Tab 1	SB 266 by Perry (CO-INTRODUCERS) Baxley; (Similar to CS/H 00403) Home-based Businesses						
169668	А	S L	RCS	CA, Perry	Delete L.31 - 60:	03/12 07:58 AM	
Tab 2	SB 13	82 by P o	erry ; (Sim	ilar to CS/H 00667) Building	Inspections		
300712	Α	S	RCS	CA, Perry	Delete L.109 - 111:	03/11 04:08 PM	
Tab 3		0 by Bu lation (FH	_	-INTRODUCERS) Baxley;	(Identical to H 00355) Florida High Sc	hool Athletic	
Tab 4	SJR 1: Purpos	-	Brandes;	(Identical to H 01377) Limita	ition on the Assessment of Real Proper	ty/Residential	
Tab 5	SB 11	86 by B ı	randes; (S	Similar to H 01379) Property	Assessments for Elevated Properties		
867370	Α	S	RCS	CA, Brandes	Delete L.178:	03/11 09:07 AM	
Tab 6			odriguez Energy Pr		gess, Gruters, Polsky; (Identical to H	H 00387) Property	
526754	Α	S	RCS	CA, Rodriguez	Delete L.77:	03/12 08:20 AM	
679318	Α	S	RCS	CA, Rodriguez	Delete L.483 - 509:	03/12 08:20 AM	
Tab 7	SB 12	14 by G	ruters; (I	dentical to H 00889) Nonprof	fit Taxation		
594614	D	S	RCS	CA, Gruters	Delete everything after	03/11 08:19 AM	
Tab 8	SB 17	88 by B (oyd ; (Simi	lar to CS/H 01059) Construc	tion Permits		
643594	Α	S	RCS	CA, Boyd	Delete L.34 - 261:	03/11 04:08 PM	
Tab 9	CS/SB	168 by	BI, Hoop	per; (Identical to CS/H 00423	3) Hurricane Loss Mitigation Program		
Tab 10	SB 73	8 by Ba x	xley ; (Ide	ntical to H 00353) Bicycle Op	peration Regulations		

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS Senator Bradley, Chair Senator Garcia, Vice Chair

MEETING DATE: Wednesday, March 10, 2021

> 8:00-10:00 a.m. TIME:

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Bradley, Chair; Senator Garcia, Vice Chair; Senators Baxley, Brodeur, Cruz, Hooper,

Hutson, Polsky, and Powell

BILL DESCRIPTION and TAB BILL NO. and INTRODUCER SENATE COMMITTEE ACTIONS COMMITTEE ACTION

PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, 32301

SB 266 1

Perry (Similar H 403) Home-based Businesses; Providing legislative findings and intent; specifying conditions under which a business is considered a home-based business; authorizing a home-based business to operate in a residential zone under certain circumstances; preempting to the state the ability to regulate or

license home-based businesses; prohibiting a local government from certain actions relating to the licensure and regulation of home-based businesses,

etc.

03/10/2021 Fav/CS CA

CM RC

2 SB 1382

> Perry (Similar CS/H 667)

Building Inspections; Requiring that certain counties allow requests for inspections to be submitted electronically; requiring that local enforcement agencies allow requests for inspections to be submitted electronically; authorizing enforcement agencies to perform virtual inspections, etc.

03/10/2021 Fav/CS CA GO

ΑP

3 **SB 760** Burgess

(Identical H 355)

Florida High School Athletic Association (FHSAA); Requiring the FHSAA to allow certain schools and home education cooperatives to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging such school or cooperative from simultaneously maintaining membership in another athletic association; requiring, rather than authorizing, the FHSAA to allow public schools to join other athletic associations, etc.

