F.S., requires an annual financial audit of accounts and records be completed within nine months after the end of the fiscal year for counties, district school boards, charter schools, and charter technical career centers and certain municipalities and special districts.

III. Effect of Proposed Changes:

Section 1 amends s.129.021, F.S., to add the property appraiser to the list of county constitutional officers who must submit a tentative budget to the board of county commissioners. The bill provides that each officer's tentative and final budget must be detailed and must provide a separate line item for proposed expenditures for each program, division, or unit within the office, and must include an identification of existing and proposed reserves.

The tentative budget must be posted on the county's official website at least two days before the public hearing and must be identified separately from the tentative budget of the county as a whole to clearly demarcate the constitutional officers' budgets.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the bill passes, county constitutional officers will be required to provide greater detail and itemization of expense items in their proposed budgets. Given that these officers already must provide detailed information for other statutorily required financial reports, the additional administrative costs to comply with the bill will likely be minimal.

VI. Technical Deficiencies:

The sponsor may want to clarify which public hearing is referred to on lines 32-33 of the bill.

VII. Related Issues:

The bill requires the property appraiser to file a copy of the proposed budget with county commission under s. 129.03(2), F.S., a step that is redundant to the similar requirement in s. 195.087(1), F.S. As the budgets submitted under s. 129.03(2), F.S., are reviewed and approved by the county commission, the bill may create an uncertainty as to the final authority for reviewing and approving the tentative budgets of the property appraisers.

VIII. Statutes Affected:

This bill substantially amends section 129.03 of the Florida Statutes

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



169744

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 129.021, Florida Statutes, is amended to
read:

129.021 County officer budget information.—

(1) Notwithstanding any other provision ~~provisions~~ of law,
the budgets of all county officers, as submitted to the board of
county commissioners, must be in sufficient detail and contain



169744

such information as the board of county commissioners may require in furtherance of their powers and responsibilities provided in ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b).

(2) The tentative and final budgets of each constitutional officer must be detailed and must provide:

(a) A separate line item for proposed expenditures for each program, division, or unit within the office.

(b) An identification of existing and proposed reserves.

(c) A separate narrative explaining:

1. The budget priorities of the constitutional officer.

2. Each budget line item that is unchanged from the budget for the prior fiscal year.

3. Each budget line item that is increased or decreased from the budget for the prior fiscal year, with an explanation for the increase or decrease.

(3) The tentative budget must be posted on the county's official website at least 2 days before the public hearing and must be identified separately from the tentative budget of the county as a whole to clearly demarcate the constitutional officers' budgets.

Section 2. Subsection (7) is added to section 195.087, Florida Statutes, to read:

195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.—

(7) (a) Notwithstanding any other provision of law, the tentative and final budgets of each constitutional officer must be detailed and must provide:

1. A separate line item for proposed expenditures for each



169744

program, division, or unit within the office.

2. An identification of existing and proposed reserves.

3. A separate narrative explaining:

a. The budget priorities of the constitutional officer.

b. Each budget line item that is unchanged from the budget
for the prior fiscal year.

c. Each budget line item that is increased or decreased
from the budget for the prior fiscal year, with an explanation
for the increase or decrease.

(b) The tentative budget must be posted on the
constitutional officer's official website at the same time the
tentative budget is submitted to the Department of Revenue. The
final budget must be posted on the constitutional officer's
website and remain posted for the fiscal year of that budget.

Section 3. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the budgets of county
constitutional officers; amending s. 129.021, F.S.;
providing criteria for submission of tentative and
final budgets by county constitutional officers;
requiring the tentative budget of a county
constitutional officer to be posted on the county's
website; amending s. 195.087, F.S.; providing criteria
for submission of tentative and final budgets by the



169744

69 property appraiser and tax collector; requiring the
70 tentative and final budgets to be posted on the
71 website of the property appraiser or tax collector;
72 providing an effective date.



192866

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Substitute for Amendment (169744) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 129.021, Florida Statutes, is amended to read:

129.021 County officer budget information.—

(1) Notwithstanding any other provision ~~provisions~~ of law, the budgets of all county officers, as submitted to the board of



192866

county commissioners, must be in sufficient detail and contain such information as the board of county commissioners may require in furtherance of their powers and responsibilities provided in ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b).

(2)(a) The tentative and final budgets of each constitutional officer must be posted on the county's official website and must provide a separate narrative explaining the budget priorities of the constitutional officer. This may be accomplished by posting to the county's official website a link to the constitutional officer's website.

(b) The tentative budget for each constitutional officer must be posted on the county's official website at least 2 days before the public hearing and must be identified separately from the tentative budget of the county as a whole to clearly demarcate the constitutional officer's budget.

Section 2. Present subsection (6) of section 195.087, Florida Statutes, is redesignated as subsection (7) and amended, and a new subsection (6) is added to that section, to read:

195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.—

(6)(a) Notwithstanding any other provision of law, the tentative and final budgets of each property appraiser and tax collector must be detailed and must provide:

1. A separate line item for proposed expenditures for each program, division, or unit within the office.

2. Existing and proposed reserves.

3. A separate narrative explaining:

a. The budget priorities of the property appraiser or tax



192866

collector.

b. Each budget line item that is unchanged from the budget for the prior fiscal year.

c. Each budget line item that is increased or decreased from the budget for the prior fiscal year, with an explanation for the increase or decrease.

(b) The tentative budget must be posted on each property appraiser's and tax collector's official website at the same time the tentative budget is submitted to the Department of Revenue.

(7)(6) Each property appraiser and tax collector must post their final approved budget on their official website within 30 days after adoption and the budget must remain posted for the fiscal year covered by the budget. Each county's official website must have a link to the websites of the property appraiser or tax collector where the final approved budget is posted. If the property appraiser or tax collector does not have an official website, the final approved budget must be posted on the county's official website and the budget must remain posted for the fiscal year covered by the budget.

Section 3. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the budgets of county
constitutional officers; amending s. 129.021, F.S.;



192866

69 requiring the tentative and final budgets of a county
70 constitutional officer to be posted on the county's
71 website, subject to certain requirements; amending s.
72 195.087, F.S.; providing criteria for submission of
73 tentative and final budgets by the property appraiser
74 and tax collector; requiring the tentative and final
75 budgets to be posted on the website of the property
76 appraiser or tax collector if such a website exists,
77 subject to certain requirements; providing an
78 effective date.



911578

LEGISLATIVE ACTION

Senate

.
.
.
.
.
.

House

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 129.021, Florida Statutes, is amended to
read:

129.021 County officer budget information.—

(1) Notwithstanding any other provision ~~provisions~~ of law,
the budgets of all county officers, as submitted to the board of
county commissioners, must be in sufficient detail and contain



911578

such information as the board of county commissioners may require in furtherance of their powers and responsibilities provided in ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b).

(2)(a) The tentative and final budgets of each constitutional officer must be posted on the county's official website and must provide a separate narrative explaining the budget priorities of the constitutional officer. This may be accomplished by posting to the county's official website a link to the constitutional officer's website.

(b) The tentative budget for each constitutional officer must be posted on the county's official website at least 2 days before the public hearing and must be identified separately from the tentative budget of the county as a whole to clearly demarcate the constitutional officer's budget.

Section 2. Present subsection (6) of section 195.087, Florida Statutes, is redesignated as subsection (7) and amended, and a new subsection (6) is added to that section, to read:

195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.—

(6)(a) Notwithstanding any other provision of law, the tentative and final budgets of each property appraiser and tax collector must be detailed and must provide:

1. A separate line item for proposed expenditures for each program, division, or unit within the office.

2. Existing and proposed reserves.

3. A separate narrative explaining:

a. The budget priorities of the property appraiser or tax collector.



911578

b. Each budget line item that is unchanged from the budget for the prior fiscal year.

c. Each budget line item that is increased or decreased from the budget for the prior fiscal year, with an explanation for the increase or decrease.

(b) The tentative budget must be posted on each property appraiser's and tax collector's official website at the same time the tentative budget is submitted to the Department of Revenue.

(7)(6) Each property appraiser and tax collector must post their final approved budget on their official website within 30 days after adoption and the budget must remain posted for the fiscal year covered by the budget. Each county's official website must have a link to the websites of the property appraiser or tax collector where the final approved budget is posted. If the property appraiser or tax collector does not have an official website, the final approved budget must be posted on the county's official website and the budget must remain posted for the fiscal year covered by the budget.

Section 3. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the budgets of county
constitutional officers; amending s. 129.021, F.S.;
requiring the tentative and final budgets of a county



911578

69 constitutional officer to be posted on the county's
70 website, subject to certain requirements; amending s.
71 195.087, F.S.; providing criteria for submission of
72 tentative and final budgets by the property appraiser
73 and tax collector; requiring the tentative and final
74 budgets to be posted on the website of the property
75 appraiser or tax collector if such a website exists,
76 subject to certain requirements; providing an
77 effective date.

By Senator Hutson

7-01862-19

2019696__

1 A bill to be entitled
 2 An act relating to the budgets of county
 3 constitutional officers; amending s. 129.03, F.S.;
 4 including property appraisers to the list of county
 5 constitutional officers who must submit a tentative
 6 budget to the board of county commissioners; providing
 7 criteria for submission of tentative and final budgets
 8 by county constitutional officers; requiring the
 9 tentative budget of a county constitutional officer to
 10 be separately identified from the tentative budget of
 11 the county as a whole when posted to the county's
 12 website; providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Subsection (2) of section 129.03, Florida
 17 Statutes, is amended to read:
 18 129.03 Preparation and adoption of budget.—
 19 (2) On or before June 1 of each year, the sheriff, the
 20 property appraiser, the clerk of the circuit court and county
 21 comptroller, the tax collector subject to a resolution entered
 22 into pursuant to s. 145.022(1), and the supervisor of elections
 23 shall each submit to the board of county commissioners a
 24 tentative budget for their respective offices for the ensuing
 25 fiscal year. However, the board of county commissioners may, by
 26 resolution, require the tentative budgets to be submitted by May
 27 1 of each year. Each officer's tentative and final budget must
 28 be detailed, and must provide a separate line item for proposed
 29 expenditures for each program, division, or unit within the

Page 1 of 2

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

7-01862-19

2019696__

30 office, and must include an identification of existing and
 31 proposed reserves. The tentative budget must be posted on the
 32 county's official website at least 2 days before the public
 33 hearing and must be identified separately from the tentative
 34 budget of the county as a whole to clearly demarcate the
 35 constitutional officers' budgets.
 36 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 616

INTRODUCER: Community Affairs Committee; Innovation, Industry, and Technology Committee; and Senators Perry and Hutson

SUBJECT: Engineering

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer/Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 616 authorizes the Florida Board of Professional Engineers (board) to establish minimum standards of practice for the profession of engineering and to establish responsibility rules for the profession of engineering. The bill revises the licensure requirements for professional engineers by permitting a license applicant to complete the required years of work experience after sitting for the license examination. Currently, an applicant must satisfy the experience work requirement before sitting for the examination. The bill increases the required experience for a person who graduated with a four-year degree from an engineering technology program, from four years to six years of work experience.

The bill repeals the right of an applicant who does not have the required education, to qualify to sit for the license examination if the person was engaged in 10 years or more of active engineering work experience on July 1, 1981. The bill also:

- Requires an engineering license applicant to be at least 18 years of age;
- Tolls the 90-day period within which the board must grant or deny an application when an applicant is required to make a personal appearance before the board;
- Specifies the stages of construction during which a special inspector must perform structural inspections on a threshold building, which is a building greater than three stories or 50 feet in height, or which has an assembly occupancy classification that exceeds 5,000 square feet in area and an occupancy of greater than 500 persons;

- Provides for shortened deadlines and time frames for notices to, and actions by, local building officials when a private provider performs plans review and inspections;
- Provides for shortened time frames for local building officials to issue building permits and notices of plan deficiencies;
- Reduces requirements for experience and length of licensure in other jurisdictions for applicants to qualify for licensure by endorsement without passing license examinations; and
- Authorizes a successor engineer to independently re-create and seal documents that were previously created and sealed by the original engineer, and delineates the obligations of the successor and original engineer

The bill provides an effective date of October 1, 2019.

II. Present Situation:

Florida Board of Professional Engineers

The practice of engineering is regulated by the board. Unlike most Department of Business and Professional Regulation (DBPR) professions, the administrative, investigative, and prosecutorial services for the board are not provided by DBPR. The DBPR contracts with the Florida Engineers Management Corporation (FEMC), a non-profit corporation, to provide such services.¹ The FEMC is a public-private nonprofit association that has contracted with the DBPR to handle administrative, investigative, and prosecutorial services for the Board of Professional Engineers.²

Section 471.008, F.S., authorizes the board to adopt rules to implement the provisions of ch. 471, F.S., and ch. 455, F.S., which provides the general licensing procedures for professional licensing by the DBPR and its professional licensing boards.

The board has adopted responsibility rules for the profession of engineering.³ The responsibility rules address a variety of issues, including minimum requirements for engineering documents,⁴ and requirements for the retention of engineering documents.⁵

There were 64,219 licensed professional engineers in the 2017-2018 fiscal year.⁶ The FEMC processed 310 complaints regarding engineering practice during that period. Only 261 complaints were found to be legally sufficient to proceed, and the FEMC filed 112

¹ Section 471.038(3), F.S.

² See the Annual Report of the FEMC for FY 2017-2018 at <https://fbpe.org/wp-content/uploads/2018/09/2017-2018-FEMC-Annual-Report.pdf> (last visited Apr. 4, 2019) and the contract between DBPR and FEMC for the period between July 1, 2017 and June 30, 2021 at <https://fbpe.org/wp-content/uploads/2018/07/FEMC-DBPR-Contract-2017.pdf> (last visited Apr. 4, 2019).

³ The responsibility rules are contained in Fla. Admin. Code Chs. 61G15-30, 61G15-31, 61G15-32, and 61G15-33 (2019).

⁴ Fla. Admin. Code R. 61G15-30.003 (2019).

⁵ Fla. Admin. Code R. 61G15-30.009 (2019).

⁶ There were 526 inactive professional licenses during that fiscal year. See *Annual Report, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, Fiscal Year 2017-2018*, at p. 19, available at <http://www.myfloridalicense.com/DBPR/os/documents/ProfessionsAnnualReport2017-2018.pdf> (last visited Apr. 4, 2019).

administrative complaints in cases where probable cause was found relating to a violation of the practice act.⁷

Professional Engineer License Qualifications

Section 471.013, F.S., provides the license qualifications for a professional engineer. In order to be licensed as a professional engineer, a person must successfully pass two examinations: the fundamentals examination and the principles and practices examination. Prior to being permitted to sit for the fundamentals examination, an applicant must have:

- Graduated from an approved engineering curriculum of four years or more in a board-approved school, college, or university; and
 - Have a record of four years of active engineering experience of a character indicating competence to be in responsible charge of engineering;⁸ or
- Graduated from an approved engineering technology curriculum of four years or more in an board-approved school, college, or university within the State University System, having been enrolled or graduated before July 1, 1979; and
 - Have a record of four years of active engineering experience of a character indicating competence to be in responsible charge of engineering.⁹

Alternatively, if an applicant does not have the required education, the applicant may qualify for an engineer license with work experience consisting of 10 years or more of active engineering work of a character indicating the applicant is competent to be placed in responsible charge of engineering. To qualify for licensure based solely on satisfying the experience requirement, the applicant must have notified the DBPR before July 1, 1984, that she or he was engaged in such work on July 1, 1981.

Licensing Procedure – Appearing Before the Board

Section 471.015(2), F.S., requires the board to certify for licensure any applicant who satisfies the requirements of s. 471.013, F.S.

The board may require personal appearance by any applicant for licensure. The board must give the applicant adequate notice of the time and place of the appearance and provide the applicant a statement of the purpose of and reasons requiring the appearance.¹⁰

Certificates of Authorization

Section 471.005, F.S., defines “certificate of authorization” as a license to practice engineering issued by the FEMC to a corporation or partnership. Section 471.023, F.S., requires business

⁷ See the Annual Report of the FEMC for FY 2017-2018 at <https://fbpe.org/wp-content/uploads/2018/09/2017-2018-FEMC-Annual-Report.pdf>, at pages 4-5 (last visited Mar. 27, 2019), which indicates the FEMC also filed 30 Final Orders with DBPR; entered 15 Settlement Stipulations; dismissed four cases after re-consideration; issued nine reprimands, five suspensions, five probations, five project reviews, and one license restriction; and imposed \$36,768.50 in administrative costs and \$38,400.00 in fines; The board also issued 30 final orders against licensees.

⁸ Section 471.013, F.S.

⁹ *Id.*

¹⁰ Section 471.015(6), F.S.

organizations that offer engineering services in Florida to obtain a certificate of authorization. The certification is issued by the FEMC pursuant to qualification by the board. The law requires at least one principal officer or partner, and all personnel who act on its behalf as engineers, of the business to be licensed professional engineers. The certification must be renewed every two years, and each certified business organization is required to notify the board within one month after changing information contained in the application.

Section 471.021, F.S., sets forth a process for temporary certificates for out-of-state entities to practice in Florida. The temporary certificate is available to out-of-state engineers who are qualified by licensure by endorsement, and are meant for work on one project for a period of one year. An out-of-state business organization that meets the requirements of s. 471.023, F.S., and upon payment of the required fee, is authorized to be issued a temporary certificate of authorization.

Section 471.011, F.S., authorizes the board by rule to establish fees to be paid for applications, examination, reexamination, licensing and renewal, inactive status applications and reactivation of inactive licenses, and recordmaking and recordkeeping. It also provides that the fee for a certificate of authorization shall not exceed \$125.

Special Inspectors of Threshold Buildings

Section 471.015(7), F.S., authorizes the board to establish by rule the qualifications for certification of licensees as inspectors of threshold buildings. A “threshold building” is “any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.”¹¹

The board is also authorized to establish minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector. Current law does not authorize the board to establish minimum training or education requirements for maintaining a certification or qualification as a special inspector.

The agency charged with enforcing the building code (enforcing agency)¹² must require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record.¹³

Use of Engineer Seals

Section 471.025(1), F.S., authorizes the board to prescribe, by rule, one or more forms of seal to be used by licensed engineers. Each licensee must obtain at least one seal. All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and filed for public record and all final documents provided to the owner or the owner’s representative must be signed by the licensee, dated, and sealed with the seal. The signature, date, and seal are evidence of the authenticity of the document to which they are affixed.

¹¹ See s. 553.71(12), F.S.

¹² See s. 553.71(5), F.S., defining the term “local enforcement agency.”

¹³ Section 553.79(5)(a), F.S.

A licensee may not affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty.¹⁴

Current law does not authorize a successor engineer to independently re-create and seal documents that were previously created and sealed by the original engineer, or delineate the obligations of the successor or original engineer in regards to prior work and documents assumed by the successor engineer.

III. Effect of Proposed Changes:

Reinstatement of Void Licenses

Sections 1 and 5 of the bill amends s. 455.271, F.S., to eliminate a requirement that a delinquent licensee must apply for licensure when a professional or occupational license expires. Current law providing such expired licenses are void, without any further action by the applicable board or the DBPR, is retained. Rulemaking authority is granted to the applicable board or the DBPR to adopt rules for license reinstatement, including continuing education requirements for professional engineers not to exceed the continuing education required to renew a license, as set forth in s. 471.019, F.S.

Rulemaking Authority

Section 2 of the bill amends s. 471.008, F.S., to authorize the board to establish minimum standards of practice for the profession of engineering and to establish responsibility rules for the profession of engineering.

License Qualifications (Age, Examination Eligibility, and Required Experience)

Section 3 of the bill amends s. 471.013(1)(a), F.S., to delete the requirement that an engineering license applicant have four or more years of active engineering experience before the applicant may sit for the fundamentals examination. The educational requirement for taking the fundamentals examination is amended to allow, in addition to a four-year degree in engineering, a four-year engineering technology degree if the approved curriculum at a program has been approved by the board.