ED 02/16/2021 Favorable 03/10/2021 Favorable CA

RC

Fav/CS

Yeas 6 Nays 3

Fav/CS

Yeas 9 Nays 0

Favorable

Yeas 7 Nays 2

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs Wednesday, March 10, 2021, 8:00—10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SJR 1182 Brandes (Identical HJR 1377, Compare H 1379, Linked S 1186)	Limitation on the Assessment of Real Property/Residential Purposes; Proposing amendments to the State Constitution, effective January 1, 2023, to authorize the Legislature, by general law, to prohibit the consideration of any change or improvement made to real property used for residential purposes to improve the property's resistance to flood damage in determining the assessed value of such property for ad valorem taxation purposes, etc. CA 03/10/2021 Favorable FT AP	Favorable Yeas 9 Nays 0
5	SB 1186 Brandes (Similar H 1379, Compare HJR 1377, Linked SJR 1182)	Property Assessments for Elevated Properties; Specifying that changes to elevate certain homestead and nonhomestead residential property, respectively, do not increase the assessed value of the property under certain circumstances; requiring property owners to provide certification for such property; prohibiting certain areas from being included in square footage calculation, etc. CA 03/10/2021 Fav/CS FT AP	Fav/CS Yeas 9 Nays 0
6	SB 1208 Rodriguez (Identical H 387)	Property Assessed Clean Energy Program; Revising legislative intent regarding the types of improvements that qualify for specified financing under this act; specifying that a property owner may apply to a PACE program for certain purposes; requiring a qualifying improvement to be affixed or plan to be affixed to specified properties before final funding; requiring a PACE administrator to make specified determinations about a property owner's ability to pay the annual PACE assessment; prohibiting a PACE administrator from offering specified types of financing for residential real properties, etc. CA 03/10/2021 Fav/CS FT AP	Fav/CS Yeas 9 Nays 0
7	SB 1214 Gruters (Identical H 889)	Nonprofit Taxation; Specifying conditions for retaining an ad valorem tax exemption for certain property used for certain purposes; defining the term "incidental use", etc. CA 03/10/2021 Fav/CS FT AP	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs Wednesday, March 10, 2021, 8:00—10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1788 Boyd (Similar CS/H 1059)	Construction Permits; Revising procedures for counties reviewing applications for development permits and orders; revising procedures for the issuance of building permits for single-family residential dwellings; requiring local governments to reduce building permit fees under certain circumstances; requiring local building departments to reduce building permit fees under certain circumstances, etc.	Fav/CS Yeas 9 Nays 0
		CA 03/10/2021 Fav/CS GO RC	
9	CS/SB 168 Banking and Insurance / Hooper (Identical CS/H 423)	Hurricane Loss Mitigation Program; Deleting construction relating to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program, etc.	Favorable Yeas 9 Nays 0
		BI 02/02/2021 Fav/CS CA 03/10/2021 Favorable AP	
10	SB 738 Baxley (Identical H 353)	Bicycle Operation Regulations; Providing an exception to the requirement that a person operating a bicycle ride upon or astride a seat attached thereto, etc.	Favorable Yeas 9 Nays 0
		TR 02/16/2021 Favorable CA 03/10/2021 Favorable RC	

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 I	By: The Profession	nal Staff	of the Committee	on Community	Affairs
BILL:	CS/SB 266					
NTRODUCER: Community Affairs Committee and Senators Perry a					and Baxley	
SUBJECT:	UBJECT: Home-based Businesses					
DATE:	March 11, 20)21 REV	ISED:			
ANAL	YST	STAFF DIREC	TOR	REFERENCE		ACTION
. Paglialong	a	Ryon		CA	Fav/CS	
· ·				CM		
3.				RC		

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 266 preempts areas of regulation for home-based businesses to the state and forbids counties and municipalities from prohibiting, restricting, regulating, or licensing a home-based business in a manner that is different from other businesses in a local government's jurisdiction. By operation of law, state preemption would cause existing local government ordinances in areas of law restricted by the bill to become null and void.

The bill provides that the legislative intent is to encourage small and home-based business enterprises by allowing potential small business entrepreneurs to use residential property in ways consistent with residential use.

The bill includes criteria that home-based businesses must meet to operate in an area zoned for residential use. To be considered a home-based business under the bill's criteria, a business must be consistent with a dwelling unit's residential character, subordinate to the use of the dwelling for residential purposes, require no external modifications that detract from the residential appearance, and use no equipment or process that creates noise, vibration, heat, smoke, dust, glare, fumes, odors, or electrical or electronic interference detectable by neighbors.

The bill also include requirements a home-based businesses must comply with to operate in an area zoned for residential use. Namely, a home-based business may only have two non-resident employees or independent contractors and involve activities secondary to the property's use as a residential dwelling. Also, a home-based business must comply with all local regulations related

to parking, hours of operation, and business activities conducted outside of the primary residential structure, and all relevant local, state, and federal regulations regarding the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.

The bill maintains that a local government may still impose local business taxes under ch. 205, F.S., and provides that the home-based business state regulations do not supersede any current or future declaration of condominium adopted pursuant to ch. 718, F.S., cooperative document adopted pursuant to ch. 719, F.S., or declaration of covenants adopted pursuant to ch. 720, F.S.

These limitations on home-based businesses resemble current home occupation ordinances imposed by local governments.

The bill takes effect on July 1, 2021.

II. Present Situation:

Home Rule Powers and Preemption

The Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, section 1 of the Florida Constitution, endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

Counties

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law. Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors. General law authorizes counties "the power to carry on county government" 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."

Municipalities

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.⁵ Chapter 166, F.S.,

¹ FLA. CONST. art. VIII, s. 1(f).

 $^{^2}$ *Id.* at (g).

³ Section 125.01(1), F.S.

⁴ *Id.* at (w).

⁵ FLA. CONST. art. VIII, s. 2.

also known as the Municipal Home Rule Powers Act,⁶ acknowledges these constitutional grants of police powers and better defines municipal powers of self-government.⁷ Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, and a charter for the county in which the municipality is located.⁸

State Preemption

Although local governments have broad home rule powers, the state legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law. Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred. Express preemption of a field by the Legislature must be accomplished by clear language stating that intent. In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended. On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme. 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 to the state, and there are strong public policy reasons for doing so. In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.