The bill repeals the provision in s. 471.013(1)(a)3., F.S., which permits an applicant who does not have the required education, to qualify to sit for the fundamentals examination if the person was engaged in 10 years or more of active engineering work experience on July 1, 1981, and notified the DBPR before July 1, 1984, that she or he was engaged in such work.

Section 4 of the bill amends s. 471.015(2)(a), F.S., to require license applicants to provide proof to the board that he or she is at least 18 years of age. Current law does not provide a minimum age requirement.

¹⁴ Section 471.025(3), F.S.

The bill also revises licensure requirements by permitting a license applicant to complete the required experience after sitting for the license examination. Currently, an applicant must satisfy the experience requirement before sitting for the examination. Under the bill, a graduate from an approved four-year engineering curriculum must have a record of four years of active engineering experience of a character indicating competence to be in responsible charge of engineering before the person may qualify for a license. This is the same experience currently required to sit for the license examination.

However, the bill increases the required experience for a person who graduated with a four-year degree in engineering technology from four years to six years of work experience.

Licensure by Endorsement

Section 4 of the bill further provides the board must consider an applicant qualified for a license by endorsement, without passing the fundamentals examination, based on a reduced number of years of experience and length of licensure in another state. The required experience and licensure is reduced from:

- 20 years to 15 years, for experience; and
- 15 years to 10 years, for licensure.

Similarly, applicants are qualified for licenses by endorsement without the need to pass the fundamentals examination or the principles and practices examination, based on a reduction in the required years of experience and length of licensure in another state. The required experience and licensure (as to both examinations) is reduced from:

- 30 years to 25 years, for experience; and
- 25 years to 20 years, for licensure.

Licensing Procedure – Appearing Before the Board

Section 4 of the bill also amends s. 471.015(6), F.S., to provide that the period within which an application must be granted or denied is tolled until such time as the applicant appears when required to make a personal appearance before the board. The bill provides the board may deny a license if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings.¹⁵

Use of Engineer Seals

Section 7 of the bill amends s. 471.025(4), F.S., to require a successor engineer seeking to reuse documents previously sealed by another engineer to independently re-create all of the work done previously.

A successor engineer assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents, which must be treated as though they were the successor engineer's original product. The original engineer is released from any professional responsibility or civil liability for prior work assumed by the successor engineer.

¹⁵ Section 120.60(1), F.S.

Special Inspections of Threshold Buildings

Section 8 of the bill amends s. 553.79, F.S., relating to building construction permits, to provide that the authority of an enforcement agency to require a special inspector to perform structural inspections on the threshold building applies during new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified.

Alternative Plans Review and Inspection Notices to Local Building Officials

Section 9 of the bill provides for shortened deadlines for various notices required by s. 553.791(4) and (5), F.S., to be provided to a local building official when a private provider is retained to perform construction inspection services on a project. Notices that a private provider will perform required inspections must be provided to the local building official either:

- At the time of application; or
- No later than 2 p.m. the business day before the first scheduled inspection (previously no less than seven days before).

Once construction begins, if the local building official is unable to provide inspection services in a timely manner, a notice that the owner has elected to retain a private provider to provide inspection services must be provided to the local building official no later than 2 p.m. the business day before the next scheduled inspection (previously no less than seven days before).

The bill also amends s. 553.791(9), F.S., to provide that a local building official may not prohibit a private provider from performing inspections outside of normal operating hours, on weekends, or on holidays.

Time Frames for Issuance of Building Permits for Private Providers

Section 9 of the bill also amends s. 553.791(7), F.S., to shorten time frames for local building officials to issue building permits or notices of construction plan deficiencies to 15 days from 30 days.

Other Revisions

The bill includes technical drafting changes, conforming changes, and elimination of obsolete language.

Effective Date

The bill provides an effective date of October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.271, 471.008, 471.013, 471.015, 471.019, 471.021, 471.025, 553.79, and 553.791.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on April 9, 2019:

- Restores a previously deleted requirement for engineering firms to obtain and pay for certifications of authorization as well as the fee amount for such certifications;
- Removes provisions for registration of engineering firms; and
- Removes requirements for qualifying agents and engineering firms, when the agent is no longer affiliated with the engineering firm, to allow work to continue temporarily.

CS by Innovation, Industry, and Technology on March 26, 2019:

The committee substitute:

- Revises the licensure requirements for professional engineers by permitting a license applicant to complete the required years of work experience after sitting for the license examination;
- Repeals right of an applicant who does not have the required education, to qualify to sit for the license examination if the person was engaged in 10 years or more of active engineering work experience on July 1, 1981;
- Reduces requirements for experience and length of licensure in other jurisdictions for applicants to qualify for licensure by endorsement without passing license examinations;
- Eliminates a requirement for engineering firms to obtain and pay for certifications of authorization;
- Provides for registration of engineering firms;
- Requires an engineering license applicant to be at least 18 years of age;
- Tolls the 90-day period within which the board must grant or deny an application when an applicant is required to make a personal appearance before the board;
- Specifies the stages of construction during which a special inspector must perform structural inspections on a threshold building, which is a building greater than three stories or 50 feet in height, or which has an assembly occupancy classification that exceeds 5,000 square feet in area and an occupancy of greater than 500 persons;
- Provides for shortened deadlines and time frames for notices to, and actions by, local building officials when a private provider performs plans review and inspections;
- Provides for shortened time frames for local building officials to issue building permits and notices of plan deficiencies;
- Adds requirements for qualifying agents and engineering firms, when the agent is no longer affiliated with the engineering firm, to allow work to continue temporarily; and
- Authorizes a successor engineer to independently re-create and seal documents that were previously created and sealed by the original engineer, and delineates the obligations of the successor and original engineer.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



142010

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 79 - 327

and insert:

Section 2. Section 471.008, Florida Statutes, is amended to read:

471.008 Rulemaking authority.—The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to:

(1) Implement provisions of this chapter or chapter 455 which confer ~~conferring~~ duties upon it.



142010

11 (2) Ensure competence in the practice of engineering.

12 (3) Ensure accuracy, completeness, and quality in the
13 engineering products provided.

14 Section 3. Subsection (4) of section 471.011, Florida
15 Statutes, is amended to read:

16 471.011 Fees.—

17 ~~(4) The fee for a certificate of authorization shall not~~
18 ~~exceed \$125.~~

19 Section 4. Paragraph (a) of subsection (1) of section
20 471.013, Florida Statutes, is amended to read:

21 471.013 Examinations; prerequisites.—

22 (1)(a) A person shall be entitled to take an examination
23 for the purpose of determining whether she or he is qualified to
24 practice in this state as an engineer if the person is of good
25 moral character and:

26 1. Is a graduate from an approved engineering curriculum of
27 4 years or more in a school, college, or university which has
28 been approved by the board ~~and has a record of 4 years of active~~
29 ~~engineering experience of a character indicating competence to~~
30 ~~be in responsible charge of engineering; or~~

31 2. Is a graduate of an approved engineering technology
32 curriculum of 4 years or more in a school, college, or
33 university which has been approved by the board ~~within the State~~
34 ~~University System, having been enrolled or having graduated~~
35 ~~prior to July 1, 1979, and has a record of 4 years of active~~
36 ~~engineering experience of a character indicating competence to~~
37 ~~be in responsible charge of engineering; or~~

38 ~~3. Has, in lieu of such education and experience~~
39 ~~requirements, 10 years or more of active engineering work of a~~



142010

~~character indicating that the applicant is competent to be placed in responsible charge of engineering. However, this subparagraph does not apply unless such person notifies the department before July 1, 1984, that she or he was engaged in such work on July 1, 1981.~~

The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in engineering in such schools and colleges. The rules must ~~shall~~ be based on the educational requirements for engineering as defined in s. 471.005. The board may adopt rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

Section 5. Subsections (2), (3), (5), and (6) of section 471.015, Florida Statutes, are amended to read:

471.015 Licensure.—

(2)(a) The board shall certify for licensure any applicant who has submitted proof satisfactory to the board that he or she is at least 18 years of age and who:

1. Satisfies the requirements of s. 471.013(1)(a)1. and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or

2. Satisfies the requirements of s. 471.013(1)(a)2. and has a record of 6 years of active engineering experience of a character indicating competence to be in responsible charge of engineering ~~s. 471.013.~~

(b) The board may refuse to certify any applicant who has



142010

violated ~~any of the provisions of~~ s. 471.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the fundamentals examination and the principles and practice examination as set forth in s. 471.013, has passed a United States national, regional, state, or territorial licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination required by s. 471.013, and has satisfied the experience requirements set forth in paragraph (2)(a) and s. 471.013; or

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

(5)(a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 10 ~~15~~ years and has had 15 ~~20~~ years of continuous professional-level engineering experience.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 20 ~~25~~ years and has had 25 ~~30~~ years of continuous professional-level engineering experience.



142010

(6) The board may require a personal appearance by any applicant for licensure under this chapter. Any applicant of whom a personal appearance is required must be given adequate notice of the time and place of the appearance and provided with a statement of the purpose of and reasons requiring the appearance. If an applicant is required to appear, the time period within which a licensure application must be granted or denied is tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, the application for licensure may be denied.

Section 6. Section 471.019, Florida Statutes, is amended to read:

471.019 Reactivation.—The board shall prescribe by rule a reinstatement process for void licenses which includes establishing appropriate continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license for a licensed engineer may not exceed the continuing education requirements prescribed pursuant to s. 471.017 ~~12 classroom hours~~ for each year the license was inactive.

Section 7. Subsection (3) of section 471.021, Florida Statutes, is amended to read:

471.021 Engineers and firms of other states; temporary certificates to practice in Florida.—

(3) The application for a temporary license shall require ~~the constitute~~ appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction



142010

or operation connected with or incidental to the practice of
engineering for which the temporary license was issued.

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

And the title is amended as follows:

Delete lines 7 - 35

and insert:

amending s. 471.008, F.S.; revising the Board of
Professional Engineers' rulemaking authority; amending
s. 471.011, F.S.; conforming provisions to changes
made by the act; amending s. 471.013, F.S.; revising
the prerequisites for a person to take an examination
that determines whether she or he is qualified to
practice in this state as an engineer; deleting an
obsolete provision; amending s. 471.015, F.S.;
revising licensure certification requirements to
include active engineering experience and a minimum
age; revising requirements for licensure by
endorsement by the board; providing that the time
period in which a licensure application must be
granted or denied is tolled if an applicant is
required to make a personal appearance before the
board; authorizing the board to deny a license if such
an applicant fails to appear before the board within a
specified timeframe; amending s. 471.019, F.S.;
requiring the board to adopt rules relating to a
reinstatement process for void licenses; revising
continuing education requirements for reactivating a
license; amending s. 471.021, F.S.; requiring an



142010

156 applicant to appoint the Department of State as an
157 agent of the applicant for service of process of
158 certain actions;



822442

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment to Amendment (142010) (with title amendment)

Delete lines 14 - 18.

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

And the title is amended as follows:

Delete lines 136 - 137

and insert:

s. 471.013, F.S.; revising

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

4/9/19

Bill Number (if applicable)

616

Amendment Barcode (if applicable)

Topic Engineering

Name Allen Douglas

Job Title Exec Dir

Address 125 S Godsdelen St

Street

City

Tallahassee

State

FL

Zip

32301

Email allen@keng.org

Phone 224 7121

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Engineering Society / ACEC-FL

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

04/09/2019

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

616

Meeting Date

Bill Number (if applicable)

Topic Engineering

Amendment Barcode (if applicable)

Name Mark Thomasson

Job Title Associate

Address 2282 Killearn Center Blvd, Suite C

Phone 850-510-2226

Street

Tallahassee

FL

32309

City

State

Zip

Email mark@littlejohnmann.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Conservation & Environmental Quality Committee of Florida Engineering Society

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 6/15/2015

Bill Number (if applicable) 616

Topic FAIR ENGINEERS

Amendment Barcode (if applicable) _____

Name Jeff Brannan

Job Title _____

Address 1111111111

Phone 721-3701

Street 1111111111 City FL State FL Zip _____

Email jeff.brannan@flsenate.gov

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By the Committee on Innovation, Industry, and Technology; and
Senators Perry and Hutson

580-03504-19

2019616c1

1 A bill to be entitled
2 An act relating to engineering; amending s. 455.271,
3 F.S.; deleting a provision requiring a delinquent
4 status licensee to apply for active or inactive
5 status; requiring rulemaking to authorize licensees
6 whose licenses are void to apply for reinstatement;
7 amending s. 471.005, F.S.; revising definitions;
8 amending s. 471.008, F.S.; revising the Board of
9 Professional Engineers' rulemaking authority; amending
10 s. 471.011, F.S.; conforming provisions to changes
11 made by the act; amending s. 471.013, F.S.; revising
12 the prerequisites for a person to take an examination
13 that determines whether she or he is qualified to
14 practice in this state as an engineer; deleting an
15 obsolete provision; amending s. 471.015, F.S.;
16 revising licensure certification requirements to
17 include active engineering experience and a minimum
18 age; revising requirements for licensure by
19 endorsement by the board; providing that the time
20 period in which a licensure application must be
21 granted or denied is tolled if an applicant is
22 required to make a personal appearance before the
23 board; authorizing the board to deny a license if such
24 an applicant fails to appear before the board within a
25 specified timeframe; amending s. 471.019, F.S.;
26 requiring the board to adopt rules relating to a
27 reinstatement process for void licenses; revising
28 continuing education requirements for reactivating a
29 license; amending s. 471.021, F.S.; requiring that

Page 1 of 18

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

580-03504-19

2019616c1

30 temporary registrations be issued for certain work
31 rather than certificates of authorization; amending s.
32 471.023, F.S.; conforming provisions to changes made
33 by the act; providing requirements for qualifying
34 agents who terminate an affiliation with or cease
35 employment with qualified business organizations;
36 amending s. 471.025, F.S.; requiring a successor
37 engineer to be able to independently re-create certain
38 work when seeking to reuse certain documents;
39 specifying that a successor engineer assumes full
40 professional and legal responsibility by signing or
41 affixing his or her seal to assumed documents;
42 releasing the engineer who previously sealed the
43 documents from any professional responsibility or
44 civil liability for her or his work that is assumed by
45 a successor engineer; defining the term "successor
46 engineer"; amending s. 553.79, F.S.; requiring that
47 structural inspections on a threshold building be
48 performed during new construction or during certain
49 repair or restoration projects; amending s. 553.791,
50 F.S.; revising notice requirements for certain
51 building code inspection services by private
52 providers; decreasing the amount of time a local
53 building official has to take certain actions after
54 receiving a permit application and affidavit from a
55 private provider; prohibiting a local building
56 official from prohibiting a private provider from
57 performing any inspection outside the local building
58 official's normal operating hours; providing an

Page 2 of 18

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

580-03504-19

2019616c1

effective date.

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

Section 1. Paragraph (a) of subsection (6) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(6) (a) ~~A delinquent status licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent.~~ Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or the department. The board, or the department if there is no board, shall adopt rules allowing a licensee whose license is void to apply for reinstatement.

This subsection does not apply to individuals subject to regulation under chapter 473.

Section 2. Subsections (13) of section 471.005, Florida Statutes, is redesignated as subsection (3), and present subsection (3) and subsection (8) of that section are amended, to read:

471.005 Definitions.—As used in this chapter, the term:

~~(3) "Certificate of authorization" means a license to practice engineering issued by the management corporation to a corporation or partnership.~~

(8) "License" means the licensing of engineers ~~or~~

580-03504-19

2019616c1

~~certification of businesses~~ to practice engineering in this state.

Section 3. Section 471.008, Florida Statutes, is amended to read:

471.008 Rulemaking authority.—The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to:

(1) Implement provisions of this chapter or chapter 455 which confer ~~conferring~~ duties upon it.

(2) Ensure competence in the practice of engineering.

(3) Ensure accuracy, completeness, and quality in the engineering products provided.

Section 4. Subsection (4) of section 471.011, Florida Statutes, is amended to read:

471.011 Fees.—

~~(4) The fee for a certificate of authorization shall not exceed \$125.~~

Section 5. Paragraph (a) of subsection (1) of section 471.013, Florida Statutes, is amended to read:

471.013 Examinations; prerequisites.—

(1) (a) A person shall be entitled to take an examination for the purpose of determining whether she or he is qualified to practice in this state as an engineer if the person is of good moral character and:

1. Is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board ~~and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or~~

2. Is a graduate of an approved engineering technology

580-03504-19

2019616c1

curriculum of 4 years or more in a school, college, or university which has been approved by the board within the State University System, ~~having been enrolled or having graduated prior to July 1, 1979, and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or~~

~~3. Has, in lieu of such education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering. However, this subparagraph does not apply unless such person notifies the department before July 1, 1984, that she or he was engaged in such work on July 1, 1981.~~

The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in engineering in such schools and colleges. The rules must ~~shall~~ be based on the educational requirements for engineering as defined in s. 471.005. The board may adopt rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

Section 6. Subsections (2), (3), (5), and (6) of section 471.015, Florida Statutes, are amended to read:

471.015 Licensure.—

(2)(a) The board shall certify for licensure any applicant who has submitted proof satisfactory to the board that he or she is at least 18 years of age and who:

1. Satisfies the requirements of s. 471.013(1)(a)1. and has

580-03504-19

2019616c1

a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or

2. Satisfies the requirements of s. 471.013(1)(a)2. and has a record of 6 years of active engineering experience of a character indicating competence to be in responsible charge of engineering s. 471.013.

(b) The board may refuse to certify any applicant who has violated ~~any of the provisions of~~ s. 471.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the fundamentals examination and the principles and practice examination as set forth in s. 471.013, has passed a United States national, regional, state, or territorial licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination required by s. 471.013, and has satisfied the experience requirements set forth in paragraph (2)(a) and s. 471.013; or

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

(5)(a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 10 ~~15~~ years and has had 15 ~~20~~ years of continuous

580-03504-19

2019616c1

professional-level engineering experience.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 20 ~~25~~ years and has had 25 ~~30~~ years of continuous professional-level engineering experience.

(6) The board may require a personal appearance by any applicant for licensure under this chapter. Any applicant of whom a personal appearance is required must be given adequate notice of the time and place of the appearance and provided with a statement of the purpose of and reasons requiring the appearance. If an applicant is required to appear, the time period within which a licensure application must be granted or denied is tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, the application for licensure may be denied.

Section 7. Section 471.019, Florida Statutes, is amended to read:

471.019 Reactivation.—The board shall prescribe by rule a reinstatement process for void licenses which includes establishing appropriate continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license for a licensed engineer may not exceed the continuing education requirements prescribed pursuant to s. 471.017 ~~12 classroom hours~~ for each year the license was inactive.

580-03504-19

2019616c1

Section 8. Section 471.021, Florida Statutes, is amended to read:

471.021 Engineers and firms of other states; temporary registration certificates to practice in Florida.—

(1) Upon approval of the board and payment of the fee set in s. 471.011, the management corporation shall issue a temporary license for work on one specified project in this state for a period not to exceed 1 year to an engineer holding a certificate to practice in another state, provided Florida licensees are similarly permitted to engage in work in such state and provided that the engineer be qualified for licensure by endorsement.

(2) Upon approval by the board and payment of the fee set in s. 471.011, the management corporation shall issue a temporary registration certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary license in accordance with subsection (1).

(3) The application for a temporary license shall require ~~the constitute~~ appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of engineering for which the temporary license was issued.