Community Planning

State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States." Under this provision, states have police powers to establish and enforce laws protecting the public's welfare, safety, and health. These police powers provide counties and municipalities the authority to enact

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&Ses sion=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf. (last visited Mar. 3, 2021).

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). 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 GLA & Assocs., Inc. v. City of Boca Raton, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).

¹⁵ Thomas v. State, 614 So.2d 468, 470 (Fla.1993); Hillsborough County v. Fla. Rest. Ass'n, 603 So.2d 587, 591 (Fla. 2d DCA 1992) ("If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.")
¹⁶ U.S. CONST. amend. X.

¹⁷ "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." *See NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).

comprehensive zoning plans to lay out zones or districts where potential uses of real property may be forbidden or restricted.¹⁸

Local governments first began implementing elements of community planning at the turn of the nineteenth century. Private property owners frequently challenged local governments' initial utilization of community planning restrictions as violating rights enumerated in state and U.S. constitutions. Eventually, the constitutionality of community planning restrictions was solidified by the U.S. Supreme Court in a series of decisions that held these land use restrictions were a constitutional exercise of a state's police powers. ¹⁹ In doing so, the early nineteenth century Supreme Court decisions noted that a local government's ability to regulate and restrict the use of private property through community planning is not unlimited and must, ultimately, bear a substantial relation to the public health, safety, morals or general welfare. ²⁰

Today, s. 163.3167, F.S. of the Community Planning Act²¹ statutorily requires incorporated municipalities and counties to prepare and maintain a comprehensive plan to set out the regulations and policies governing land within a community. Comprehensive plans address both physical elements of land and buildings and the land uses permitted therein. Under s.163.3177, F.S., comprehensive plans are required to include elements that address the distribution, extent, and location of various land uses within a community. Some of the statute's land uses include residential, commercial, industrial, agricultural, recreational, conservation education, public, historic, and mixed-use categories.²²

Residential Use Restrictions

Community zoning plans typically contain two significant distinctions of property use: residential and commercial. Property zoned for residential use requires residents to use a building or premises therein as a dwelling.²³

Areas zoned for residential use may exclude other nonresidential buildings and uses. Residential use ordinances allow local governments to deny land uses not customary to a home or dwelling. Courts have opined that residential land use restrictions serve the public health, safety, morals, and general welfare by providing an attractive community, lessening congestion, increasing safety, and preventing overcrowding, among other things.²⁴ Although local governments may use

¹⁸ Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536 (1974)

¹⁹ See Eubank v. city of Richmond, 226 U.S. 137, 33 S.Ct. 76 (1912); Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114 (1926); Nectow v. City of Cambridge, 277 U.S. 183, 48 S.Ct. 447 (1928); State of Washington ex rel. Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 49 S. Ct. 50 (1928)

²⁰ In *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, the Supreme Court stated: "Zoning measures must find their justification in the police power exerted in the interest of the public. The governmental power to interfere by zoning regulations with the general rights of the landowner by restricting the character of his use, is not unlimited and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare. Legislatures may not, under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities."

²¹ See ch. 163, part II, F.S.

²² Section 163.3177, F.S.

²³ Black's Law Dictionary 505 (6th ed. 1990) (*Dwelling* is defined as: "The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or group of buildings, occupied by a family as a place of residence. Structure used as place of habitation.")

²⁴ Flava Works, Inc. v. City of Miami, 800 F.Supp.2d 1182 (S.D. Fla. 2011).

similar definitions of residential use in an ordinance, counties and municipalities are free to decide the specific uses or terms allowed for this land.

As a practical matter, residential use restrictions largely exclude property uses that include most commercial or business operations. Residential use areas are often cordoned off from business zones to promote the state's interest in preserving the quality of home life for the community and ensuring residential neighborhoods' safety.²⁵ The traditional purpose for this categorical separation of residential and business uses has been to prevent unwanted secondary effects of a business operating in a residential area.²⁶

Home Occupation Ordinances

Although local governments have the authority to discriminate between commercial and residential land uses, local governments have historically persevered the right for individuals to use residential dwellings to conduct business for certain activities deemed home occupations. Home occupation provisions are widely incorporated in residential land use ordinances and are considered an accessory use²⁷ to a residential property.

Home occupation ordinances are not a modern idea. These accessory use provisions have been incorporated in land use ordinances since the early nineteenth century. In the 1928 Supreme Court case, *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, the land use ordinance being challenged included a home occupation provision that reads remarkably similar to home occupation provisions today.²⁸ The overarching premise of home occupation provisions that has remained unchanged for over a century is that residents may use a dwelling for business activities secondary to residential uses and don't disturb the residential character of the property. There is no enumerated right to or precise definition of a home occupation in Florida law. Local

²⁵ Voyeur Dorm, L.C. v. City of Tampa, Fla., 265 F.3d 1232 (11th Cir. 2001).