Section 9. Section 471.023, Florida Statutes, is amended to read:

580-03504-19

2019616c1

233 471.023 Registration Certification of business
 234 organizations.—
 235 (1) The practice of, or the offer to practice, engineering
 236 by licensees or offering engineering services to the public
 237 through a business organization, including a partnership,
 238 corporation, business trust, or other legal entity or by a
 239 business organization, including a corporation, partnership,
 240 business trust, or other legal entity offering such services to
 241 the public through licensees under this chapter as agents,
 242 employees, officers, or partners is permitted only if the
 243 business organization is registered with ~~possesses a~~
 244 ~~certification issued by~~ the management corporation pursuant to
 245 qualification by the board, subject to the provisions of this
 246 chapter. One or more of the principal officers of the business
 247 organization or one or more partners of the partnership and all
 248 personnel of the business organization who act in its behalf as
 249 engineers in this state shall be licensed as provided by this
 250 chapter. All final drawings, specifications, plans, reports, or
 251 documents involving practices licensed under this chapter which
 252 are prepared or approved for the use of the business
 253 organization or for public record within the state shall be
 254 dated and shall bear the signature and seal of the licensee who
 255 prepared or approved them. Nothing in this section shall be
 256 construed to mean that a license to practice engineering shall
 257 be held by a business organization. Nothing herein prohibits
 258 business organizations from joining together to offer
 259 engineering services to the public, if each business
 260 organization otherwise meets the requirements of this section.
 261 No business organization shall be relieved of responsibility for

580-03504-19

2019616c1

262 the conduct or acts of its agents, employees, or officers by
 263 reason of its compliance with this section, nor shall any
 264 individual practicing engineering be relieved of responsibility
 265 for professional services performed by reason of his or her
 266 employment or relationship with a business organization.
 267 (2) For the purposes of this section, registration with the
 268 management corporation ~~a certificate of authorization~~ shall be
 269 required for any business organization or other person
 270 practicing under a fictitious name, offering engineering
 271 services to the public. However, when an individual is
 272 practicing engineering in his or her own given name, he or she
 273 shall not be required to be registered ~~licensed~~ under this
 274 section.
 275 (3) Except as provided in s. 558.0035, the fact that a
 276 licensed engineer practices through a business organization does
 277 not relieve the licensee from personal liability for negligence,
 278 misconduct, or wrongful acts committed by him or her.
 279 Partnerships and all partners shall be jointly and severally
 280 liable for the negligence, misconduct, or wrongful acts
 281 committed by their agents, employees, or partners while acting
 282 in a professional capacity. Any officer, agent, or employee of a
 283 business organization other than a partnership shall be
 284 personally liable and accountable only for negligent acts,
 285 wrongful acts, or misconduct committed by him or her or
 286 committed by any person under his or her direct supervision and
 287 control, while rendering professional services on behalf of the
 288 business organization. The personal liability of a shareholder
 289 or owner of a business organization, in his or her capacity as
 290 shareholder or owner, shall be no greater than that of a

580-03504-19

2019616c1

shareholder-employee of a corporation incorporated under chapter 607. The business organization shall be liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.

~~(4) Each certification of authorization shall be renewed every 2 years.~~ Each business organization registered ~~certified~~ under this section must notify the board within 1 month after any change in the information contained in the application upon which the registration ~~certification~~ is based.

(a) A qualifying agent who terminates an affiliation with a qualified business organization must notify the board, by a process established by rule, of such termination within 24 hours after the termination. If such qualifying agent is the only qualifying agent for that business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination. Except as provided in paragraph (b), the business organization may not engage in the practice of engineering until it is qualified by another qualifying agent.

(b) In the event a qualifying agent ceases employment with a qualified business organization and such qualifying agent is the only licensed individual affiliated with the business organization, the board may authorize another licensee employed by the business organization to temporarily serve as its qualifying agent for a period of not more than 60 days to proceed with incomplete contracts. The business organization may not operate beyond such period under this chapter absent

580-03504-19

2019616c1

replacement of the qualifying agent.

(c) A qualifying agent shall notify the board, by a process established by rule, before engaging in the practice of engineering in affiliation with a different business organization.

(5) Disciplinary action against a business organization shall be administered in the same manner and on the same grounds as disciplinary action against a licensed engineer.

Section 10. Subsection (4) is added to section 471.025, Florida Statutes, to read:

471.025 Seals.—

(4) A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer. A successor engineer assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents. Such documents must be treated as though they were the successor engineer's original product, and the original engineer is released from any professional responsibility or civil liability for prior work assumed by the successor engineer. For the purposes of this subsection, the term "successor engineer" means an engineer who is using or relying upon the work, findings, or recommendations of the engineer who previously sealed the pertinent documents.

Section 11. Paragraph (a) of subsection (5) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(5) (a) During new construction or during repair or restoration projects in which the structural system or

580-03504-19

2019616c1

structural loading of a threshold building is being modified,
 the enforcing agency shall require a special inspector to
 perform structural inspections on ~~the a~~ threshold building
 pursuant to a structural inspection plan prepared by the
 engineer or architect of record. The structural inspection plan
 must be submitted to and approved by the enforcing agency before
 the issuance of a building permit for the construction, repair,
or restoration of a threshold building. The purpose of the
 structural inspection plan is to provide specific inspection
 procedures and schedules so that the building can be adequately
 inspected for compliance with the permitted documents. The
 special inspector may not serve as a surrogate in carrying out
 the responsibilities of the building official, the architect, or
 the engineer of record. The contractor's contractual or
 statutory obligations are not relieved by any action of the
 special inspector. The special inspector shall determine that a
 professional engineer who specializes in shoring design has
 inspected the shoring and reshoring for conformance with the
 shoring and reshoring plans submitted to the enforcing agency. A
 fee simple title owner of a building, which does not meet the
 minimum size, height, occupancy, occupancy classification, or
 number-of-stories criteria which would result in classification
 as a threshold building under s. 553.71(12), may designate such
 building as a threshold building, subject to more than the
 minimum number of inspections required by the Florida Building
 Code.

Section 12. Subsections (4) and (5), paragraphs (a), (b),
 and (c) of subsection (7), and subsection (9) of section
 553.791, Florida Statutes, are amended to read:

580-03504-19

2019616c1

553.791 Alternative plans review and inspection.—

(4) A fee owner or the fee owner's contractor using a
 private provider to provide building code inspection services
 shall notify the local building official at the time of permit
 application, or no later than 2 p.m. of the business day before
~~less than 7 business days prior to~~ the first scheduled
 inspection by the local building official or building code
 enforcement agency for a private provider performing required
 inspections of construction under this section, on a form to be
 adopted by the commission. This notice shall include the
 following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and
 facsimile number of each private provider who is performing or
 will perform such services, his or her professional license or
 certification number, qualification statements or resumes, and,
 if required by the local building official, a certificate of
 insurance demonstrating that professional liability insurance
 coverage is in place for the private provider's firm, the
 private provider, and any duly authorized representative in the
 amounts required by this section.

(c) An acknowledgment from the fee owner in substantially
 the following form:

I have elected to use one or more private providers to
 provide building code plans review and/or inspection
 services on the building or structure that is the
 subject of the enclosed permit application, as
 authorized by s. 553.791, Florida Statutes. I

580-03504-19

2019616c1

407 understand that the local building official may not
 408 review the plans submitted or perform the required
 409 building inspections to determine compliance with the
 410 applicable codes, except to the extent specified in
 411 said law. Instead, plans review and/or required
 412 building inspections will be performed by licensed or
 413 certified personnel identified in the application. The
 414 law requires minimum insurance requirements for such
 415 personnel, but I understand that I may require more
 416 insurance to protect my interests. By executing this
 417 form, I acknowledge that I have made inquiry regarding
 418 the competence of the licensed or certified personnel
 419 and the level of their insurance and am satisfied that
 420 my interests are adequately protected. I agree to
 421 indemnify, defend, and hold harmless the local
 422 government, the local building official, and their
 423 building code enforcement personnel from any and all
 424 claims arising from my use of these licensed or
 425 certified personnel to perform building code
 426 inspection services with respect to the building or
 427 structure that is the subject of the enclosed permit
 428 application.

429

430 If the fee owner or the fee owner's contractor makes any changes
 431 to the listed private providers or the services to be provided
 432 by those private providers, the fee owner or the fee owner's
 433 contractor shall, within 1 business day after any change, update
 434 the notice to reflect such changes. A change of a duly
 435 authorized representative named in the permit application does

Page 15 of 18

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

580-03504-19

2019616c1

436 not require a revision of the permit, and the building code
 437 enforcement agency shall not charge a fee for making the change.
 438 In addition, the fee owner or the fee owner's contractor shall
 439 post at the project site, prior to the commencement of
 440 construction and updated within 1 business day after any change,
 441 on a form to be adopted by the commission, the name, firm,
 442 address, telephone number, and facsimile number of each private
 443 provider who is performing or will perform building code
 444 inspection services, the type of service being performed, and
 445 similar information for the primary contact of the private
 446 provider on the project.

447 (5) After construction has commenced and if the local
 448 building official is unable to provide inspection services in a
 449 timely manner, the fee owner or the fee owner's contractor may
 450 elect to use a private provider to provide inspection services
 451 by notifying the local building official of the owner's or
 452 contractor's intention to do so no later than 2 p.m. of the
 453 business day before less than 7 business days prior to the next
 454 scheduled inspection using the notice provided for in paragraphs
 455 (4) (a) - (c).

456 (7) (a) No more than 15 ~~30~~ business days after receipt of a
 457 permit application and the affidavit from the private provider
 458 required pursuant to subsection (6), the local building official
 459 shall issue the requested permit or provide a written notice to
 460 the permit applicant identifying the specific plan features that
 461 do not comply with the applicable codes, as well as the specific
 462 code chapters and sections. If the local building official does
 463 not provide a written notice of the plan deficiencies within the
 464 prescribed 15-day ~~30-day~~ period, the permit application shall be

Page 16 of 18

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

580-03504-19

2019616c1

deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed ~~15-day 30-day~~ period, the ~~15-day 30-day~~ period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (13) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled ~~15-day 30-day~~ period plus 5 business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be issued by the local building official on the next business day.

(9) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may not prohibit the private provider from performing any inspection outside of the local building official's normal operating hours, including before and after normal business hours, on weekends, or on holidays. The local building official may visit the building

580-03504-19

2019616c1

site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted at the job site by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

Section 13. This act shall take effect October 1, 2019.

COMMITTEE: Community Affairs
ITEM: CS/SB 616
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 668

INTRODUCER: Criminal Justice Committee and Senator Perry

SUBJECT: Public Nuisances

DATE: April 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 668 amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property, assault, aggravated assault, battery, aggravated battery, burglary, theft, or robbery by sudden snatching, may be declared a public nuisance and may be abated or enjoined; and
- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

Public nuisances are abated pursuant to s. 60.05, F.S. The bill amends this statute to:

- Extend and increase the frequency of notice so a property owner has sufficient time to receive notice and correct the use of the property;
- Allow for shorter notice where the public nuisance presents a danger of immediate and irreparable injury; and
- Provide more detail on what must be provided in the notice and serving the notice.

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss, and a cost-savings or cost-avoidance to local governments if they have sustained an economic loss. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Public Nuisances (s. 823.05, F.S.)

Section 823.05(1), F.S., provides that a person is guilty of maintaining a public nuisance¹ if he or she erects, establishes, continues, or maintains, owns or leases any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S., or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated. The building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a public nuisance.

Section 823.05(2), F.S., provides that a criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity² is a public nuisance,³ and the use of a location on two or more occasions by a criminal gang or member or associate of such gang for the purpose of engaging in criminal gang-related activity is also a public nuisance.⁴

Section 823.05(2), F.S., does not prevent a local governing body from adopting and enforcing laws consistent with ch. 823, F.S., relating to criminal gangs and gang violence.⁵ Further, the state, through the Department of Legal Affairs or any state attorney, or any of the state's agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of ch. 823, F.S., may institute civil proceedings under s. 823.05(2)(e),

¹ Although s. 823.05(1), F.S., refers to a person being "guilty of maintaining a public nuisance," s. 823.05, F.S., does not make maintaining a public nuisance a crime. However, s. 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors, except that a violation of s. 823.10, F.S., is a third degree felony. Section 823.10(1), F.S., provides that certain places visited by persons for the purpose of unlawfully using any controlled substance under ch. 893, F.S. (Florida Comprehensive Drug Abuse Prevention and Control Act), or any drugs as described in ch. 499, F.S. (Florida Drug and Cosmetic Act), or for the illegal keeping, selling, or delivering of such substance or drug, are a public nuisance. Any person who willfully keeps or maintains, or aids or abets another in keeping or maintaining, such public nuisance commits a third degree felony, if such public nuisance is a warehouse, structure, or building. *Id.*

² Section 823.05(2)(a), F.S., defines the terms "criminal gang," "criminal gang member," "criminal gang associate," and "criminal gang-related activity" by reference to the definitions of those terms in s. 874.03, F.S.

³ Section 823.05(2)(b), F.S. Section 893.138(2)(d), F.S., also provides that any place or premises that has been used by a criminal gang for the purpose of conducting criminal gang activity may be declared a public nuisance. Additionally, if the place or premises has been used on more than two occasions within a six-month period as the site of dealing in stolen property or a violation of ch. 499, F.S., such location may be declared a public nuisance. Unlike s. 823.05, F.S., a public nuisance described in s. 893.138, F.S., is abated pursuant to procedures provided in that section. Section 893.138(2)-(7), F.S. However, the public nuisance may be enjoined pursuant to s. 60.05, F.S. Section 893.138(9), F.S.

⁴ Section 823.05(2)(c), F.S.

⁵ Section 823.05(2)(d), F.S.

F.S., and, pending final determination, the circuit court may enter injunctions, prohibitions, or restraining orders, or take such other actions it deems proper.

Section 823.05(3), F.S., provides that a massage establishment as defined in s. 480.033(7), F.S., that operates in violation of s. 480.0475, F.S., or s. 480.0535(2), F.S., is declared a public nuisance.

Abating or Enjoining Public Nuisances (ss. 60.05 and 60.06, F.S.)

Public nuisances described in s. 823.05, F.S., must be enjoined pursuant to s. 60.05, F.S., or abated pursuant to s. 60.06, F.S.⁶ Section 60.05(1), F.S., authorizes the Attorney General, state attorney, city attorney, county attorney, and any citizen of the county to sue in the name of the state to enjoin the nuisance, the person(s) maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court, based on evidence⁷ or affidavit, may issue a temporary injunction enjoining:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists; and
- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.⁸

The injunction must specify the activities enjoined and must not preclude the operation of any lawful business not conducive to the maintenance of the alleged nuisance.⁹ If the existence of a nuisance is shown at the final hearing, the court must issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance.¹⁰ The court must adjudge that the costs are a lien on all personal property found in the place of the nuisance; however, if the property fails to bring enough to pay costs, the lien is on the real estate occupied by the nuisance.¹¹

Section 60.06, F.S., requires the court, upon “proper” proof, to order the abatement of all nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by contempt. However, this jurisdiction does not repeal or alter s. 823.01, F.S., which provides criminal penalties for nuisances described in that section.¹²

⁶ Section 823.05(1), (2)(b) and (c), and (3), F.S.

⁷ Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of a nuisance. Section 60.05(3), F.S.

⁸ Section 60.05(2), F.S.

⁹ Section 60.05(2), F.S. At least 3 days’ notice in writing shall be given to the defendant of the time and place of application for the temporary injunction. *Id.*

¹⁰ Section 60.05(4), F.S.

¹¹ *Id.* However, no lien attaches to the real estate of any person other than the person establishing or maintaining the nuisance unless five days’ written notice has been given to the owner or owner’s agent who fails to abate the nuisance within this five-day period. *Id.*

¹² Section 60.06, F.S.

Real Property and the Florida Contraband Forfeiture Act

The “Florida Contraband Forfeiture Act” (Act)¹³ authorizes seizure and civil forfeiture of real property used in violation of the provisions of the Act.¹⁴ The seizure may only occur if the owner of the property is arrested for a criminal offense¹⁵ that forms the basis for determining that the property is a “contraband article” under s. 932.701, F.S.,¹⁶ or when one or more statutorily-specified exceptions to this arrest requirement apply.¹⁷ For example, one specified exception is when the property is not owned by the person arrested for a criminal offense that forms the basis for determining that the property is a “contraband article,” but the owner of the property had actual knowledge of the criminal activity.¹⁸

As previously noted, s. 823.05, F.S., in part, addresses criminal gang-related activity. Section 874.08, F.S., provides that the following are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act:

- All profits, proceeds, and instrumentalities of criminal gang activity;
- All property used or intended or attempted to be used to facilitate the criminal activity of any criminal gang or of any criminal gang member;
- All profits, proceeds, and instrumentalities of criminal gang recruitment; and
- All property used or intended or attempted to be used to facilitate criminal gang recruitment.

III. Effect of Proposed Changes:

The bill amends s. 823.05, F.S., relating to public nuisances, to:

- Delete the requirement that a criminal gang or member or associate of such gang must use a location “on two or more occasions” for the purpose of engaging in a criminal gang-related activity in order for such use to qualify as a public nuisance that can be abated or enjoined;
- Provide that any place or premises that has been used on more than two occasions within a six-month period as the site of dealing in stolen property (s. 812.019, F.S.), assault (s. 784.011, F.S.), aggravated assault (s. 784.021, F.S.), battery (s. 784.03, F.S.), aggravated battery (s. 784.045, F.S.), burglary (s. 810.02, F.S.),¹⁹ theft (s. 812.014, F.S.), or robbery by

¹³ Sections 932.701-932.7062, F.S. See s. 932.701(1), F.S.

¹⁴ Section 932.703(1)(a), F.S. Real property may not be seized or restrained, other than by *lis pendens*, subsequent to a violation of the Florida Contraband Forfeiture Act until the persons entitled to notice are afforded the opportunity to attend the pre-seizure adversarial preliminary hearing. Section 932.703(3)(b), F.S. “A notice of *lis pendens* is an instrument which may be filed with the clerk of the circuit court in connection with actions involving the ownership of, or interest in, property. It is intended to operate as constructive notice to persons dealing with the property that is the subject matter of litigation.” Op. Att’y Gen. Fla. 58-135 (1958). Other requirements relating to seizure are specified in s. 932.703, F.S. Forfeiture proceedings are addressed in s. 932.704, F.S., and disposition of liens and forfeited property are addressed in s. 932.7055, F.S.

¹⁵ Section 932.703(1)(a), F.S.

¹⁶ The definition of “contraband article” in s. 932.701(2), F.S., includes an extensive list of tangible items. One of these items is real property used or attempted to be used as an instrumentality in the commission of, or in aiding or abetting the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Act. Section 932.701(2)(a)6., F.S. See s. 932.702, F.S. (unlawful acts involving a contraband article).

¹⁷ Section 932.703(1)(a), F.S.

¹⁸ Section 932.703(1)(a)3., F.S. Evidence that the owner received notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Act on a prior occasion by the arrested person, may be used to establish actual knowledge. *Id.*

¹⁹ Armed burglary is also included in this section. See s. 810.02(2)(b), F.S.

sudden snatching (s. 812.131, F.S.), may be declared a public nuisance and may be abated or enjoined as provided in s. 60.05, F.S., or s. 60.06, F.S.; and

- Provide that a rental property that is declared a public nuisance based upon the previously-described circumstances may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a public nuisance and completes the rehabilitation within a reasonable time thereafter.

The bill also restructures s. 823.05(1), F.S., which defines what constitutes a public nuisance and what may be abated or enjoined as a public nuisance. This is not a substantive change because nothing of a substantive nature is eliminated from or added to that subsection.

Public nuisances are abated pursuant to s. 60.05, F.S. The bill amends this statute to increase the notice requirements from one three-day notice to two notices (if needed) with a total of 25 days to abate the nuisance. The defendant must be given written notice (first notice) with a ten-day compliance time frame to abate the nuisance. If the defendant fails to abate the nuisance within these ten days, the defendant must be given written notice (second notice) of the application for temporary injunction if the defendant does not abate the nuisance within 15 days following the original ten-day period. However, the notice period may be waived and shortened to a period of 24 to 72 hours where the nuisance presents an immediate and irreparable danger to a person or to the safety of a community. The written notice must identify the location of where the application for temporary injunction will be filed and the time that it will be filed.

Contents of the notice must include:

- If applicable, a description of the building, booth, tent, or place that is declared a public nuisance;
- The activities that led to the public nuisance being declared;
- The actions necessary to abate the public nuisance; and
- A statement that costs will be assessed if abatement of the public nuisance is not completed and if there is a determination by the court that such public nuisance exists.

Required notices must be sent by personal service to the owner at his or her address as it appears on the latest tax assessment roll or to the tenant of such address. If an address is not found for the owner, notices must be sent to the location of the declared nuisance and displayed prominently and conspicuously at such location. The notice timeframe before a lien may attach when the property is owned by someone other than the person causing the public nuisance is extended from five days to 15 days.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to homeowners or businesses, if they have sustained an economic loss (e.g., decreased home and business property values and loss of customers) as a result of the presence of the nuisance.

C. Government Sector Impact:

The abatement or enjoining of a public nuisance described in the bill may result in a cost-savings or cost-avoidance to local governments if they have sustained an economic loss (e.g., decreased local tax revenues, increased local law enforcement costs, and increased local ordinance or code enforcement costs) as a result of the presence of the nuisance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 60.05 and 823.05.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2019:

The Committee Substitute:

- Extends and increases the frequency of notice so a property owner has sufficient time to receive notice and correct the use of the property;
- Allows for shorter notice where the public nuisance presents a danger of immediate and irreparable injury; and
- Provides more detail on what must be provided in the notice and serving the notice.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Criminal Justice; and Senator Perry

591-03672-19

2019668c1

A bill to be entitled

An act relating to public nuisances; amending s. 60.05, F.S.; revising notice requirements for the filing of temporary injunctions relating to the enjoinder of certain nuisances; extending the period of notice before a lien may attach to certain real estate; amending s. 823.05, F.S.; making technical changes; providing that the use of a location by a criminal gang, criminal gang members, or criminal gang associates for criminal gang-related activity is a public nuisance; declaring that any place or premises that has been used on more than two occasions within a certain period as the site of specified violations is a nuisance and may be abated or enjoined pursuant to specified provisions; providing a property owner an opportunity to remedy a nuisance before specified legal actions may be taken against the property under certain circumstances; providing an effective date.

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

Section 1. Section 60.05, Florida Statutes, is amended to read:

60.05 Abatement of nuisances.—

(1) When any nuisance as defined in s. 823.05 exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the

Page 1 of 7

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

591-03672-19

2019668c1

building or ground on which the nuisance exists.

(2) The court may allow a temporary injunction without bond on proper proof being made. If it appears by evidence or affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, may enjoin any of the following:

(a) The maintaining of a nuisance.~~+~~

(b) The operating and maintaining of the place or premises where the nuisance is maintained.~~+~~

(c) The owner or agent of the building or ground upon which the nuisance exists.~~+~~

(d) The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.

The injunction shall specify the activities enjoined and shall not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of.

(3) (a) The defendant shall be given written notice to abate the nuisance within 10 days after the issuance of such notice at least 3 days' notice in writing shall be given defendant of the time and place of application for the temporary injunction. The notice must inform the defendant that an application for temporary injunction may be filed if the nuisance is not abated. If the nuisance is not timely abated, the defendant must be given a second written notice that informs the defendant that an application for a temporary injunction will be filed if the nuisance is not abated within 15 days after the end of the

Page 2 of 7

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

591-03672-19

2019668c1

initial 10-day period. This notice also must provide the location where the application will be filed and the time that it will be filed. If the nuisance is not timely abated as provided in the second notice, the application for the temporary injunction must be filed as indicated in the notice.

(b) In addition to the information provided in paragraph (a), each notice must:

1. If applicable, describe the building, booth, tent, or place that is declared a nuisance;

2. State the activities that led to the nuisance being declared;

3. State the actions necessary to abate the nuisance; and

4. State that costs will be assessed if abatement of the nuisance is not completed and if there is a determination by the court that such nuisance exists.

(c) The notices provided in this subsection must be sent by personal service to the owner at his or her address as it appears on the latest tax assessment roll or to the tenant of such address. If an address is not found for the owner, the notices must be sent to the location of the declared nuisance and displayed prominently and conspicuously at such location.

(d) If a nuisance presents a danger of immediate and irreparable injury to a person or to the safety of a community, the notice requirements under paragraph (a) are waived, and only one notice is required, which must inform the defendant that the application for a temporary injunction will be filed if the nuisance is not abated within a designated timeframe of between 24 and 72 hours. The notice also must identify the location where the application will be filed and time that it will be

591-03672-19

2019668c1

filed.

(4)(3) Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of the nuisance. No action filed by a citizen shall be dismissed unless the court is satisfied that it should be dismissed. Otherwise the action shall continue and the state attorney notified to proceed with it. If the action is brought by a citizen and the court finds that there was no reasonable ground for the action, the costs shall be taxed against the citizen.

(5)(4) On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then on the real estate occupied by the nuisance. A ~~no~~ lien may not ~~shall~~ attach to the real estate of any other than said persons unless 15 ~~5~~ days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within the 15-day period ~~said 5 days~~. In a proceeding abating a nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has been convicted of an offense under chapter 893 or s. 796.07, the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.

(6)(5) If the action was brought by the Attorney General, a state attorney, or any other officer or agency of state government; if the court finds either before or after trial that

591-03672-19

2019668c1

there was no reasonable ground for the action; and if judgment is rendered for the defendant, the costs and reasonable attorney's fees shall be taxed against the state.

Section 2. Section 823.05, Florida Statutes, is amended to read:

823.05 Places and groups engaged in certain activities ~~criminal gang-related activity~~ declared a nuisance; abatement and enjoinder ~~massage establishments engaged in prohibited activity; may be abated and enjoined.~~

(1) A person who erects, establishes, continues, maintains, owns, or leases any of the following is deemed to be maintaining a nuisance, and the building, erection, place, tent, or booth, and the furniture, fixtures, and contents of such structure, are declared a nuisance, and all such places or persons shall be abated or enjoined as provided in ss. 60.05 and 60.06:

(a) Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent, or place that which tends to annoy the community or injure the health of the community, or becomes ~~become~~ manifestly injurious to the morals or manners of the people as provided ~~described~~ in s. 823.01. ~~or~~

(b) A ~~any~~ house or place of prostitution, assignation, or lewdness. ~~or~~

(c) A place or building in which persons engage in ~~where~~ games of chance ~~are engaged in~~ violation of law. ~~or~~

(d) A ~~any~~ place where any law of the state is violated, ~~shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in ss. 60.05~~

591-03672-19

2019668c1

~~and 60.06.~~

(2) (a) As used in this subsection, the terms "criminal gang," "criminal gang member," "criminal gang associate," and "criminal gang-related activity" have the same meanings as provided in s. 874.03.

(b) A criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity is a public nuisance. Any and all such persons shall be abated or enjoined as provided in ss. 60.05 and 60.06.

(c) The use of a location ~~on two or more occasions~~ by a criminal gang, criminal gang members, or criminal gang associates for the purpose of engaging in criminal gang-related activity is a public nuisance. Such use of a location as a public nuisance shall be abated or enjoined as provided in ss. 60.05 and 60.06.

(d) Nothing in this subsection shall prevent a local governing body from adopting and enforcing laws consistent with this chapter relating to criminal gangs and gang violence. Where local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

(e) The state, through the Department of Legal Affairs or any state attorney, or any of the state's agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of this chapter may institute civil proceedings under this subsection. In any action brought under this subsection, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court

591-03672-19

2019668c1

may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(3) A massage establishment as defined in s. 480.033(7) that operates in violation of s. 480.0475 or s. 480.0535(2) is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

(4) (a) Any place or premises that has been used on more than two occasions within a 6-month period as the site of any of the following violations is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06:

1. Section 812.019, relating to dealing in stolen property.

2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery.

3. Section 810.02, relating to burglary.

4. Section 812.014, relating to theft.

5. Section 812.131, relating to robbery by sudden snatching.

(b) Notwithstanding any other law, a rental property that is declared a nuisance under this subsection may not be abated or subject to forfeiture under the Florida Contraband Forfeiture Act if the nuisance was committed by someone other than the owner of the property and the property owner commences rehabilitation of the property within 30 days after the property is declared a nuisance and completes the rehabilitation within a reasonable time thereafter.

Section 3. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: CS/SB 668
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 816

INTRODUCER: Environment and Natural Resources Committee and Senator Perry

SUBJECT: Environmental Regulation

DATE: April 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Fav/CS
2.	Peacock	Yeatman	CA	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 816 requires local governments to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential material. The bill applies to contracts between a local government and a residential recycling collector or recovered materials processing facility that are executed or renewed after October 1, 2019. Such contracts are required to define the term “contaminated recyclable material” based on certain factors. The bill specifies topics that must be addressed in local government contracts with both residential recycling collectors and recovered materials processing facilities.

The bill prohibits local governments from requiring a person claiming an exemption from environmental resource permitting requirements to provide further verification from the Department of Environmental Protection. The bill also changes the specific requirements for the replacement or repair of a dock or pier that is exempt from permitting requirements.

II. Present Situation:

Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.¹ Municipalities are responsible for collecting and transporting solid waste from their

¹ Section 403.706(1), F.S.

jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county.² Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities.³ Each county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.⁴

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.⁵ Each county must implement a program for recycling construction and demolition debris.⁶ If the state's recycling rate is below 75 percent by January 1, 2021, the Department of Environmental Protection (DEP) must provide a report to the President of the Senate and the Speaker of the House of Representatives.⁷ The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals.⁸ The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.⁹

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.¹⁰

“Municipal solid waste” includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.¹¹ DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility; and

² *Id.*

³ *Id.*

⁴ Section 403.706(2)(a), F.S.

⁵ *Id.*

⁶ Section 403.706(2)(b), F.S.

⁷ Section 403.706(2)(e), F.S.

⁸ *Id.*

⁹ Section 403.706(2)(f), F.S.

¹⁰ Section 403.706(3), F.S.

¹¹ Section 403.706(5), F.S.

- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.¹²

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality.¹³ Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government.¹⁴ A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled.¹⁵ Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.¹⁶

A local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with DEP; and
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.¹⁷

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.¹⁸

Florida's Recycling Goal

In recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management

¹² Section 403.706(6), F.S.

¹³ Section 403.706(9), F.S.

¹⁴ Section 403.706(21), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 403.7046(3), F.S.

¹⁸ Section 403.7046(3)(a), F.S.

facilities, landfills, or incineration facilities by 2020.¹⁹ DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.²⁰

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent.²¹ The current practices in Florida are not expected to significantly increase the recycling rate beyond the 56 percent rate.²² Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.²³

DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle."²⁴ The campaign addresses the need to educate Florida residents on how to reduce single stream curbside recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs, and paper and cardboard. DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes;
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020, to market specific goals such as a food diversion goal or an organics recycling goal;
- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices;
- Continuing to work with state agencies to identify recycling/cost saving measures specific to their operations; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.²⁵

A number of counties and municipalities have instituted single stream recycling programs.²⁶ Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream

¹⁹ Section 403.7032(2), F.S.; DEP, *Florida and the 2020 75% Recycling Goal, Volume I - Report*, 5 (2017), available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited March 23, 2019).

²⁰ DEP, *Recycling*, <http://www.dep.state.fl.us/waste/categories/recycling/default.htm> (last visited March 23, 2019).

²¹ DEP, *Florida and the 2020 75% Recycling Goal, Volume I - Report*, 5 (2017), available at https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited March 23, 2019).

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ *Id.* at 13.

recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.²⁷

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts.²⁸ Those items are often harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement costs, and delays. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling of unusable materials. Although some local governments have implemented successful single stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some case reaching contamination rates of more than 30-40 percent by weight.²⁹

Exceptions to Requirements for Environmental Resource Permitting

DEP's Environmental Resource Permitting (ERP) program regulates activities involving the alteration of surface water flows.³⁰ An ERP is required if a project exceeds certain thresholds for surface water management systems, such as for the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on, or over wetlands or other surface waters).³¹

However, for a number of low impact activities and projects that are narrow in scope, an environmental permit is not required under state law.³² Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.³³ A broad array of activities are expressly exempted from the ERP program, and these include, but are not limited to: the installation of overhead transmission lines; installation and maintenance of boat ramps; work on sea walls and mooring pilings, swales, and foot bridges; the removal of aquatic plants; construction and operation of floating vessel platforms; and work on county roads and bridges.³⁴ Included among activities exempt from the requirement to obtain an ERP is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.³⁵ Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Chapter 373, p. IV, F.S.; Fla. Admin. Code Ch. 62-330; DEP, *DEP 101: Environmental Resource Permitting*, <https://floridadep.gov/comm/press-office/content/dep-101-environmental-resource-permitting> (last visited Mar. 23, 2019).

³¹ Fla. Admin. Code R. 62-330.010. The responsibilities for implementing the statewide ERP program are partially delegated by DEP to the water management districts and certain local governments.

³² Section 403.813, F.S.

³³ Fla. Admin. Code Rules 62-330.050(1) and 62-330.051(2).

³⁴ Section 403.813(1), F.S.; Fla. Admin. Code R. 62-330.051.

³⁵ Section 403.813(1)(d), F.S.

owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 403.706, F.S., which establishes the responsibilities and authority of local governments to provide for the operation of solid waste disposal facilities.

The bill requires local governments to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential material. This must be achieved based on the requirements described in section 1 of the bill. The requirements apply only to the collection and processing of material obtained from residential recycling activities. The bill applies to each contract between a local government and a residential recycling collector or recovered materials processing facility that is executed or renewed after October 1, 2019.

As used in the bill, the term “contaminated recyclable material” refers only to recyclable material that is comingled or mixed with solid waste or other nonhazardous material. The term does not include contamination as that term or a derivation of that term is used in chapter 376, F.S., and other sections of chapter 403, F.S., including, but not limited to, brownfield site cleanup, water quality remediation, drycleaning solvent-contaminated site cleanup, petroleum-contaminated site cleanup, cattle dipping vat site cleanup, or other hazardous waste remediation.

The bill states that a residential recycling collector is not required to collect or transport contaminated recyclable material, except pursuant to a contract consistent with the bill’s requirements. As used in the bill, the term “residential recycling collector” means: a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality. The bill requires that each contract between a residential recycling collector and a local government for the collection or transport of residential recyclable material, and each request for proposal or other solicitation for the collection of residential recyclable material, must define the term “contaminated recyclable material.” The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. Each contract and request for proposal or other solicitation must include:

- The respective strategies and obligations of the local government and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material;
- The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and
- The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

The bill states that a recovered materials processing facility is not required to process contaminated recyclable material, except pursuant to a contract consistent with the bill’s requirements. The bill requires that each contract between a recovered materials processing

³⁶ Section 403.813(1), F.S.

facility and a local government for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term “contaminated recyclable material.” The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. Each contract and request for proposal must include:

- The respective strategies and obligations of the local government and the facility to reduce the amount of contaminated recyclable material being collected and processed;
- The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material; and
- The remedies authorized to be used if a container or truck load contains contaminated recyclable material.

Section 2 amends s. 403.813, F.S., which identifies certain activities for which an environmental resource permit is not required.

The bill prohibits a local government from requiring a person claiming an exemption under s. 403.813(1), F.S., to provide further verification from the DEP.

The bill exempts from environmental resource permitting requirements the replacement or repair of existing docks and piers, except that:

- The replacement or repaired dock or pier must be within 5 feet of the same location and no larger in size than the existing dock or pier; and
- No additional aquatic resources may be adversely and permanently impacted by such replacement or repair.

The bill deletes the existing requirement that the replacement or repaired dock or pier must be in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.

Section 3 states that this act shall take effect on October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires local governments to include provisions in their contracts requiring procedures for minimizing contamination and authorizing remedies if contamination exists. Requirements for local governments to perform additional procedures in the collection or transport of residential recyclable material, to establish and enforce new standards for contamination, or to be subject to remedies may cause local governments to incur additional costs. Therefore, this bill may result in an indeterminate, negative fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.706 and 403.813.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources Committee on March 26, 2019:

The committee substitute:

- Changes the date, from July 1, 2019 to October 1, 2019, after which section 1 of the bill applies to each contract executed or renewed between a local government and a residential recycling collector or a recovered materials processing facility; and
- Changes the effective date of the bill from July 1, 2019 to October 1, 2019.

B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4/9/19

Bill Number (if applicable) SB 814

Topic Environmental Reg.

Amendment Barcode (if applicable) _____

Name Keynacy

Job Title Chapter lobbyist

Address 730 E. PARK AVE

Phone 850 681 1065

City Tallahassee State FL Zip 32301

Email keynacy@pacconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Waste and Recycling Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4/9/19

Bill Number (if applicable) 816

Topic Environmental Regulation

Amendment Barcode (if applicable) _____

Name Jim Speart

Job Title _____

Address 310 W. College Ave

Phone 850 228 1296

City Altamonte State FL Zip 32301

Email Jim@magallanbooks.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By the Committee on Environment and Natural Resources; and
Senator Perry

592-03513-19

2019816c1

A bill to be entitled

An act relating to environmental regulation; amending s. 403.706, F.S.; requiring counties and municipalities to address the contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors; defining the term "residential recycling collector"; specifying required contract provisions in residential recycling collector and materials recovery facility contracts with counties and municipalities; amending s. 403.813, F.S.; prohibiting a local government from requiring from the Department of Environmental Protection further verification for certain projects; revising the types of dock and pier replacements and repairs that are exempt from such verification and certain permitting requirements; providing an effective date.

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

Section 1. Present subsection (22) of section 403.706, Florida Statutes, is redesignated as subsection (23), and a new subsection (22) is added to that section, to read:

403.706 Local government solid waste responsibilities.—

(22) Counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material based upon all of the following:

Page 1 of 20

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

592-03513-19

2019816c1

(a) A residential recycling collector is not required to collect or transport contaminated recyclable material, except pursuant to a contract consistent with paragraph (c). As used in this subsection, the term "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

(b) A recovered materials processing facility is not required to process contaminated recyclable material, except pursuant to a contract consistent with paragraph (d).

(c) Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal or other solicitation for the collection of residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal or other solicitation must include:

1. The respective strategies and obligations of the county or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart,

Page 2 of 20

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

592-03513-19

2019816c1

or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a recovered materials processing facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal must include:

1. The respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected and processed;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, truck loads, carts, or bins that contain contaminated recyclable material; and

3. The remedies authorized to be used if a container or truck load contains contaminated recyclable material.

(e) This subsection applies to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after October 1, 2019.

(f) This subsection applies only to the collection and processing of material obtained from residential recycling activities. As used in this subsection, the term "contaminated

592-03513-19

2019816c1

recyclable material" refers only to recyclable material that is comingled or mixed with solid waste or other nonhazardous material. The term does not include contamination as that term or a derivation of that term is used in chapter 376 and other sections of chapter 403, including, but not limited to, brownfield site cleanup, water quality remediation, drycleaning-solvent-contaminated site cleanup, petroleum-contaminated site cleanup, cattle dipping vat site cleanup, or other hazardous waste remediation.

Section 2. Subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, and a local government may not require a person claiming this exception to provide further department verification, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, having with support structures ~~that which~~ are not constructed in waters of the state and which do not create a navigational hazard.

592-03513-19

2019816c1

(b) The installation and repair of mooring pilings and dolphins associated with private docking facilities or piers and the installation of private docks, piers, and recreational docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat, any of which docks:

1. Has 500 square feet or less of over-water surface area for a dock ~~which is~~ located in an area designated as Outstanding Florida Waters or 1,000 square feet or less of over-water surface area for a dock ~~which is~~ located in an area that ~~which~~ is not designated as Outstanding Florida Waters;

2. Is constructed on or held in place by pilings or is a floating dock ~~which is~~ constructed so as not to involve filling or dredging other than that necessary to install the pilings;

3. May ~~shall~~ not substantially impede the flow of water or create a navigational hazard;

4. Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

5. Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

~~Nothing in~~ This paragraph does not ~~shall~~ prohibit the department from taking appropriate enforcement action pursuant to this chapter to abate or prohibit any activity otherwise exempt from

592-03513-19

2019816c1

permitting pursuant to this paragraph if the department can demonstrate that the exempted activity has caused water pollution in violation of this chapter.