²⁶ In the landmark case, *Village of Euclid, Ohio v. Amber Realty Co.* (upholding the constitutionality of a broad residential zoning restriction on all land uses that did not constitute a single-family dwelling), the 1926 Supreme Court describes numerous secondary effects of allowing businesses to operate in a residential zone and states the benefits of exclusion. The Court reasoned exclusion of business uses would "prevent congestion of population, secure quiet residence districts, expedite local transportation, and facilitate the suppression of disorder, the extinguishment of fires, and the enforcement of traffic and sanitary regulations... The danger of fire and of contagion are often lessened... A place of business in a residence neighborhood furnishes an excuse for any criminal to go into the neighborhood, where, otherwise, a stranger would be under the ban of suspicion. Besides, open shops invite loiterers and idlers to congregate; and the places of such congregations need police protection. In the second place, the zoning of a city into residence districts and commercial districts is a matter of economy is street paving. Heavy trucks, hauling freight to and from places of business in residence districts, require the city to maintain the same costly pavement in such districts... [A]ny business establishment is likely to be a genuine nuisance in a neighborhood of residences. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc... By reducing the traffic and resulting confusion in residential sections, decrease noise and other conditions which produce or intensify nervous disorders." *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926) (quotations and citations omitted).

²⁷ Black's Law Dictionary 15 (6th ed. 1990) (*accessory use* is "a use which is dependent on or pertains to principal or main use; a use which is subordinate to, clearly incidental to, customary in connection with, and ordinarily located on same lot with, principle use").

²⁸ The exact language of the provision reads: "The office of a physician, dentist, or other professional person when located in his or her dwelling, also home occupations engaged in by individuals within their dwellings shall be considered as accessory uses, provided that no window display is made or any sign shown other than one not exceeding two (2) square feet in area and bearing only the name and occupation of the occupant." *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 49 S. Ct. 50 (1928).

governments have the home rule power to include home occupation provisions in land use ordinances and define the provision as they see fit.

Current home occupation ordinances vary on the types of businesses allowed, the activities authorized, and the permitting and taxes imposed. Common home occupation regulation areas include residential character requirements, licensing/permitting/certification, permitted home occupations, prohibited home occupations, signage, employees, traffic and parking, storage and sale of merchandise, and floor area used for the home occupation.

The following excerpts are examples of local government ordinances addressing the common areas of home occupation regulation:

- **Residential character:** "Home occupations are intended to be small-scale, limited businesses that do not detract from the residential character of the neighborhood. Home occupations shall be accessory to the principal residential use."²⁹
- Licensing/Permitting/Certification: "All home occupations shall be required to obtain an occupational license prior to the start of such use. In addition to any other submittals required for an occupational license, the applicant shall also submit the following: (a) Location of dwelling unit where the home occupation will be conducted; (b) Total floor area of the dwelling unit; (c) Area of room or rooms to be utilized in the conduct of the home occupation; (d) A sketch with dimensions showing the floor plan and the area to be utilized for the conduct of the home occupation; (e) A written description of the exact nature of the home occupation; and (f) Notarized letter of approval for the home occupation from the property owner and/or property manager; (g) The Zoning Official may require a site plan indicating the location of all improvements."³⁰
- **Permitted home occupations:** "Home occupation uses: (subject to all regulations set forth in section 906.5 and in addition to all those listed therein) Accountant, advertising agency, building contractor, credit reporting service, investigative service, insurance agent, market research service, optician, public relations service, real estate agency, stenographic service, stock broker, telephone answering service, telemarketing service, and other similar occupations which do not generate high vehicular demand."³¹
- Prohibited home occupations: "Notwithstanding any other provision of this Code, the following uses are hereby prohibited as home occupations: Adult Entertainment Antique Shops Auto Service & Repair Barber & Beauty Shops Bed and Breakfast Facilities Body Scrubs Child Day Care Centers and Adult Day Care Centers Churches Clubs, Private Commercial Physical Contact Establishments Drive-in Facilities Eating and Drinking Establishments Escort Services Food Processing and Handling Fortune Tellers Funeral Homes Group Instruction of More Than (4) People Health Spas Hospitals and Clinics Hotels/Motels Kennels Massage Establishments Modeling of Clothes Pain Management Clinic Plasmapheresis Facilities Vehicle Sales, Rental or Repair Whole Blood Facilities Also, any other similar use or activity as determined by the Zoning Official." 32
- **Signage:** "No sign relating to the home occupation may be posted or displayed on the site."³³

²⁹ Jacksonville, FL., Sec. 656.369(c)(1).

³⁰ Orlando, FL., Sec. 58.941.

³¹ Miami, FL., Sec. 622.7.2.

³² Orlando, FL., Sec. 58.939.

³³ Miami-Dade County, FL., Sec. 33-25.1(A)4.