(c) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists or the installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, and the maintenance to design specifications of such ramps; however, the material to be removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state.

(d) The replacement or repair of existing docks and piers, except that fill material may not be used and the replacement or repaired dock or pier must be within 5 feet of the same location and no larger in size than the existing dock or pier, and no additional aquatic resources may be adversely and permanently impacted by such replacement or repair in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired. This does not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches waterward of, their previous locations. However, this may ~~shall~~ not affect the permitting requirements of chapter 161, and department rules shall clearly

592-03513-19

2019816c1

175 indicate that this exception does not constitute an exception
 176 from the permitting requirements of chapter 161.

177 (f) The performance of maintenance dredging of existing
 178 manmade canals, channels, intake and discharge structures, and
 179 previously dredged portions of natural water bodies within
 180 drainage rights-of-way or drainage easements which have been
 181 recorded in the public records of the county, where the spoil
 182 material is to be removed and deposited on a self-contained,
 183 upland spoil site which will prevent the escape of the spoil
 184 material into the waters of the state, provided that no more
 185 dredging is to be performed than is necessary to restore the
 186 canals, channels, and intake and discharge structures, and
 187 previously dredged portions of natural water bodies, to original
 188 design specifications or configurations, provided that the work
 189 is conducted in compliance with s. 379.2431(2)(d), provided that
 190 no significant impacts occur to previously undisturbed natural
 191 areas, and provided that control devices for return flow and
 192 best management practices for erosion and sediment control are
 193 utilized to prevent bank erosion and scouring and to prevent
 194 turbidity, dredged material, and toxic or deleterious substances
 195 from discharging into adjacent waters during maintenance
 196 dredging. Further, for maintenance dredging of previously
 197 dredged portions of natural water bodies within recorded
 198 drainage rights-of-way or drainage easements, an entity that
 199 seeks an exemption must notify the department or water
 200 management district, as applicable, at least 30 days before
 201 ~~prior to~~ dredging and provide documentation of original design
 202 specifications or configurations where such exist. This
 203 exemption applies to all canals and previously dredged portions

592-03513-19

2019816c1

204 of natural water bodies within recorded drainage rights-of-way
 205 or drainage easements constructed before ~~prior to~~ April 3, 1970,
 206 and to those canals and previously dredged portions of natural
 207 water bodies constructed on or after April 3, 1970, pursuant to
 208 all necessary state permits. This exemption does not apply to
 209 the removal of a natural or manmade barrier separating a canal
 210 or canal system from adjacent waters. When no previous permit
 211 has been issued by the Board of Trustees of the Internal
 212 Improvement Trust Fund or the United States Army Corps of
 213 Engineers for construction or maintenance dredging of the
 214 existing manmade canal or intake or discharge structure, such
 215 maintenance dredging shall be limited to a depth of no more than
 216 5 feet below mean low water. The Board of Trustees of the
 217 Internal Improvement Trust Fund may fix and recover from the
 218 permittee an amount equal to the difference between the fair
 219 market value and the actual cost of the maintenance dredging for
 220 material removed during such maintenance dredging. However, no
 221 charge shall be exacted by the state for material removed during
 222 such maintenance dredging by a public port authority. The
 223 removing party may subsequently sell such material; however,
 224 proceeds from such sale that exceed the costs of maintenance
 225 dredging shall be remitted to the state and deposited in the
 226 Internal Improvement Trust Fund.

227 (g) The maintenance of existing insect control structures,
 228 dikes, and irrigation and drainage ditches, provided that spoil
 229 material is deposited on a self-contained, upland spoil site
 230 which will prevent the escape of the spoil material into waters
 231 of the state. In the case of insect control structures, if the
 232 cost of using a self-contained upland spoil site is so

592-03513-19

2019816c1

excessive, as determined by the Department of Health, pursuant to s. 403.088(1), that it will inhibit proposed insect control, then-existing spoil sites or dikes may be used, upon notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

(h) The repair or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter, and the length of the culvert may ~~shall~~ not be changed. However, the material used for the culvert may be different from the original.

(i) The construction of private docks of 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing manmade canal where the shoreline is currently occupied in whole or part by vertical seawalls.

592-03513-19

2019816c1

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided the devices are marked pursuant to s. 327.40.

(l) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided that no more dredging or filling of submerged lands is performed other than that which is necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in the waters of the state.

(m) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters in the state, except in Class I and Class II waters and aquatic preserves, provided no dredging or filling is necessary.

(n) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(o) The construction of private seawalls in wetlands or other surface waters where such construction is between and adjoins at both ends existing seawalls; follows a continuous and uniform seawall construction line with the existing seawalls; is no more than 150 feet in length; and does not violate existing water quality standards, impede navigation, or affect flood control. However, in estuaries and lagoons the construction of vertical seawalls is limited to the circumstances and purposes stated in s. 373.414(5)(b)1.-4. This paragraph does not affect

592-03513-19

2019816c1

the permitting requirements of chapter 161, and department rules must clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(p) The restoration of existing insect control impoundment dikes which are less than 100 feet in length. Such impoundments shall be connected to tidally influenced waters for 6 months each year beginning September 1 and ending February 28 if feasible or operated in accordance with an impoundment management plan approved by the department. A dike restoration may involve no more dredging than is necessary to restore the dike to its original design specifications. For the purposes of this paragraph, restoration does not include maintenance of impoundment dikes of operating insect control impoundments.

(q) The construction, operation, or maintenance of stormwater management facilities which are designed to serve single-family residential projects, including duplexes, triplexes, and quadruplexes, if they are less than 10 acres total land and have less than 2 acres of impervious surface and if the facilities:

1. Comply with all regulations or ordinances applicable to stormwater management and adopted by a city or county;

2. Are not part of a larger common plan of development or sale; and

3. Discharge into a stormwater discharge facility exempted or permitted by the department under this chapter which has sufficient capacity and treatment capability as specified in this chapter and is owned, maintained, or operated by a city, county, special district with drainage responsibility, or water management district; however, this exemption does not authorize

592-03513-19

2019816c1

discharge to a facility without the facility owner's prior written consent.

(r) The removal of aquatic plants, the removal of tussocks, the associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital material when such planting or removal is performed and authorized by permit or exemption granted under s. 369.20 or s. 369.25, provided that:

1. Organic detrital material that exists on the surface of natural mineral substrate shall be allowed to be removed to a depth of 3 feet or to the natural mineral substrate, whichever is less;

2. All material removed pursuant to this paragraph shall be deposited in an upland site in a manner that will prevent the reintroduction of the material into waters in the state except when spoil material is permitted to be used to create wildlife islands in freshwater bodies of the state when a governmental entity is permitted pursuant to s. 369.20 to create such islands as a part of a restoration or enhancement project;

3. All activities are performed in a manner consistent with state water quality standards; and

4. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys, except when a governmental entity is permitted pursuant to s. 369.20 to conduct such activities as a part of a restoration or enhancement project.

592-03513-19

2019816c1

The department may not adopt implementing rules for this paragraph, notwithstanding any other provision of law.

(s) The construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts, provided that such structures:

1. Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;

2. Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water, when associated with a dock that is exempt under this subsection or associated with a permitted dock with no defined boat slip or attached to a bulkhead on a parcel of land where there is no other docking structure;

3. Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in s. 253.141;

4. Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where seagrasses are least dense adjacent to the dock or bulkhead; and

5. Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance

592-03513-19

2019816c1

with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and, with the exception of those structures attached to a bulkhead on a parcel of land where there is no docking structure, may ~~shall~~ not be subject to any more stringent permitting requirements, registration requirements, or other regulation by any local government. Local governments may require either permitting or one-time registration of floating vessel platforms to be attached to a bulkhead on a parcel of land where there is no other docking structure as necessary to ensure compliance with local ordinances, codes, or regulations. Local governments may require either permitting or one-time registration of all other floating vessel platforms as necessary to ensure compliance with the exemption criteria in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning, which are no more stringent than the exemption criteria in this section or address subjects other than subjects addressed by the exemption criteria in this section; and to ensure proper installation, maintenance, and precautionary or evacuation action following a tropical storm or hurricane watch of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure. The exemption provided in this paragraph shall be in addition to the

592-03513-19

2019816c1

exemption provided in paragraph (b). The department shall adopt a general permit by rule for the construction, installation, operation, or maintenance of those floating vessel platforms or floating boat lifts that do not qualify for the exemption provided in this paragraph but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of such general permit shall also constitute permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund. No local government shall impose a more stringent regulation, permitting requirement, registration requirement, or other regulation covered by such general permit. Local governments may require either permitting or one-time registration of floating vessel platforms as necessary to ensure compliance with the general permit in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning that are no more stringent than the general permit in this section; and to ensure proper installation and maintenance of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure.

(t) The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway, within the Northwest Florida Water Management District and the Suwannee River Water Management District, provided:

1. The road and associated bridge were in existence and in use as a public road or bridge, and were maintained by the county as a public road or bridge on or before January 1, 2002;

2. The construction activity does not realign the road or

592-03513-19

2019816c1

expand the number of existing traffic lanes of the existing road; however, the work may include the provision of safety shoulders, clearance of vegetation, and other work reasonably necessary to repair, stabilize, pave, or repave the road, provided that the work is constructed by generally accepted engineering standards;

3. The construction activity does not expand the existing width of an existing vehicular bridge in excess of that reasonably necessary to properly connect the bridge with the road being repaired, stabilized, paved, or repaved to safely accommodate the traffic expected on the road, which may include expanding the width of the bridge to match the existing connected road. However, no debris from the original bridge shall be allowed to remain in waters of the state, including wetlands;

4. Best management practices for erosion control shall be employed as necessary to prevent water quality violations;

5. Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project;

6. No more dredging or filling of wetlands or water of the state is performed than that which is reasonably necessary to repair, stabilize, pave, or repave the road or to repair or replace the bridge, in accordance with generally accepted engineering standards; and

7. Notice of intent to use the exemption is provided to the department, if the work is to be performed within the Northwest Florida Water Management District, or to the Suwannee River Water Management District, if the work is to be performed within the Suwannee River Water Management District, 30 days before

592-03513-19

2019816c1

465 ~~prior to~~ performing any work under the exemption.

466
 467 Within 30 days after this act becomes a law, the department
 468 shall initiate rulemaking to adopt a no fee general permit for
 469 the repair, stabilization, or paving of existing roads that are
 470 maintained by the county and the repair or replacement of
 471 bridges that are part of the roadway where such activities do
 472 not cause significant adverse impacts to occur individually or
 473 cumulatively. The general permit shall apply statewide and, with
 474 no additional rulemaking required, apply to qualified projects
 475 reviewed by the Suwannee River Water Management District, the
 476 St. Johns River Water Management District, the Southwest Florida
 477 Water Management District, and the South Florida Water
 478 Management District under the division of responsibilities
 479 contained in the operating agreements applicable to part IV of
 480 chapter 373. Upon adoption, this general permit shall, pursuant
 481 to ~~the provisions of~~ subsection (2), supersede and replace the
 482 exemption in this paragraph.

483 (u) Notwithstanding any provision to the contrary in this
 484 subsection, a permit or other authorization under chapter 253,
 485 chapter 369, chapter 373, or this chapter is not required for an
 486 individual residential property owner for the removal of organic
 487 detrital material from freshwater rivers or lakes that have a
 488 natural sand or rocky substrate and that are not Aquatic
 489 Preserves or for the associated removal and replanting of
 490 aquatic vegetation for the purpose of environmental enhancement,
 491 providing that:

492 1. No activities under this exemption are conducted in
 493 wetland areas, as defined in s. 373.019(27), which are supported

592-03513-19

2019816c1

494 by a natural soil as shown in applicable United States
 495 Department of Agriculture county soil surveys.

496 2. No filling or peat mining is allowed.

497 3. No removal of native wetland trees, including, but not
 498 limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

499 4. When removing organic detrital material, no portion of
 500 the underlying natural mineral substrate or rocky substrate is
 501 removed.

502 5. Organic detrital material and plant material removed is
 503 deposited in an upland site in a manner that will not cause
 504 water quality violations.

505 6. All activities are conducted in such a manner, and with
 506 appropriate turbidity controls, so as to prevent any water
 507 quality violations outside the immediate work area.

508 7. Replanting with a variety of aquatic plants native to
 509 the state shall occur in a minimum of 25 percent of the
 510 preexisting vegetated areas where organic detrital material is
 511 removed, except for areas where the material is removed to bare
 512 rocky substrate; however, an area may be maintained clear of
 513 vegetation as an access corridor. The access corridor width may
 514 not exceed 50 percent of the property owner's frontage or 50
 515 feet, whichever is less, and may be a sufficient length
 516 waterward to create a corridor to allow access for a boat or
 517 swimmer to reach open water. Replanting must be at a minimum
 518 density of 2 feet on center and be completed within 90 days
 519 after removal of existing aquatic vegetation, except that under
 520 dewatered conditions replanting must be completed within 90 days
 521 after reflooding. The area to be replanted must extend waterward
 522 from the ordinary high water line to a point where normal water

592-03513-19 2019816c1

depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months after replanting is complete, and the plants, including naturally recruited native aquatic plants, must be allowed to expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to the state may not be used for replanting.

8. No activity occurs any farther than 100 feet waterward of the ordinary high water line, and all activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

9. The person seeking this exemption notifies the applicable department district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.

10. The department is provided written certification of compliance with the terms and conditions of this paragraph within 30 days after completion of any activity occurring under this exemption.

(v) Notwithstanding any other provision in this chapter, chapter 373, or chapter 161, a permit or other authorization is not required for the following exploratory activities associated

592-03513-19 2019816c1

with beach restoration and nourishment projects and inlet management activities:

1. The collection of geotechnical, geophysical, and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

2. Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

3. Incidental excavation associated with any of the activities listed under subparagraph 1. or subparagraph 2.

Section 3. This act shall take effect October 1, 2019.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: CS/SB 816
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

FINAL VOTE		SENATORS	4/09/2019 ¹ Motion to vote "YEA" after Roll Call					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
VA		Broxson						
X		Pizzo						
X		Simmons						
X		Farmer, VICE CHAIR						
X		Flores, CHAIR						

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1752

INTRODUCER: Community Affairs Committee and Senator Perry

SUBJECT: Inspections and Permits

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.			IT	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1752 allows local governments that impose building inspection or permit fees to establish a priority process by which inspections or permits may be expedited. Local governments may charge an additional fee for the expedited process, but the fee may not exceed two times the baseline fee for the inspection or permit type being expedited.

The bill limits local governments to collecting 50 percent of the fee that is due when an application for a building permit is filed. If the local government fails to meet an established application deadline, the bill reduces the permitting fee by 10 percent of the original amount for every 10 business days by which the local government fails to meet the established deadline. Upon approval of the building permit application, the local government must notify the applicant of the fee balance. If the applicant owes additional fees, payment of the fees are due before the issuance of any certificate or permit. If the applicant is owed a refund, that refund is due to the applicant when the certificate or permit is issued.

The bill also revises the types of building permits to which certain application deadlines apply.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.¹ The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction.² The Florida Building Commission develops and maintains the Florida Building Code.³

Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.⁴ The FFPC operates in conjunction with the Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.⁵

Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public’s health, safety, and welfare.⁶ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁸ 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 enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹ A local enforcement agency must post each type of building permit application on its website.¹⁰

¹ Section 553.72(1), F.S.

² *Id.*

³ Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

⁴ Section 633.202(1), F.S.

⁵ See ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

⁶ Section 553.72(2), F.S.

⁷ See ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1), F.S.

⁸ Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) *available at* <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited April 4, 2019). Section 553.79(1)(b), F.S., requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

⁹ See ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

¹⁰ Section 553.79(1)(b), F.S.

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.¹¹ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,¹² including certain required building, electrical, plumbing, mechanical, and gas inspections.¹³

Local Government Building Code Permit and Inspection Fees

Determination and Usage

A local government entity may provide a schedule of reasonable fees in order to defer the costs of building permitting and inspections and enforcement of the Florida Building Code.¹⁴ The local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida Building Code.¹⁵ The basis for the fee structure must relate to the level of service provided by the local government.¹⁶ The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.¹⁷ Fees charged must be consistently applied.¹⁸ The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.¹⁹

Fiscal Tracking and Accountability

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.²⁰ Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.²¹

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2017. For that year, 63 counties

¹¹ Section 468.603(2), F.S.

¹² Section 553.79(2), F.S.

¹³ Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited April 4, 2019).

¹⁴ See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

¹⁵ The phrase “enforcing the Florida Building Code” includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement. See s. 553.80(7)(a), F.S.

¹⁶ Section 553.80(7), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

²⁰ *Id.*

²¹ Section 553.80(7), F.S.

reported building permit fee revenues totaling \$265,162,945; while 310 municipalities reported revenues totaling \$478,299,301.²²

Building Permit Application Timeframes

When an application for a building permit is filed, the local government must inform the applicant within 10 days of any additional information needed to find that the application is in compliance.²³ 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. Once the application is completed, the local government must notify the applicant within 45 days if additional information is necessary to determine the sufficiency of the application and shall 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. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.²⁴ This period is tolled, i.e., suspended, during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

III. Effect of Proposed Changes:

Section 1 amends s. 125.56, F.S., to allow a county that imposes inspection fees to establish an expedited priority inspection process. The additional fee for any expedited processing may not exceed two times the fee for a non-expedited inspection.

Section 2 amends s. 166.222, F.S., to allow a municipality that imposes inspection fees to establish an expedited priority inspection process. The additional fee for any expedited processing may not exceed two times the fee for a non-expedited inspection.

Section 3 amends s. 553.792, F.S., to allow a local government that imposes building permit fees to establish an expedited priority process for such permits. The additional fee for any expedited processing may not exceed two times the fee for a non-expedited permit.

Section 553.792, F.S., is further amended to limit local governments to collecting 50 percent of the fee that is due when an application for a building permit is filed. If the local government fails to meet an established application deadline, the fee associated with the deadline is reduced by 10 percent of the original amount for every 10 business days the local government fails to meet the established deadline. Upon approval of the building permit application, the local government must notify the applicant of the fee balance. If the applicant owes additional fees, payment of the

²² Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited April 4, 2019).

²³ Section 553.792, F.S. Types of permit applications include those concerning accessory structures; alarm permits; nonresidential buildings less than 25,000 square feet; electric; irrigation permits; 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. The application procedures do not include permits for any wireless communications facilities or any situation where a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

²⁴ *Id.*

fee is due before the issuance of any certificate or permit. If the applicant is owed a refund that refund is due to the applicant when the certificate or permit is issued.

The bill revises the types of building permits to which the established application deadlines provided by s. 553.792, F.S., apply to include all non-residential building permits.

Section 4 provides an effective date of October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expedited inspection and building permit processes allowed in the bill may increase the speed at which applicants' inspections or building permits are processed. Also, because applicants for local government building permits will pay fees in two phases --- at application and then at approval --- they will experience an extended timeframe to pay permit fees.

C. Government Sector Impact:

To the extent that expedited inspections and building permits are utilized, local governments may realize increased fee revenues. It is unclear if the increased revenues would offset expenditures to provide the expediting. While the two-phase payment of

building permit fees – at application and then at approval – should not affect a local government's total amount of fees collected, it will affect the cash flow of fee revenues received. In addition, local governments may need to increase resources devoted to accommodate the two-phase fee payments. To the extent that building permit applications are denied, local governments may realize less fee revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.56, 166.222, 553.792.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 9, 2019:

- Provides that the bill's expedited inspection and building permit processes are permissive rather than required.
- Changes the bill's effective date from July 1, 2019 to October 1, 2019.

- B. **Amendments:**

None.