• **Employees:** "No person shall be engaged in any home occupation as an employee or volunteer worker other than members of the immediate family residing in the dwelling unit. No accessory building shall be used for such home occupation. Any home occupation that creates objectionable noise, fumes, odor, dust, electrical interference shall be prohibited."³⁴

- **Traffic and parking:** "Traffic generated by the home occupation shall be no greater in volume than would normally be expected at a similar residence where no home occupation is conducted. The occupation shall not involve the use of a commercial vehicle for delivery of materials to or from the premises except for travel from the home occupation-site to a job location and to return, such trips not to exceed on the average more than two trips per day. No marked vehicle or equipment used in conjunction with the home occupation shall be parked on the property or contiguous to the street right-of-way so as to identify, advertise or otherwise attract attention to the occupation."³⁵
- **Storage and sale of merchandise:** "No commodity shall be sold on the premises nor displayed or warehoused on the premises for sale elsewhere."³⁶
- Floor area used for home occupation: "Home occupations may occupy up to 500 square feet or 25 percent of the floor area of the residence, whichever is less. If the property also has an accessory apartment, total floor area devoted to both uses shall not exceed 1,250 square feet or 35 percent of the floor area of the residence, whichever is less."³⁷

Another common component of home occupation ordinances is the method of enforcing these restrictions. Typically, local government code enforcement divisions are tasked with the enforcement of home occupation ordinances. Other community residents may report violations to a code enforcement officer, who usually provides the violator with a warning about the behavior. If the restricted behavior continues, local governments have the authority to issue a civil infraction or penalty that the violator may contest in court. Repeated refusal to cease code violations could result in a local government issuing misdemeanor fines as described in s. 775.083, F.S.

Florida Business Address

To establish a formal business organization in Florida, an individual must file specific paperwork with the Florida Department of State, Division of Corporations. Regardless of the corporate business structure, Florida law requires that the business provide the street address of its principal place of business, register agent, and persons owning the business. Residential property may be used as a principal place of business for these corporate filings. It is unclear how using a residential home address as a principal place of business for state corporate filings is interpreted in the context of home occupation ordinances.

III. Effect of Proposed Changes:

The bill creates s. 559.955, F.S., to preempt areas of regulation for home-based businesses to the state. The bill forbids counties and municipalities from prohibiting, restricting, regulating, or

³⁴ Winter Park, FL., Sec. 58-71(5).

³⁵ Clearwater, FL., Sec. 3-1102.A.5 – 7.

³⁶ Tampa, FL., Sec. 27-282.5.(7).

³⁷ Jacksonville, FL., Sec. 656.369(c)(1)(A).

³⁸ See s. 605.0201, F.S. (limited liability company); s. 607.0202, F.S. (corporation); s. 620.1111, F.S. (partnership).

licensing a home-based business in a manner that is different from other businesses in a local government's jurisdiction. By operation of law, state preemption would cause existing local government ordinances in areas of law restricted by the bill to become null and void.

To be considered a home-based business under the bill, a business must meet the following:

- Be consistent with a dwelling unit's residential character.
- Be subordinate to the use of the dwelling for residential purposes.
- Require no external modifications that detract from the residential appearance.
- Use no equipment or process that creates noise, vibration, heat, smoke, dust, glare, fumes, odors, or electrical or electronic interference detectable by neighbors.

Additionally, a home-based business must meet the following requirements:

- May only have two non-resident employees or independent contractors.
- May only involve activities secondary to the property's use as a residential dwelling.
- Comply with all state and local parking regulations.
- Comply with local regulations for hours of operation and business activities conducted outside of the primary residential structure.
- Comply with all relevant local, state, and federal regulations regarding the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.

The bill clarifies that local governments may still impose local business taxes on home-based businesses under ch. 205, F.S. The bill also provides that the home-based business state regulations do not supersede any current or future declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration of covenants adopted pursuant to chapter 720.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A.	Municipality/County Mandates Restrictions:				
	None.				
B.	Public Records/Open Meetings Issues:				

C. Trust Funds Restrictions:

None.

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Restricting the number and types of persons allowed to engage in otherwise legal activities³⁹ conducted wholly within the confines of a private dwelling may unconstitutionally infringe on an individual's freedom of association⁴⁰ and right to privacy.⁴¹ If these fundamental rights are implicated, the judiciary may require the State to demonstrate that limiting the number and types of persons allowed to work at a home-based business serves a compelling State interest and accomplishes its goals through the use of the least intrusive means.⁴²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

For small and family-owned businesses that operate in a local government jurisdiction with a more severe restriction on home occupations, the bill will likely provide a significant net positive fiscal impact by allowing these businesses to avoid the costs associated with commercial property. Notwithstanding, this positive fiscal impact may be negatively correlated to the market demand for small-scale commercial real estate.

C. Government Sector Impact:

The bill may have a negative fiscal impact on local governments that charge fees related to home occupations.

³⁹ See Henry v. Board of County Com'rs of Putnam County, 509 So.2d 1221 (Fla. 5th DCA 1987)(describing that there is a considerable distinction between regulating the use of land and prohibiting the advertising for, and business use of, telephone located on residential property); see also Coca-Cola Co., Food Division, Polk County v. State, Dept. of Citrus, 406 So.2d 1079 (Fla.1981)(wherein the Florida Supreme Court discussed first amendment protection of commercial speech).

⁴⁰ "Our decisions establish that the First and Fourteenth Amendments protect the freedom to choose one's associates. Constitutional protection is extended, not only to modes of association that are political in the usual sense, but also to those that pertain to the social and economic benefit of the members... The freedom of association is often inextricably entwined with the constitutionally guaranteed right of privacy. The right to establish a home is an essential part of the liberty guaranteed by the Fourteenth Amendment. And the Constitution secures to an individual a freedom to satisfy his intellectual and emotional needs in the privacy of his own home." See Village of Belle Terre v. Boraas, 416 U.S. 1, 15 (1974)(Justice Marshall, dissenting; quotations and citations omitted).

⁴¹ Courts have long recognized that the boundaries of a home create a constitutionally protected zone of privacy. *See Griswold v. Connecticut*, 381 U.S. 479, 484 (1965). The Florida Constitution contains an explicit right to privacy which affords Florida citizens greater protection in the area of privacy than does the federal Constitution. *See State v. J.P.*, 907 So.2d 1101, 1115 (Fla. 2004).

⁴² It is settled law that each of the personal liberties enumerated in the Declaration of Rights of the Florida Constitution is a fundamental right. Florida courts consistently have applied the strict scrutiny standard whenever the Right of Privacy Clause was implicated, regardless of the nature of the activity. *See State v. J.P.*, at 1109. *See also Winfield v. Div. of Pari–Mutuel Wagering*, 477 So.2d 544 (Fla.1985)(explaining that where law intrudes on fundamental right to privacy guaranteed in Florida's Constitution, the State must demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means).

VI. Technical Deficiencies:

The term "only" on line 68 should be removed for clarity.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 559.955 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 March 10, 2021:

The committee substitute revises the criteria and requirements a business must meet to be considered a home-based business and allowed to operate in a residential zone. The committee substitute retains the bill's core elements but makes several technical and substantive changes to provide more detailed and precise descriptions of home-based business restrictions.

It also clarifies that the bill's regulations do not supersede any current or future declaration of condominium adopted pursuant to ch. 718, F.S., cooperative document adopted pursuant to ch. 719, F.S., or declaration of covenants adopted pursuant to ch. 720, 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.



	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/12/2021		
	•	
	•	

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

Senate Amendment (with title amendment)

2 3

5

6

7

8

9

10

1

Delete lines 31 - 60

and insert: 4

- (2) (a) For purposes of this section, a business is considered a home-based business if:
- 1. The business is consistent with the residential character of the dwelling unit;
- 2. The business is subordinate to the use of the dwelling unit for residential purposes and requires no external

11

12

13

14 15

16

17

18

19 20

21

22

23

24

2.5

26

27

28

29

30

31

32

33

34 35

36

37

38

39



modifications that detract from the residential appearance of the dwelling unit; and

- 3. The business uses no equipment or process that creates noise, vibration, heat, smoke, dust, glare, fumes, odors, or electrical or electronic interference detectable by neighbors.
- (b) A home-based business must meet all of the following requirements:
- 1. The employees of the home-based business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business.
- 2. Parking related to the business activities of the homebased business must comply with all local or state parking regulations.
- 3. Business activities related to hours of operation and business activities conducted outside of the primary residential structure, including exterior signage displays or exterior storage, must comply with all local regulations.
- 4. The activities of the home-based business must be secondary to the property's use as a residential dwelling.
- 5. All home-based business activities must comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids.
- (3) A home-based business that operates from a residential property as provided in subsection (2):
 - (a) May operate in an area zoned for residential use;
 - (b) May not be prohibited, restricted, regulated, or



licensed in a manner that is different from other businesses in a local government's jurisdiction; and

- (c) Is only subject to applicable business taxes under chapter 205 in the county and municipality in which the homebased business is located.
- (4) Local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to otherwise regulate a home-based business, other than as provided in this section.
- (5) This section does not supersede any current or future declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration of covenants adopted pursuant to chapter 720.

53 54

55

56

57 58

59

60

61

62

6.3

64

65

40 41

42 43

44

45

46 47

48

49

50

51 52

> ======== T I T L E A M E N D M E N T ========= And the title is amended as follows:

Delete lines 5 - 11

and insert:

is considered a home-based business; providing requirements for home-based businesses; authorizing a home-based business to operate in a residential zone under certain circumstances; specifying that homebased businesses are subject to certain business taxes; prohibiting a local government from taking certain actions relating to home-based businesses; providing construction; providing an