462060

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) 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.—

(2) (a) The board of county commissioners of each of the



462060

several counties may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the provisions of this act, and of the Florida Building Code and the Florida Fire Prevention Code.

(b) A county that imposes inspection fees as described in paragraph (a) may establish an expedited inspection process that provides priority processing for such inspections. The county may charge an additional fee in an amount not to exceed two times the fee for the inspection for which the applicant requests expedited processing.

Section 2. Section 166.222, Florida Statutes, is amended to read:

166.222 Building code inspection fees.—

(1) The governing body of a municipality may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the provisions of its building code.

(2) A municipality that imposes inspection fees as described in subsection (1) may establish an expedited inspection process that provides priority processing for such inspections. The municipality may charge an additional fee in an amount not to exceed two times the fee for the inspection for which the applicant requests expedited processing.

Section 3. Present subsection (2) of section 553.792, Florida Statutes, is redesignated as subsection (3), subsection (1) and present subsection (2) of that section are amended, and a new subsection (2) is added to that section, to read:

553.792 Building permit application to local government.—

(1)(a) Within 10 days of an applicant submitting an



462060

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 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) A local government that imposes permit fees may establish an expedited permitting process that provides priority processing for such permits. The local government may charge an additional fee in an amount not to exceed two times the fee for the permit for which the applicant requests expedited processing.

(2) (a) Upon receipt of an application to the local



462060

government, the local government must require the applicant to pay only 50 percent of the fees due.

(b) Whenever a local government does not meet an established deadline for processing a completed application, the fee associated with such deadline must be reduced by 10 percent of the original amount for every 10 business days the local government fails to meet its established deadline.

(c) Upon approval of an application, the local government must notify and inform the applicant of the amount of fees due, reduced by the amount, if any, required under paragraph (b), and must require payment of such fees before the issuance of any certificate or permit.

(d) If the amount of fees due has been reduced by more than 50 percent of the original fee, the local government must issue a refund of any fees that are due to the applicant upon issuance of the certificate or permit.

~~(3)(2)~~ The procedures in this section ~~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 in this section ~~set forth in subsection (1)~~ do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specifies ~~specify~~ different



462060

timeframes for review of local building permit applications.

Section 4. This act shall take effect October 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to inspections and permits; amending
ss. 125.56 and 166.222, F.S.; authorizing a county or
municipality that imposes inspection fees to establish
an expedited inspection process that provides priority
processing for such inspections; authorizing the
county or municipality to charge an additional fee up
to a specified amount for the expedited inspection
process; amending s. 553.792, F.S.; authorizing a
local government that imposes permit fees to establish
an expedited permitting process that provides priority
processing for such permits; authorizing the local
government to charge an additional fee up to a
specified amount for the expedited inspection process;
providing that the local government must require the
applicant to pay only a specified percentage of the
fees due upon receipt of an application; providing for
a reduction of the outstanding fees due under certain
circumstances; providing for a refund of fees under
certain circumstances; specifying that certain
procedures apply to building permit applications for
any nonresidential buildings, instead of



462060

127 nonresidential buildings less than a specified size;
128 providing an effective date.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4-9-19

Bill Number (if applicable) 1752

Topic FAST Act

Amendment Barcode (if applicable) _____

Name Chris Rotoro

Job Title President

Address 9242 Isles Cay Dr.

Phone 954 325 2927

City Delray Beach State FL Zip 33446

Email chrisrotoro@stiles.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing STILES

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/19
Meeting Date

1752
Bill Number (if applicable)

Topic Fast Act

Amendment Barcode (if applicable)

Name Megan Purdue

Job Title Senior Property Manager

Address 401 E Las Olas Blvd #130-545

Phone 954.846.0883

Street
Fort Lauderdale FL 33301
City State Zip

Email megan.purdue@stiles.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Stiles Property Management

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4/9/19

Bill Number (if applicable) 1752

Topic FIRST ACT

Amendment Barcode (if applicable) _____

Name HILDA MENDOZA

Job Title PROPERTY MANAGER

Address 2335 PINELEAF BLVD

Street

City

State

Zip

Phone 9865662254

Email hilda.mendoza@colliers.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Colliers Int'l

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/19/19

Bill Number (if applicable) S1752

Topic Fast Act

Amendment Barcode (if applicable) _____

Name Mary Lantz

Job Title General Manager

Address 400 International Pkwy Ste 320

Phone 3212006445

City Deerfield, FL State 32746 Zip

Email Mary.lantz@abre.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing BONN Orlando

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/19
Meeting Date

1752
Bill Number (if applicable)

Topic Fast Act

Amendment Barcode (if applicable)

Name Cary Fronstin

Job Title EVP

Address 8019 NW 186 Ter

Phone

Street
Parkland FL 33076

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing BONA FL / Family Commerce

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Perry

8-01245-19

20191752__

A bill to be entitled

An act relating to inspections and permits; amending ss. 125.56 and 166.222, F.S.; requiring a county or municipality that imposes inspection fees to establish an expedited inspection process that provides priority processing for such inspections; authorizing the county or municipality to charge an additional fee up to a specified amount for the expedited inspection process; amending s. 553.792, F.S.; requiring a local government that imposes permit fees to establish an expedited permitting process that provides priority processing for such permits; authorizing the local government to charge an additional fee up to a specified amount for the expedited inspection process; providing that the local government must require the applicant to pay only a specified percentage of the fees due upon receipt of an application; providing for a reduction of the outstanding fees due under certain circumstances; providing for a refund of fees under certain circumstances; specifying that certain procedures apply to building permit applications for any nonresidential buildings, instead of nonresidential buildings less than a specified size; providing an effective date.

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

Section 1. Subsection (2) of section 125.56, Florida Statutes, is amended to read:

Page 1 of 5

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

8-01245-19

20191752__

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

(2) (a) The board of county commissioners of each of the several counties may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the provisions of this act, and of the Florida Building Code and the Florida Fire Prevention Code.

(b) A county that imposes inspection fees as described in paragraph (a) must establish an expedited inspection process that provides priority processing for such inspections. The county may charge an additional fee in an amount not to exceed two times the fee for the inspection for which the applicant requests expedited processing.

Section 2. Section 166.222, Florida Statutes, is amended to read:

166.222 Building code inspection fees.—

(1) The governing body of a municipality may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the provisions of its building code.

(2) A municipality that imposes inspection fees as described in subsection (1) must establish an expedited inspection process that provides priority processing for such inspections. The municipality may charge an additional fee in an amount not to exceed two times the fee for the inspection for which the applicant requests expedited processing.

Section 3. Present subsection (2) of section 553.792, Florida Statutes, is redesignated as subsection (3), subsection

Page 2 of 5

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

8-01245-19

20191752

(1) and present subsection (2) of that section are amended, and a new subsection (2) is added to that section, 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 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) A local government that imposes permit fees must establish an expedited permitting process that provides priority processing for such permits. The local government may charge an

8-01245-19

20191752

additional fee in an amount not to exceed two times the fee for the permit for which the applicant requests expedited processing.

(2)(a) Upon receipt of an application to the local government, the local government must require the applicant to pay only 50 percent of the fees due.

(b) Whenever a local government does not meet an established deadline for processing a completed application, the fee associated with such deadline must be reduced by 10 percent of the original amount for every 10 business days the local government fails to meet its established deadline.

(c) Upon approval of an application, the local government must notify and inform the applicant of the amount of fees due, reduced by the amount, if any, required under paragraph (b), and must require payment of such fees before the issuance of any certificate or permit.

(d) If the amount of fees due has been reduced by more than 50 percent of the original fee, the local government must issue a refund of any fees that are due to the applicant upon issuance of the certificate or permit.

(3)(2) The procedures in this section 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

8-01245-19

20191752__

117 permit application ~~set forth in this subsection~~. The procedures
118 ~~in this section set forth in subsection (1)~~ do not apply to
119 permits for any wireless communications facilities or when a
120 law, agency rule, or local ordinance specifies ~~specify~~ different
121 timeframes for review of local building permit applications.

122 Section 4. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: SB 1752
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 718

INTRODUCER: Military and Veterans Affairs and Space Committee and Senator Gruters

SUBJECT: Honor and Remember Flag

DATE: April 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	Fav/CS
2.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 718 designates the Honor and Remember Flag as the state's emblem of the service and sacrifice of the brave men and women of the Armed Forces of the United States who died in the line of duty. The bill authorizes both entities of the state and local governments to display the flag.

The bill specifies the days on which the Honor and Remember Flag may be displayed, and includes the display of the flag on days in which a member of the United States Armed Forces who is a state resident dies in the line of duty.

The bill further requires that the flag must be:

- Displayed in a manner designed to ensure visibility to the public;
- Displayed with no more than two other flags when displayed together on a flagpole; and
- Manufactured in the United States.

By July 1, 2020, a responsible department or agency or a participating local government may adopt regulations to implement the provisions of this bill.

The bill takes effect January 1, 2020.

II. Present Situation:

Display of Flags

Flag of the United States

Current law requires the flag of the United States to be displayed daily when the weather permits, from a staff upon the state capitol and upon each county courthouse.¹ Additionally, the U.S. flag must be flown on election day at each polling place,² at each publicly supported and controlled auditorium,³ the grounds of every public K-20 educational institution, and within each classroom of a public K-20 educational institution.⁴ Further guidance on the protocol and display of the U.S. flag is provided by the Florida Department of State.⁵

State Flag of Florida

Section 256.015, F.S., directs the Governor to adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.⁶ The state flag must be displayed on the grounds of every public K-20 educational institution.⁷

POW – MIA Flag

The National League of Families POW-MIA flag is designated as the symbol of our nation's concern and commitment to resolving as fully as possible the fates of Americans still prisoner, missing, and unaccounted for in Southeast Asia.⁸ A POW-MIA flag must be displayed at each state-owned building at which the U.S. flag is displayed, if the POW-MIA flag is available free of charge to the agency that occupies the building and if the display is in accordance with federal laws and regulations.⁹ The Department of Transportation must display the flag year-round at each rest area along an interstate highway in the state.¹⁰ Additionally, the Department of Environmental Protection must display the POW-MIA flag year round at each state park where the U.S. flag is displayed.¹¹

¹ Section 256.01, F.S.

² Section 256.011, F.S.

³ Section 256.11, F.S.

⁴ Section 1000.06, FS.

⁵ Florida Department of State, *Flag Protocols and display, The United States Flag*, available at <http://dos.myflorida.com/about-the-department/flag-and-seal-protocol/flag-protocols-and-display/> (last visited March 26, 2019).

⁶ Section 256.015(1), F.S. See also Executive Office of the Governor, *Flag Protocol (Sept. 26, 2012)*, available at <https://www.flgov.com/wp-content/uploads/2017/11/EOG%20Flag%20Protocol%202017.pdf> (last visited April 4, 2019).

⁷ Sections 256.032 and 1000.06(1), F.S.

⁸ 36 U.S.C. s. 902(2).

⁹ Section 256.12, F.S.

¹⁰ Section 256.13, F.S.

¹¹ Section 256.14, F.S.

Firefighter Memorial Flag

The Division of State Fire Marshal of the Department of Financial Services is directed by law to design, produce, and implement the creation and distribution of an official state Firefighter Memorial Flag to honor firefighters who died in the line of duty.¹² The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.¹³

Honor and Remember Flag

The nonprofit organization Honor and Remember, Inc., states that they created the Honor and Remember Flag “to perpetually recognize the sacrifice of America’s military fallen service members and their families.”¹⁴ The mission of the organization is to establish the Honor and Remember Flag as a nationally recognized flag.¹⁵

The Honor and Remember Flag has been endorsed by various military and veteran organizations.¹⁶ Additionally, 24 states have already adopted the Honor and Remember Flag as an official state symbol of remembrance.¹⁷

In addition to other stated missions of Honor and Remember, Inc., financial donations and sales of Honor and Remember Flag merchandise including the flag itself, fund the ability of the organization to provide families of lost loved ones with personalized flags.¹⁸ See image below:¹⁹



¹² Section 256.15, F.S.

¹³ Section 256.15(1), F.S.

¹⁴ Honor and Remember, *Our Mission*, available at <http://www.honorandremember.org/our-mission/> (last visited March 26, 2019).

¹⁵ *Id.*

¹⁶ Honor and Remember, *Supporters, Official Endorsements*, available at <http://www.honorandremember.org/category/supporters/official-edorsements/> (last visited march 26, 2019).

¹⁷ Honor and Remember, *Home*, available at <https://www.honorandremember.org/> (last visited March 26, 2019). These states are: Delaware, Louisiana, North Carolina, Maryland, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Kansas, Arizona, Missouri, South Carolina, New Jersey, Indiana, Texas, Wisconsin, South Dakota, Tennessee, West Virginia, Minnesota, Wyoming, Nebraska, and Vermont.

¹⁸ Honor and Remember, *FAQ, Where do the donations go?*, available at <http://www.honorandremember.org/faq/> (last visited March 26, 2019).

¹⁹ See Flags International, available at <https://flagsinternational.com/> (last visited April 5, 2019).

III. Effect of Proposed Changes:

This bill creates s. 256.16, F.S., and designates the Honor and Remember Flag as the state's emblem of the service and sacrifice of the brave men and women of the United States Armed Forces who died in the line of duty.

The bill authorizes the flag to be displayed at state-owned buildings at which the United States flag is displayed, state-owned military memorials, and other state-owned locations deemed appropriate; and also at any local government building at which the United States flag is displayed or any other local government location deemed appropriate on the following days:

- Veterans' Day, November 11;
- Gold Star Mother's Day, the last Sunday in September; and
- A day on which a member of the U.S. Armed Forces who is a resident of the state loses his or her life in the line of duty.

The flag may be displayed in a manner designed to ensure visibility to the public with no more than two additional flags when displayed together on a flagpole. Additionally, a flag displayed pursuant to these provisions of the bill must be manufactured in the United States.

The bill authorizes a department, agency, or local government responsible for a location for the flag to be displayed to adopt regulations by July 1, 2020. An employee may not be required to report to work solely to display the flag.

The bill takes effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As stated above, the Governor is required to adopt protocol on the display of the State flag.²⁰ Each state-owned building at which the flag of the United States is displayed, must also display a POW-MIA flag.²¹ The bill requires that the Honor and Remember Flag may be displayed with no more than two additional flags when displayed together on a flagpole. Because the POW-MIA flag is required to be flown with the United States flag on specific days and with no more than two other flags, it appears the State flag could not be flown on those days.

VIII. Statutes Affected:

This bill creates section 256.16 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs and Space on April 3, 2019:

The committee substitute:

- Removes authority for the Honor and Remember Flag to be flown on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and National POW/MIA Recognition Day, so that the Honor and Remember Flag may only be flown on Veterans Day, Gold Star Mother's Day, and on days in which a state resident who serves in the Armed Forces loses his or her life in the line of duty.
- Removes language providing for the Department of Management Services to begin procurement and distribution of the flag by July 31, 2020.

²⁰ Section 256.015(1), F.S.

²¹ Section 256.12, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Military and Veterans Affairs and Space; and
Senator Gruters

583-03835-19

2019718c1

A bill to be entitled

An act relating to the Honor and Remember flag;
creating s. 256.16, F.S.; designating the Honor and
Remember flag as an emblem of the state; authorizing
the display of the flag at specified locations, on
specified days, and in a specified manner; requiring
the flags to be manufactured in the United States;
authorizing local governments to display the flag at
certain locations; authorizing certain departments,
agencies, and local governments to adopt certain
regulations by a specified date; providing an
effective date.

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

Section 1. Section 256.16, Florida Statutes, is created to
read:

256.16 Honor and Remember flag.—

(1) The Honor and Remember flag is designated as the
state's emblem of the service and sacrifice of the brave men and
women of the United States Armed Forces who have given their
lives in the line of duty.

(2) The flag may be displayed:

(a) At the following locations:

1. Any state-owned building at which the United States flag
is displayed.

2. Any state-owned military memorials.

3. Any other state-owned location.

(b) On the following days:

Page 1 of 2

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

583-03835-19

2019718c1

1. Veterans' Day, November 11.

2. Gold Star Mother's Day, the last Sunday in September.

3. A day on which a member of the United States Armed
Forces who is a resident of this state loses his or her life in
the line of duty.

(c) In a manner designed to ensure visibility to the
public.

(d) With no more than two additional flags when displayed
together on a flagpole.

(3) A flag displayed pursuant to this section must be
manufactured in the United States.

(4) A local government may display the flag in accordance
with paragraphs (2) (b), (c), and (d) at any local government
building at which the United States flag is displayed and at any
other local government location it deems appropriate.

(5) By July 1, 2020, a department or an agency responsible
for a location specified in paragraph (2) (a), or a local
government pursuant to subsection (4), may adopt regulations as
necessary to carry out this section. Such regulations may not
require an employee to report to work solely to display the
flag.

Section 2. This act shall take effect January 1, 2020.

Page 2 of 2

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

COMMITTEE: Community Affairs
ITEM: CS/SB 718
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 854

INTRODUCER: Senator Gruters

SUBJECT: Special Neighborhood Improvement Districts

DATE: April 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	Favorable
2.			IT	
3.			RC	

I. Summary:

SB 854 revises provisions relating to the board of directors of a special neighborhood improvement district including authorizing the appointment of a three-, five-, or seven-member board and requiring the board of directors to be landowners in the district. The bill requires counties or municipalities to specify the number of directors in the ordinance creating the special neighborhood improvement district.

II. Present Situation:

Safe Neighborhood Improvement Districts

Purposes and Creation

Part IV of ch. 163, F.S., is known as the “Safe Neighborhoods Act.” The intent of the Act is to:

- Guide and accomplish the coordinated, balanced, and harmonious development of safe neighborhoods;
- Promote the health, safety, and general welfare of these areas and their inhabitants, visitors, property owners, and workers;
- Establish, maintain, and preserve property values and preserve and foster the development of attractive neighborhoods and business environments;
- Prevent overcrowding and congestion;
- Improve or redirect traffic and provide pedestrian safety;
- Reduce crime rates and the opportunities for the commission of crime; and
- Provide improvements in neighborhoods so they are defensible against crime.¹

¹ See s. 163.502(3), F.S.

Section 163.503(1), F.S., defines the term “safe neighborhood improvement district” (SNID) or “neighborhood improvement district” to mean:

A district located in an area in which more than 75 percent of the land is used for residential purposes, or in an area in which more than 75 percent of the land is used for commercial, office, business, or industrial purposes, excluding the land area used for public facilities, and where there is a plan to reduce crime through the implementation of crime prevention through environmental design, environmental security or defensible space techniques, or through community policing innovations.

The Safe Neighborhoods Act allows county or municipal governing bodies to create SNIDs through the adoption of a planning ordinance. Each SNID that is established is required to register within 30 days with both the Department of Economic Opportunity (DEO) and the Department of Legal Affairs (DLA) and provide the name, location, size, type of SNID, and such other information that the departments may require.² Under current law, there are four types of SNIDs:

- Local government SNIDs;
- Property owners’ association SNIDs;
- Community redevelopment SNIDs; and
- Special SNIDs, which are further classified as either residential or business.³

As of March 29, 2019, there are 26 active SNIDs in the state of Florida.⁴ Twenty-three of these are local government SNIDs; two are special residential SNIDs; and one is classified as a property owners’ association SNID.

SNID Boards and Revenue Sources

The board of directors of a local government SNID is the local governing body of the municipality or county that created the SNID; however, as an alternative, a majority of the local governing body may also appoint a different board.⁵ The board of a property owners’ association SNID is comprised of the officers of the property owners’ association.⁶

The board of a special SNID is a three-member body, appointed by the governing body of the municipality or county that created the SNID, who are residents of the area and serve staggered terms of 3 years.⁷ The board of a community redevelopment SNID is the community redevelopment board of commissioners, which is designated by the governing body of the municipality or county that created the board of commissioners.⁸

² Section 163.5055(1)(a), F.S.