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

3/10/2021	APPEARANCE RECO)RD	266
Meeting Date				Bill Number (if applicable)
Topic Home-based Businesses			_	Amendment Barcode (if applicable)
Name David Cruz			_	
Job Title Legislative Counsel			-	
Address PO Box 1757			_ Phone <u>850</u>)-701-3676
Street Tallahassee	FL	32301	_ Email dcru	z@flcities.com
Speaking: For ✓ Against	State Information			In Support Against information into the record.)
Representing Florida League	of Cities, Inc.			
Appearing at request of Chair:]Yes ✓ No Lob	byist regis	tered with Le	gislature: Yes No
While it is a Senate tradition to encourag meeting. Those who do speak may be as	•	•	•	-
This form is part of the public record to	for this meeting.			S-001 (10/14/14

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

3/10/21	APPEARAN	ICE RECO	RD	266
Meeting Date		_		Bill Number (if applicable)
Topic				Amendment Barcode (if applicable)
Name Tim Nungesser			_	
Job Title Legislative Director			_	
Address 110 East Jefferson Stre	et		Phone	-445-5367
Street Tallahassee	FL	32301	Email ^{Tim.r}	nungesser@nfib.org
City Speaking: For Against	State Information		Speaking:	In Support Against nformation into the record.)
Representing NFIB				
Appearing at request of Chair:	Yes 🗸 No	Lobbyist regis	tered with Leg	gislature: Ves No
While it is a Senate tradition to encourage meeting. Those who do speak may be a	ne public testimony, time sked to limit their remar	e may not permit al	l persons wishin persons as pos	g to speak to be heard at this sible can be heard.
This form is part of the public record	for this meeting.			S-001 (10/14/14)

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Bill Number (if applicable) Topic Amendment Barcode (if applicable) Name Job Title Address Phone Street City State Information Speaking: For Against Waive Speaking: (The Chair will read this information into the record.) FOR WSTILE Representing Appearing at request of Chair: Lobbyist registered with Legislature: Yes 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.

S-001 (10/14/14)

APPEARANCE RECORD

3 / 10 / 2 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Meeting Date (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Bill Number (if applicable)
Topic HOME BUSINESS Amendment Barcode (if applicable)
Name_JASON STEELE
Job Title DIR. OF GOU RELATION
Address 7095 HARBOR CITY BUD Phone 321-258-8993
MELB-FLA Email
City State Zip
Speaking: For Against Information Waive Speaking: In Support Against (The Chair will read this information into the record.)
Representing SATELITTE BCH, INDIALANTIC
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. S-001 (10/14/14

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Sta	aff conducting the meeting) SB 266
Meeting Date	Bill Number (if applicable)
Topic Home Based Business	Amendment Barcode (if applicable)
Name	
Job Title Policy & Planning Director	
Address <u>A4 Cathedral Place</u> Street	Phone 904-671-4008
St Augustine FL 32080 City State Zip	Email jwest@1000fof.org
Speaking: For Against Information Waive Speaking:	eaking: In Support Against r will read this information into the record.)
Representing 1000 Friends of Florid	12
Appearing at request of Chair: Yes No Lobbyist register	ered with Legislature: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit all preeting. Those who do speak may be asked to limit their remarks so that as many p	· · · · · · · · · · · · · · · · · · ·
This form is part of the public record for this meeting.	S-001 (10/14/14)

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

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

THE FLORIDA SENATE

3/10/21	APPEARANCE	RECO)RD	266
Meeting Date				Bill Number (if applicable) 169668
Topic	# 144.4% The second of the sec		_	Amendment Barcode (if applicable)
Name Tim Nungesser			_	
Job Title Legislative Director			_	
Address 110 East Jefferson S	Street		_ Phone 8	50-445-5367
Street Tallahasse e	FL	32301	Email ^{Tin}	n.nungesser@nfib.org
Speaking: For Agains	State Information		Speaking:	In Support Against s information into the record.)
Representing NFIB				
Appearing at request of Chair	: Yes No Lob	byist regis	tered with L	egislature: 🗹 Yes 🗌 No
While it is a Senate tradition to enco				

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

3/10/2021		APPEARAN	ICE RECO	RD	266
Meeting Date					Bill Number (if applicable)
Topic Home-ba	ased Businesses			Ai	mendment Barcode (if applicable)
Name David Cr	ruz				
Job Title Legisl	ative Counsel				
/ taa1033	ox 1757			Phone <u>850-7</u>	701-3676
Street Tallaha	assee	FL	32301	Email dcruz@	@flcities.com
Speaking:	For Against	State Information	<i>Zip</i> Wai∨e S∣ (The Chai	Contraction of the contraction o	n Support Against formation into the record.)
Representin	g Florida Leagu	e of Cities, Inc.		***	
Appearing at re	quest of Chair:	Yes 🗸 No	Lobbyist registe	ered with Legi	slature: Yes No
		age public testimony, time asked to limit their remar	•	•	to speak to be heard at this ble can be heard.
This form is part	of the public record	d for this meeting.			S-001 (10/14/14)