³ See ss. 163.506-163.512, F.S.

⁴ Florida Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx> (last visited March 29, 2019).

⁵ Sections 163.506(1)(e) and (3), F.S.

⁶ Section 163.508(1)(e), F.S.

⁷ Sections 163.511(1)(f), and (8), F.S.

⁸ Section 163.512(1)(d), F.S.

Local government SNIDs and special SNIDs are authorized to levy ad valorem taxes up to 2 mills annually.⁹ Local government SNIDs are authorized to levy tax without a referendum; however, special SNIDs require a referendum to levy ad valorem taxes.¹⁰ For a special *residential* SNID, taxes are approved by a majority of the electors voting in the referendum.¹¹ For a special *business* SNID, taxes are approved by freeholders representing in excess of 50 percent of the assessed value of the property within the SNID.¹²

All SNIDs are also authorized to make and collect special assessments, but all special assessments are subject to referendum approval.¹³ Special assessments are approved by a majority of registered voters residing in the SNID.¹⁴ Assessments may be collected pursuant to ss. 197.3632 and 197.3635, F.S. (the uniform method for collection of non-ad valorem assessments). Assessments may not exceed \$500 for each individual parcel of land per year.

Community redevelopment SNIDs may also utilize community redevelopment trust funds to implement district planning and programming.¹⁵

SNID Dissolutions

Local government and community redevelopment SNIDs may be dissolved by the governing body that established them.¹⁶ Property owners' association SNIDs continue in perpetuity as long as the property owners' association exists.¹⁷ Special SNIDs are dissolved at the end of the tenth fiscal year of operation.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 163.511, F.S., to revise several provisions relating to the board of directors of a special SNID. Specifically, the bill provides for the appointment of a three-, five-, or seven-member board, the members of which must be elected to staggered terms. The number of appointed directors must be specified in the local planning ordinance, rather than the 3-member board currently provided by law.

The bill requires counties or municipalities to specify the number of directors in the ordinance creating the special neighborhood improvement district.

Additionally, the board of directors must be landowners in the district, whereas current law only required the board of directors to be residents of the area. Finally, the bill removes the

⁹ Sections 163.506(1)(c), F.S., and 163.511(1)(b), F.S.

¹⁰ Section 163.511(1)(a) and (b), F.S.

¹¹ Section 163.511(3)(g), F.S. Although the word "elector" is used in s. 163.511(3)(g), F.S., it appears that the intent is that the vote be made by residents within the district that are registered voters. *See* s. 163.511(3)(b), F.S.

¹² Section 163.511(4)(g), F.S.

¹³ Section 163.514(16), F.S. This authority and any of the other SNID powers enumerated in s. 163.514, F.S., may be prohibited by the SNID's enacting ordinance.

¹⁴ *Id.* *See also* Footnote 11 regarding the term "elector."

¹⁵ Section 163.512(1)(c), F.S.

¹⁶ Sections 163.506(4) and 163.512(3), F.S.

¹⁷ Section 163.508(4), F.S.

¹⁸ Section 163.511(13), F.S. Special SNIDs may continue for subsequent 10-year periods if the continuation of the district is approved through referendum.

requirement that the appointment of the board of directors be for a period of 3 years, implicitly authorizing the district to provide for its own term lengths in its local planning ordinance.

Section 2 provides the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.511 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Gruters

23-00495-19

2019854__

A bill to be entitled

An act relating to special neighborhood improvement districts; amending s. 163.511, F.S.; revising the number of directors allowed for the boards of special neighborhood improvement districts; requiring local planning ordinances to specify director term lengths and provide for staggered terms; requiring that directors be landowners in, rather than residents of, the proposed area and be subject to certain taxation; removing obsolete language; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) and subsections (7) and (8) of section 163.511, Florida Statutes, are amended to read:

163.511 Special neighborhood improvement districts; creation; referendum; board of directors; duration; extension.—

(1) After a local planning ordinance has been adopted authorizing the creation of special neighborhood improvement districts, the governing body of a municipality or county may declare the need for and create special residential or business neighborhood improvement districts by the enactment of a separate ordinance for each district, which ordinance:

(f) Provides for the appointment of a three-, five-, or seven-member ~~3-member~~ board of directors for the district, the members of which must be elected to staggered terms. The number of appointed directors must be specified in the ordinance.

Page 1 of 3

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

23-00495-19

2019854__

(7) The business and affairs of a special neighborhood improvement district shall be conducted and administered by a board of three, five, or seven directors who ~~must~~ shall be ~~landowners in~~ residents of the proposed area and who are subject to ad valorem taxation in the district. Upon their appointment and qualification and in January of each year, the directors shall organize by electing from their number a chair and a secretary, and may also employ staff and legal representatives as deemed appropriate, who shall serve at the pleasure of the board and may receive such compensation as ~~shall be~~ fixed by the board. The secretary shall keep a record of the proceedings of the district and is the ~~shall be~~ custodian of all books and records of the district. The directors may ~~shall~~ not receive any compensation for their services or, ~~nor may they~~ be employed by the district.

(8) Within 30 days of the approval of the creation of a special neighborhood improvement district, if the district is in a municipality, a majority of the governing body of the municipality, or, if the district is in the unincorporated area of the county, a majority of the county commission, shall appoint the ~~three~~ three directors provided for under this section, as specified in the local planning ordinance herein for staggered terms of 3 years. The initial appointments shall be as follows: ~~one for a 1-year term, one for a 2-year term, and one for a 3-year term.~~ Each director shall hold office until his or her successor is appointed and qualified unless the director ceases to be qualified to act as a director or is removed from office. Vacancies on the board shall be filled for the unexpired portion of a term in the same manner as the initial appointments were

Page 2 of 3

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

23-00495-19

2019854__

59 made.

60 Section 2. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: SB 854
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
-R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1036

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Florida Building Code Enforcement

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.			IT	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1036 prohibits a local government from carrying forward a code enforcement operating budget balance greater than its average cost for enforcing the Florida Building Code for the preceding four fiscal years. The bill also requires a local government to use any excess enforcement operating budget funds to rebate or reduce code enforcement fees. A local government which had established specified Building Inspections Advisory Boards as of January 1, 2019 may be exempt from these requirements. The bill also prohibits charging surcharges or similar fees not directly related to enforcing the Florida Building Code.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.¹ The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to

¹ Section 553.72(1), F.S.

jurisdiction.² The Florida Building Commission develops and maintains the Florida Building Code.³

Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.⁴ The FFPC operates in conjunction with the Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.⁵

Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.⁶ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁸ 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 enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹ A local enforcement agency must post each type of building permit application on its website.¹⁰

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.¹¹ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,¹² including certain required building, electrical, plumbing, mechanical, and gas inspections.¹³

² *Id.*

³ Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

⁴ Section 633.202(1), F.S.

⁵ *See* ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

⁶ Section 553.72(2), F.S.

⁷ *See* ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1), F.S.

⁸ Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited February 26, 2019). Section 553.79(1)(b), F.S. requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

⁹ *See* ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

¹⁰ Section 553.79(1)(b), F.S.

¹¹ Section 468.603(2), F.S.

¹² Section 553.79(2), F.S.

¹³ Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited February 26, 2019).

Local Government Building Code Permitting Fees

Determination and Usage

A local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code.¹⁴ The local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida Building Code.¹⁵ The basis for the fee structure must relate to the level of service provided by the local government.¹⁶ The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.¹⁷ Fees charged must be consistently applied.¹⁸ The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.¹⁹

Fiscal Tracking and Accountability

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.²⁰ Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.²¹

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2017. For that year, 63 counties reported building permit fee revenues totaling \$265,162,945; while 310 municipalities reported revenues totaling \$478,299,301.²²

¹⁴ See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

¹⁵ The phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement. See s. 553.80(7)(a), F.S.

¹⁶ Section 553.80(7), F.S.

¹⁷ *Id.* Section 553.721, F.S., authorizes a surcharge at the rate of one percent of permit fees in order for the Department of Business and Professional Regulation to administer and carry out code enforcement activities.

¹⁸ *Id.*

¹⁹ Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

²⁰ Section 553.80(7)(b), F.S.

²¹ Section 553.80(7), F.S.

²² Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited April 3, 2019).

III. Effect of Proposed Changes:

Section 1 amends s. 553.80, F.S., to prohibit a local government from carrying forward an amount of funds generated by code enforcement that exceeds a four year rolling average of its operating budget for code enforcement. The bill defines “operating budget” as not including reserve amounts. A local government which had established, as of January 1 2019, a Building Inspections Fund Advisory Board consisting of five members from the construction stakeholder community and carries an unexpended balance in excess of the four year average may continue to carry such excess funds upon the recommendation of the advisory board.

The bill also requires a local government to use any excess funds it is prohibited from carrying forward to rebate and reduce fees. Charging surcharges or other similar fees not directly related to enforcing the Florida Building Code is prohibited.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in a reduction in permitting fees to the extent local governments are levying fees in excess of the amount necessary to cover authorized expenses.

C. Government Sector Impact:

The bill may require local governments to reduce fees and provide rebates to fee-payers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 553.80 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 9, 2019:

- Provides that the limit on the amount of Florida Building Code enforcement fee funds a local government can carry forward may not exceed a 4-year average of its code enforcement operating budget.
- Provides a grandfathering exception to the carry forward funds limitation for local governments which had specified Building Inspection Advisory Boards as of January 1, 2019.
- Limits the usage of any carry forward code enforcement fee funds to a rebate or reduction of fees.
- Prohibits the charging of surcharges or fees not related to enforcing the Florida Building Code.

B. Amendments:

None.



802848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2019	.	
	.	
	.	
	.	

The Committee on Community Affairs (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (7) of section 553.80, Florida
Statutes, is amended to read:

553.80 Enforcement.—

(7) The governing bodies of local governments may provide a
schedule of reasonable fees, as authorized by s. 125.56(2) or s.
166.222 and this section, for enforcing this part. These fees,



802848

and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years. For purposes of this subsection, the term "operating budget" does not include reserve amounts. Any amount exceeding this limit must be used as authorized in subparagraph (a)2. However, a local government which established, as of January 1, 2019, a Building Inspections Fund Advisory Board consisting of five members from the construction stakeholder community and carries an unexpended balance in excess of the average of its operating budget for the previous 4 fiscal years may continue to carry such excess funds forward upon the recommendation of the advisory board. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

(a)1. As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable



802848

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

2. A local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees.

(b) The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

1. Planning and zoning or other general government activities.

2. Inspections of public buildings for a reduced fee or no fee.

3. Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

4. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code as defined in paragraph (a).

5. Charging surcharges or other similar fees not directly related to enforcing the Florida Building Code.

(c) A local government shall use recognized management, accounting, and oversight practices to ensure that fees, fines, and investment earnings generated under this subsection are maintained and allocated or used solely for the purposes



802848

described in paragraph (a).

(d) The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

1. Providing proof of licensure pursuant to chapter 489;

2. Recording or filing a license issued pursuant to this chapter; or

3. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440.

Section 2. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to Florida Building Code enforcement;
amending s. 553.80, F.S.; prohibiting a local
government from carrying forward more than a specified
amount of unexpended revenue; defining the term
"operating budget"; providing an exception; revising
requirements for the expenditure of certain unexpended
revenue; expanding the list of activities that are
prohibited from being funded by fees adopted for
enforcing the Florida Building Code; providing an
effective date.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4/9/19

Bill Number (if applicable) ~~1750~~ 1036

Amendment Barcode (if applicable) _____

Topic Florida Building Code
Name Scott Jenkins

Job Title Lobbyist

Address 113 E. College Ave Ste 200

Street 1CH City FC State 32301 Zip

Speaking: ☐ For ☐ Against ☐ Information ☒ Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ~~Florida Building Code~~ National Utility Contractors Assoc

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

301 2013

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/19/19
Meeting Date

1030
Bill Number (if applicable)

Topic Florida Building Code

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Parkway, Ste 200
Street

Phone (954) 465-6811

City Coconut Creek, FL 33060
State Zip

Email chawendabowen@floridabuildingcode.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Builders and Contractors

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

4/19/19

Bill Number (if applicable)

1636

Topic

Permit Fees

Amendment Barcode (if applicable)

Name

Ruby Patton

Job Title

CEO

Address

Street

2600 Condor Place

Phone

850 567-1073

City

Tallahassee

State

FL 32317

Zip

Email

rpatt@flba.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida Home Builders Assoc

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Gruters

23-00514C-19

20191036__

A bill to be entitled

An act relating to the Florida Building Code; amending s. 553.80, F.S.; prohibiting local governments from carrying forward balances resulting from its enforcement of the Florida Building Code which exceed a specified amount; requiring local governments to use any excess funds for specified purposes; providing an effective date.

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

Section 1. Subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget, not including reserve amounts, for enforcing the Florida Building Code for the

Page 1 of 3

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

23-00514C-19

20191036__

previous 2 fiscal years. Any amount exceeding this limit must be used as authorized in subparagraph (a)2. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

(a)1. As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

2. A local government must use any excess funds it is prohibited from carrying forward to increase services, reduce fees, or provide funding to entities designated as not for profit under s. 501(c)(3) of the Internal Revenue Code whose primary purpose is to expand training opportunities for the construction industry, as defined in s. 440.02(8).

(b) The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

1. Planning and zoning or other general government activities.

2. Inspections of public buildings for a reduced fee or no fee.

Page 2 of 3

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

23-00514C-19

20191036__

59 3. Public information requests, community functions,
60 boards, and any program not directly related to enforcement of
61 the Florida Building Code.

62 4. Enforcement and implementation of any other local
63 ordinance, excluding validly adopted local amendments to the
64 Florida Building Code and excluding any local ordinance directly
65 related to enforcing the Florida Building Code as defined in
66 paragraph (a).

67 (c) A local government shall use recognized management,
68 accounting, and oversight practices to ensure that fees, fines,
69 and investment earnings generated under this subsection are
70 maintained and allocated or used solely for the purposes
71 described in paragraph (a).

72 (d) The local enforcement agency, independent district, or
73 special district may not require at any time, including at the
74 time of application for a permit, the payment of any additional
75 fees, charges, or expenses associated with:

76 1. Providing proof of licensure pursuant to chapter 489;

77 2. Recording or filing a license issued pursuant to this
78 chapter; or

79 3. Providing, recording, or filing evidence of workers'
80 compensation insurance coverage as required by chapter 440.

81 Section 2. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: SB 1036
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1512

INTRODUCER: Senator Diaz

SUBJECT: Fees for Enforcing the Florida Building Code

DATE: April 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Favorable
2.			CM	
3.			RC	

I. Summary:

SB 1512 adds allowable activities for which local governments may charge reasonable fees when enforcing the Florida Building Code. These activities are: costs for the production and maintenance of records; and costs associated with the implementation of local ordinances related or complimentary to the implementation and enforcement of the Florida Building Code.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.¹ The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction.² The Florida Building Commission develops and maintains the Florida Building Code.³

Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.⁴ The FFPC operates in conjunction with the

¹ Section 553.72(1), F.S.

² *Id.*

³ Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

⁴ Section 633.202(1), F.S.

Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.⁵

Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.⁶ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁸ 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 enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹ A local enforcement agency must post each type of building permit application on its website.¹⁰

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.¹¹ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,¹² including certain required building, electrical, plumbing, mechanical, and gas inspections.¹³

Local Government Building Code Permit and Inspection Fees

Determination and Usage

A local government entity may provide a schedule of reasonable fees in order to defer the costs of building permitting and inspections and enforcement of the Florida Building Code.¹⁴ The local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida Building Code.¹⁵ The basis for the fee structure must

⁵ See ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

⁶ Section 553.72(2), F.S.

⁷ See ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1), F.S.

⁸ Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) *available at* <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited April 4, 2019). Section 553.79(1)(b), F.S., requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

⁹ See ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

¹⁰ Section 553.79(1)(b), F.S.

¹¹ Section 468.603(2), F.S.

¹² Section 553.79(2), F.S.

¹³ Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) *available at* <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited April 4, 2019).

¹⁴ See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

¹⁵ The phrase “enforcing the Florida Building Code” includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and

relate to the level of service provided by the local government.¹⁶ The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.¹⁷ Fees charged must be consistently applied.¹⁸ The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.¹⁹

Fiscal Tracking and Accountability

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.²⁰ Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.²¹

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2017. For that year, 63 counties reported building permit fee revenues totaling \$265,162,945; while 310 municipalities reported revenues totaling \$478,299,301.²²

III. Effect of Proposed Changes:

Section 1 amends s. 553.80, F.S., to include costs for the production and maintenance of records as an allowable activity for which local governments may charge reasonable fees when enforcing the Florida Building Code. Costs associated with the implementation of local ordinances related or complimentary to the implementation and enforcement of the Florida Building Code are also designated as an allowable activity for fee charges.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement. *See* s. 553.80(7)(a), F.S.

¹⁶ Section 553.80(7), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

²⁰ Section 553.80(7)(c), F.S.

²¹ Section 553.80(7), F.S.

²² Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited April 4, 2019).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Applicants for building permits may incur higher permit fees as a result of the added allowable activities for which reasonable costs may be charged.

C. Government Sector Impact:

While a local government's permit fee revenues may rise as a result of the added allowable chargeable activities, the increase remains statutorily bound not to exceed the costs of the activities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 553.80 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Diaz

36-01760-19

20191512__

1 A bill to be entitled
 2 An act relating to fees for enforcing the Florida
 3 Building Code; amending s. 553.80, F.S.; revising the
 4 definition of the phrase "enforcing the Florida
 5 Building Code" to include certain costs; revising
 6 specified activities that, unless otherwise provided
 7 by law, may not be funded with fees adopted for
 8 enforcing the code; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (7) of section 553.80, Florida
 13 Statutes, is amended to read:
 14 553.80 Enforcement.—
 15 (7) The governing bodies of local governments may provide a
 16 schedule of reasonable fees, as authorized by s. 125.56(2) or s.
 17 166.222 and this section, for enforcing this part. These fees,
 18 and any fines or investment earnings related to the fees, must
 19 ~~shall~~ be used solely for carrying out the local government's
 20 responsibilities in enforcing the Florida Building Code. When
 21 providing a schedule of reasonable fees, the total estimated
 22 annual revenue derived from fees, and the fines and investment
 23 earnings related to the fees, may not exceed the total estimated
 24 annual costs of allowable activities. Any unexpended balances
 25 must shall be carried forward to future years for allowable
 26 activities or ~~shall~~ be refunded, at the discretion of the local
 27 government. The basis for a fee structure for allowable
 28 activities must shall relate to the level of service provided by
 29 the local government and must shall include consideration for

Page 1 of 3

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

36-01760-19

20191512__

30 refunding fees due to reduced services, based on services
 31 provided as prescribed by s. 553.791, but not provided by the
 32 local government. Fees charged must shall be consistently
 33 applied.
 34 (a) As used in this subsection, the phrase "enforcing the
 35 Florida Building Code" includes the direct costs and reasonable
 36 indirect costs associated with review of building plans,
 37 building inspections, reinspections, and building permit
 38 processing, including costs for production of and maintaining
 39 records; building code enforcement; and fire inspections
 40 associated with new construction. The phrase may also include
 41 training costs associated with the enforcement of the Florida
 42 Building Code, and enforcement action pertaining to unlicensed
 43 contractor activity, and costs associated with the
 44 implementation and enforcement of local ordinances related or
 45 complimentary to the implementation and enforcement of the
 46 Florida Building Code, to the extent not funded by other user
 47 fees.
 48 (b) Unless otherwise provided by law, the following
 49 activities may not be funded with fees adopted for enforcing the
 50 Florida Building Code:
 51 1. Planning and zoning or other general government
 52 activities.
 53 2. Inspections of public buildings for a reduced fee or no
 54 fee.
 55 3. Public information requests, community functions,
 56 boards, and any program not directly related to enforcement of
 57 the Florida Building Code.
 58 4. Enforcement and implementation of any other local

Page 2 of 3

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

36-01760-19 20191512__

ordinance, excluding validly adopted local amendments to the
Florida Building Code and excluding any local ordinance ~~directly~~
related to enforcing the Florida Building Code as defined in
paragraph (a).

(c) A local government shall use recognized management,
accounting, and oversight practices to ensure that fees, fines,
and investment earnings generated under this subsection are
maintained and allocated or used solely for the purposes
described in paragraph (a).

(d) The local enforcement agency, independent district, or
special district may not require at any time, including at the
time of application for a permit, the payment of any additional
fees, charges, or expenses associated with:

1. Providing proof of licensure pursuant to chapter 489;

2. Recording or filing a license issued pursuant to this
chapter; or

3. Providing, recording, or filing evidence of workers'
compensation insurance coverage as required by chapter 440.

Section 2. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: SB 1512
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1694

INTRODUCER: Senator Flores

SUBJECT: Takings Claims Within Areas of Critical State Concern

DATE: March 28, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.	Toman	Yeatman	CA	Favorable
3.			AP	

I. Summary:

SB 1694 provides that the state and the local government located in an area of critical state concern must share equally in judgments if they both are defendants in property rights-related litigation and if:

- The court has found liability against both the state and local government;
- The regulation restricting development or use, which was the basis of the judgment, was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation adopted by the local government restricting development or use, which was the basis of the judgment, was necessary to comply with the guiding principles for the area or other obligations for the area.

II. Present Situation:

The adoption of development regulations can impose significant burdens on a property owner's rights. These regulations can be especially significant in areas designated as areas of critical state concern.

Areas of Critical State Concern

Areas of critical state concern are designated by the Administration Commission, which is composed of the Governor and Cabinet, following a process set forth in statute.¹ Areas that qualify for designation include only:

An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state

¹ Section 380.05, F.S.

or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources.²

Once designated, the area's land planning regulations must comply with the principles guiding development specified by the Administration Commission which must be approved by the Department of Economic Opportunity.³

Several areas have been designated as an area of critical state concern or have had their designations ratified by statute. These areas include the Big Cypress Area,⁴ the Green Swamp Area,⁵ the Apalachicola Bay Area,⁶ and the Florida Keys Area.⁷

With respect to the Florida Keys Area, land planning regulations that are subject to approval by the state must be consistent with the principles of protecting many different natural resources and making affordable housing available.⁸ Additionally, these regulations must be consistent with "maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours."⁹

A specific regulation that may form the basis of property rights-related litigation in the Florida Keys Area is the Monroe County Rate of Growth Ordinance.¹⁰ Under this ordinance, Monroe County permits for new residential development are subject to an annual cap of 197 units plus unused allocations from previous years. Additionally, at least 71 but not more than 126 of the 197 permits must be allocated to affordable housing.

According to representatives from Monroe County, the total number of development permits that may be issued in the future is also capped in order to allow for sufficient hurricane evacuation clearance time. As a result, the number of undeveloped lots for which owners may seek development permits exceeds the total number of permits that will ultimately be available. This is expected to provide the impetus for additional property-rights related litigation when the available permits are exhausted in 2023.

Informal Agreement for Shared Defense and Liability with the State

Because the state and the local government in an area designated as an area of critical state concern are involved in the applicable land planning regulations, both the state and the area can be defendants in property-rights based litigation or litigation involving inverse condemnation or takings claims.

² Section 380.05(2), F.S.

³ Section 380.05(6), F.S.

⁴ Section 380.055, F.S.

⁵ Section 380.0551, F.S.

⁶ Section 380.0555, F.S.

⁷ Section 380.0552, F.S.

⁸ Section 380.0552(1)(d), F.S.

⁹ Section 380.0552(9)(a)2., F.S.

¹⁰ Rule 28-20.140(2), F.A.C.

With respect to Monroe County and the Florida Keys Area, the state and Monroe County have been operating under an informal agreement for 14 years to defend against property-rights related litigation and share equally in judgments awarded against them.¹¹ Judgments in property-rights related litigation arising out of the state-approved Monroe County land development regulations are starting to be entered. And in a judgment provided as an example by Monroe County, the judgment was entered against the county and the state, jointly and severally.^{12,13}

Eminent Domain and Inverse Condemnation

In an eminent domain action the government, as the plaintiff, asserts its power to take private property for a public use. In compliance with the United States Constitution, the government must compensate the land owner for the loss.¹⁴ The Florida Constitution similarly states that no private property may be taken except for a public purpose and each owner must be fully compensated.¹⁵ In an inverse condemnation action, however, the government has “taken” private property without the owner’s consent, either through its activities or conduct, and without adequate compensation. Because the government has not adequately compensated the property owner, the property owner is the plaintiff who sues to recover the value of property that has been taken.¹⁶

There are several forms of takings, one being by regulatory action. In those instances, the trial judge is the trier of all legal and factual issues, except for the issue of what constitutes just compensation for damages.¹⁷ Damages are determined by a jury. For a landowner to be fully compensated, prejudgment interest reaching back to the date of the taking must be permitted.¹⁸ Attorney fees and costs are also recoverable at the trial level and on appeal.¹⁹

Relief from Burdens on Real Property Rights, Chapter 70, F.S.

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Act” in 1995. The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking

¹¹ Correspondence from Jonathan A. Glogau explaining the Monroe County land development regulations and the informal agreement with the state dated March 6, 2019 (On file with the Committee on Judiciary).

¹² *Thomas and Collins v. Monroe County*, Case No. 04-CA-379-M (Fla. 16th Cir. Ct. Feb. 15, 2017)

¹³ The Legislature acknowledged in s.7, ch. 2006-223, Laws of Fla., that the state may have some liability for inverse condemnation actions in the Florida Keys Area due to the state’s role in adopting land use regulations for the area as follows:

If the designation of the Florida Keys Area as an area of critical state concern is removed, the state shall be liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in chapter 28-29, Florida Administrative Code, and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), Florida Statutes.

¹⁴ The Fifth Amendment to the United States Constitution provides “ . . . nor shall private property be taken for public use without just compensation.”

¹⁵ FLA. CONST. art. X, s. 6.

¹⁶ 21 FLA. JUR 2d Eminent Domain, s. 227.

¹⁷ *Id.*, at s. 240.

¹⁸ 21 FLA. JUR 2d Eminent Domain at s. 241.

¹⁹ *Id.*, at s. 242.

under either the State Constitution or the United States Constitution.²⁰ The act provides a process whereby private landowners may seek relief and recover damages when their property is inordinately burdened by the actions of a government.²¹

III. Effect of Proposed Changes:

The bill provides that the state and the local government located in an area of critical state concern must share equally in any award of compensation, costs, attorney fees, and prejudgment interest if:

- The court has determined that both the state and the local government are liable;
- The regulation that restricts development or use of the property was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation that restricts development or use of the property adopted by the local government was necessary for the local government to comply with the principles for guiding development established for the area or other obligations of the area under the area of critical state concern designation.

These proceedings must be brought pursuant to the Bert J. Harris, Jr. Private Property Rights Protection Act of ch. 70, F.S., a claim for inverse condemnation, or any other property-rights related action when the state is named as a codefendant or a third-party defendant by a local government in an area of critical state concern. A third-party defendant is “brought into a lawsuit by the original defendant”²² who alleges that the third-party defendant is at fault, or at least partially at fault, for the actions giving rise to the plaintiff’s lawsuit.

The court must enter separate judgments for the apportioned amount against the state and local government, notwithstanding other provisions of law.²³

A governmental entity named as a judgment debtor²⁴ is only liable for postjudgment interest²⁵ on the judgment entered against it. The governmental entity is not liable for postjudgment interest on the judgment entered against the other governmental entity. However, the bill does not prohibit a court from awarding a separate judgment for attorney fees and costs made under these provisions.

The bill takes effect July 1, 2019.

²⁰ Section 70.001, F.S.

²¹ Amber L. Ketterer and Rafael E. Suarez-Rivas, *The Bert J. Harris, Jr., Private Property Rights Protection Act: An Overview, Recent Developments, and What the Future May Hold*, THE FLORIDA BAR JOURNAL, (Sept./Oct. 2015), <https://www.floridabar.org/the-florida-bar-journal/the-bert-j-harris-jr-private-property-rights-protection-act-an-overview-recent-developments-and-what-the-future-may-hold/>.

²² BLACK’S LAW DICTIONARY (10th ed. 2014).

²³ The bill cites specifically to s. 11.066, F.S., and s. 7, chapter 2006-223. Section 11.066, F.S., provides that the presumption that the state, when exercising its inherent police power, is presumed to be acting to prevent a public harm, but that presumption may be rebutted in a suit seeking monetary damages from the state or a state agency only by clear and convincing evidence to the contrary. Section 7, chapter 2006-223 is discussed above in footnote 13.

²⁴ A judgment debtor is someone “against whom a money judgment has been entered but not yet satisfied.” BLACK’S LAW DICTIONARY (10th ed. 2014).

²⁵ Postjudgment interest is the amount of interest that a creditor is allowed to collect from a debtor after a judgment is rendered until the date it is paid by the debtor. TheLaw.com Dictionary <https://dictionary.thelaw.com/postjudgment-interest/>.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No agency analyses have been provided that estimate the fiscal impact of this bill. However, the bill will provide the affected state and local governments with some certainty on their liability in property-rights related litigation in areas of critical state concern.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 380.0501 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 4/9/15

Bill Number (if applicable) 1694

Topic Taking Claims within Areas of Critical State Concern Amendment Barcode (if applicable) _____

Name Frank Bernardino

Job Title Partner Anfield Consulting

Address 201 West Park Ave, Suite 100

Phone (561) 718-2345

Street

City Tallahassee

State FL

Zip 32301

Email franke.anfield@floridacan

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/9/19

1694

Meeting DateBill Number (if applicable)Topic Takings Claims Within Areas of Critical State ConcernAmendment Barcode (if applicable)Name Carol BracyJob Title ConsultantAddress 201 E Park Ave, 5th FloorPhone 850.577.0444StreetTallahasseeFL32301Email carol@ballardfl.comCityStateZipSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing City of MarathonAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Flores

39-01050A-19

20191694__

A bill to be entitled

An act relating to takings claims within areas of critical state concern; creating s. 380.0501, F.S.; providing for the apportionment of awards of damages for takings claims within areas of critical state concern; providing an effective date.

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

Section 1. Section 380.0501, Florida Statutes, is created to read:

380.0501 Apportionment of awards of damages for takings claims within an area of critical state concern.-

(1) In any proceeding brought pursuant to chapter 70, any claim for inverse condemnation, or any other property-rights related action for compensation in which the state is named as a codefendant with a local government located in an area of critical state concern or named as a third-party defendant by a local government located in an area of critical state concern, the court shall require the state and the local government to equally pay any award of compensation, costs, attorney fees, and prejudgment interest to the property owner if:

(a) The court has found liability against both the state and the local government;

(b) The regulation restricting development or use of the property was mandated or approved by the state land planning agency or the Administration Commission under s. 380.05; or

(c) The regulation restricting development or use of the property adopted by the local government was necessary for the

39-01050A-19

20191694__

local government to comply with the principles for guiding development established for the area or other obligations under the area of critical state concern designation.

(2) Notwithstanding s. 11.066 or s. 7, chapter 2006-223, Laws of Florida, the court shall enter separate judgments for the apportioned amount against the state and local government.

(3) A governmental entity named as a judgment debtor in a judgment entered under this section is only liable for postjudgment interest on the judgment entered against it and is not liable for postjudgment interest on the judgment entered against the other governmental entity. This section does not prohibit a court from awarding a separate judgment for attorney fees and costs pursuant to the limitations set forth in this section.

Section 2. This act shall take effect July 1, 2019.

COMMITTEE: Community Affairs
ITEM: SB 1694
FINAL ACTION: Favorable
MEETING DATE: Tuesday, April 9, 2019
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Building

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

CourtSmart Tag Report

Room: SB 301
Caption: Senate Community Affairs

Case No.:
Judge:

Type:

Started: 4/9/2019 10:02:35 AM

Ends: 4/9/2019 10:49:47 AM

Length: 00:47:13

10:02:34 AM Call to Order
10:03:01 AM Tab 10 - SB 1512
10:03:09 AM Senator Diaz you are recognized to explain the bill
10:03:46 AM Questions?
10:03:52 AM Debate?
10:03:57 AM Roll Call on SB 1512
10:04:09 AM SB 1512 is Reported Favorably
10:04:16 AM Tab 3 - SB 616
10:04:26 AM Senator Perry you are recognized to explain the bill
10:04:57 AM Questions?
10:05:02 AM Take up strike-all amendment barcode 142010
10:05:19 AM Questions?
10:05:19 AM Explanation of the amendment
10:05:22 AM There is an amendment to the amendment barcode 822442
10:05:35 AM Senator Perry for explanation
10:05:39 AM Questions?
10:05:44 AM Amendment to the amendment is adopted
10:05:49 AM We are back on the main amendment as amended
10:05:53 AM Main amendment adopted
10:05:57 AM Back on the Bill as amended
10:06:12 AM Allen Douglas Representing the aFlorida Engineering Society/ACEC-FL Speaks in Support
10:06:17 AM Mark Thomasson from the Conservation & Environmental Committee of Florida Engineering Society
Waives in Support
10:06:23 AM Jeff Branch from the Florida League of Cities Waives in Opposition
10:06:31 AM No Debate
10:06:34 AM Roll call on CS/CS/SB 616
10:06:46 AM CS/CS/SB 616 is Reported Favorably
10:06:54 AM Tab 4 - CS/SB 668
10:07:01 AM Senator Perry for explanation
10:07:37 AM Questions?
10:07:47 AM Debate?
10:07:49 AM Senator Perry waives close
10:07:55 AM Roll call on CS/SB 668
10:08:00 AM CS/SB 816 is Reported Favorably
10:08:06 AM Tab 5 - CS/SB 816
10:08:13 AM Senator Perry for explanation of the bill
10:08:29 AM Questions?
10:09:00 AM Keyna Cory from the National Waste and Recycling Association Waives in Support
10:09:10 AM Jim Spratt from Associated Industries of Florida Waives in Support
10:09:16 AM Debate?
10:09:20 AM Senator Perry waives close
10:09:25 AM Roll call on CS/SB 816
10:09:34 AM CS/SB 816 is Reported Favorably
10:09:36 AM Tab 6 - SB 1752
10:09:45 AM Senator Perry for explanation
10:09:53 AM Take up amendment 462060
10:10:39 AM Questions?
10:10:50 AM Strike-all amendment is adopted
10:10:55 AM Chris Rotolo from STILES Waives in Support
10:10:59 AM Megan Perdue from Stiles Property Management Waives in Support
10:11:05 AM Hilda Mendoza from Colliers Int'l
10:11:16 AM Mary Lantz from BOMA Orlando Waives in Support

10:11:25 AM Cary Fronstin from BOMA FL/Foundry Commercial Waives in Support
10:11:34 AM Questions?
10:11:37 AM Debate?
10:11:39 AM Senator Perry waives close
10:11:48 AM Roll Call on CS/SB 1752
10:11:52 AM CS/SB 1752 is Reported Favorably
10:12:13 AM Tab 2 - SB 696 is temporarily postponed
10:12:25 AM Tab 1 - CS/SB 588 by Senator Hutson
10:12:37 AM Senator Hutson explains strike-all amendment barcode 225460
10:13:50 AM Questions?
10:13:54 AM Senator Pizzo for a question
10:14:38 AM Senator Farmer for a question
10:15:11 AM Senator Hudson for a response
10:15:36 AM Amendment to the amendment barcode 355162 by Senator Flores
10:15:56 AM Senator Flores for explanation
10:16:51 AM Questions?
10:17:10 AM Senator Pizzo for a question
10:17:20 AM Senator Flores for a response
10:17:34 AM Debate?
10:17:42 AM Amendment to the amendment barcode 355162
10:17:53 AM Back on main amendment
10:17:56 AM Laura Youmans from the Florida Association of Counties Speaks in Opposition
10:19:37 AM Rebecca O'Hara from the Florida League of Cities Speaks in Opposition
10:19:44 AM Deborah Foote from Sierra Club Florida Waives in Support
10:19:53 AM Back on the amendment as amended
10:20:00 AM Amendment is adopted
10:20:06 AM Deborah Foote from Sierra Club Florida Waives in Opposition
10:20:11 AM Jake Farmer from the Florida Retail Federation Waives in Support
10:20:18 AM Christopher Emmanuel from the Florida Chamber of Commerce Waives in Support
10:20:24 AM Susan Aertker from the League of Women Votes Waives in Opposition
10:20:25 AM Nicolette Springer from the League of Women Voters Waives in Opposition
10:20:31 AM Olivia Babis from Disability Rights Florida Speaks with Information
10:25:41 AM Senator Pizzo for a question
10:26:31 AM Back on the bill
10:26:33 AM Debate?
10:26:38 AM Senator Simmons asks for an explanation of the bill as amended
10:26:58 AM Senator Hutson for a summary of the bill as amended
10:28:06 AM Debate?
10:28:08 AM Senator Hutson to close
10:28:19 AM Roll Call on CS/SB 588
10:29:00 AM CS/SB 588 is Reported Favorably
10:29:12 AM Senator Broxson yes on several bills
10:29:37 AM Tab 11 - SB 1694
10:29:44 AM Senator Flores for an explanation
10:30:52 AM Questions?
10:30:57 AM Senator Broxson for a question
10:31:38 AM Senator Flores for an explanation
10:31:49 AM Frank Bernardino Waives in Support
10:31:55 AM Carol Bracy Representing the City of Marathon Waives in Support
10:32:09 AM Debate?
10:32:11 AM Senator Flores waives close
10:32:22 AM Roll Call on SB 1694
10:32:26 AM SB 1694 is Reported Favorably
10:32:37 AM Senator Flores back in the Chair
10:32:50 AM Informal Recess
10:33:09 AM Recording Paused
10:39:57 AM Recording Resumed
10:40:03 AM Meeting Resumes
10:40:08 AM Senator Pizzo will present CS/SB 718, SB 854, and SB 1036 in Senator Gruter's stead
10:40:21 AM Tab 7 - CS/SB 718
10:40:29 AM Senator Pizzo for an explanation
10:41:09 AM Questions?

10:41:14 AM No Amendments
10:41:20 AM No Debate
10:41:24 AM Senator Pizzo waives close
10:41:28 AM Roll Call on CS/SB 718
10:41:29 AM CS/SB 718 is Reported Favorably
10:41:38 AM Tab 8 - SB 854
10:41:47 AM Senator Pizzo explains SB 854
10:42:12 AM Questions?
10:42:26 AM Any Debate?
10:42:33 AM Senator Pizzo waives close
10:42:37 AM Roll Call on SB 854
10:42:43 AM SB 854 is Reported Favorably
10:42:49 AM Tab 9 - SB 1036
10:43:01 AM Senator Pizzo for an explanation
10:43:51 AM Strike-all amendment barcode 802848 explained
10:44:43 AM Questions?
10:44:49 AM Senator Simmons for a question
10:45:23 AM Senator Pizzo for a response
10:45:42 AM Follow-up question from Senator Simmons
10:45:45 AM Response from Chair Flores
10:46:13 AM Questions?
10:46:19 AM Amendment barcode 802848 is adopted
10:46:24 AM Carol Bowen from Associated Builders and Contractors Waives in Support
10:46:29 AM Rusty Payton from the Florida Home Builders Assoc. Waives in Support
10:46:37 AM Questions or debate?
10:46:44 AM Senator Broxson for a comment
10:47:05 AM Debate?
10:47:10 AM Senator Pizzo to close
10:47:32 AM Roll call on CS/SB 1036
10:47:51 AM CS/SB 1036 is Reported Favorably
10:48:16 AM Comments from Chair Flores
10:48:31 AM Senator Gruters made an appearance
10:48:54 AM Chair Flores closing comments
10:48:59 AM Senator Broxson for comment
10:49:29 AM Senator Pizzo moves we adjourn
10:49:38 AM Meeting adjourned