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
Topic Home Based Businesses	Amendment Barcode (if applicable)
Name Phillip Suderman	
Job Title Policy Director	
Address	Phone
	Email
	peaking: In Support Against ir will read this information into the record.)
Representing Americans for Prosperity	
	ered with Legislature: Ves No
While it is a Senate tradition to encourage public testimony, time may not permit all meeting. Those who do speak may be asked to limit their remarks so that as many	persons wishing to speak to be heard at this persons as possible can be heard.
This form is part of the public record for this meeting.	S-001 (10/14/14)

APPEARANCE RECORD

3/10/21 (Deliver BOTH	copies of this form to the Senator	r or Senate Professional	Staff conducting the me	eeting)	
Meeting Date				Bill Number (if applic	cable)
Topic Amendment # 169664 Name Mark Anderson	on SB 266 - Com	munity Alfans	Conte	169669 Amendment Barcode (if appl	 'icable)
Job Title Lobbyist			_		
Address 110 5 Monfor 6	†		_ Phone_ _	3-205-0659	
Tallahuss er City	PC State	3230\ Zip	_ Email_ <i>Mad</i>	k O consultanderson.com	M
Speaking: For Against	Information	Waive S (The Ch	Speaking: \(\sum_{\text{II}}\) air will read this in	n Support Agains	it (.)
Representing Chief Exec	cutive Officers of M	langument Con	panies (CE	omc)	
Appearing at request of Chair: [Yes 🔀 No	Lobbyist regis	stered with Leg	islature: 💢 Yes 🔙] No
While it is a Senate tradition to encourameeting. Those who do speak may be	age public testimony, time asked to limit their remar	e may not permit a ks so that as man	ell persons wishing y persons as poss	g to speak to be heard at t sible can be heard.	this
This form is part of the public record	d for this meeting.			S-001 (10)/14/14)

Florida Senate - 2021 SB 266

By Senator Perry

8-00638-21 2021266

A bill to be entitled

An act relating to home-based businesses; creating s.

559.955, F.S.; providing legislative findings and intent; specifying conditions under which a business is considered a home-based business; authorizing a home-based business to operate in a residential zone under certain circumstances; preempting to the state the ability to regulate or license home-based businesses; prohibiting a local government from certain actions relating to the licensure and regulation of home-based businesses; providing an effective date.

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

14 15 16

17

18

19

20

21

22

23

24

25

26

27

28

29

13

Section 1. Section 559.955, Florida Statutes, is created to read:

559.955 Home-based businesses; legislative findings and intent; preemption.—

- (1) It is the intent of the Legislature to encourage small and home-based business enterprises. To that end, the Legislature finds that:
- (a) Small and home-based businesses are a critical part of the economy of this state and provide unique and valuable benefits to the communities in which they are located.
- (b) Residential property is often the most valuable asset owned by a potential small business entrepreneur.
- (c) Residential property can be put to beneficial use by potential small business entrepreneurs in ways that are

Page 1 of 3

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 266

2021266

8-00638-21

30	consistent with residential use.
31	(2) For purposes of this section, a business is considered
32	a home-based business if it operates, in whole or in part, from
33	a residential property and meets the following criteria:
34	(a) The employees of the home-based business reside in the
35	residential dwelling or are immediate family members of
36	residents of the dwelling, except that up to two employees are
37	not required to be related to a resident of or reside in the
38	dwelling.
39	(b) Parking related to the business activities of the home-
40	based business complies with local zoning requirements.
41	(c) The business activities of the home-based business do
42	not generate a substantial increase in any of the following:
43	1. Traffic.
44	2. Noise.
45	3. Waste or recycling.
46	(d) As viewed from the street, the use of the residential
47	property is consistent with the uses of the residential areas
48	that surround the property.
49	(e) The activities of the home-based business are secondary
50	to the property's use as a residential dwelling.
51	(3) (a) A home-based business that operates from a
52	residential property as provided in subsection (2) may operate
53	in an area zoned for residential use.
54	(b) A residential dwelling that is used as a home-based
55	business must meet the applicable standards of the Florida
56	Building Code.
57	(4) The licensure and regulation of home-based businesses
58	is preempted to the state, and local governments may not enact

Page 2 of 3

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

Florida Senate - 2021 SB 266

8-00638-21
2021266__
or enforce any ordinance, regulation, or policy or take any
action to license or otherwise regulate a home-based business.

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

Page 3 of 3

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ 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.)

 Hackett 		Ryon	CA GO	Fav/CS	
ANAL	YST	STAFF DIRECTOR	REFERENCE		ACTION
DATE:	March 10, 202	1 REVISED:			
SUBJECT:	Building Inspe	ections			
INTRODUCER:	Community A	ffairs Committee and	d Senator Perry		
BILL:	CS/SB 1382				
	Ртератец Бу	: The Professional Staff	f of the Committee	on Community A	ffairs

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1382 requires local building code enforcement agencies to allow requests for inspections to be submitted electronically, and in person in non-electronic form at the official's discretion.

The bill provides that any government entity with the authority to enforce the Florida building code may perform virtual inspections at their own discretion, except for certain structural inspections, and defines "virtual inspection."

The bill requires a local enforcement agency to refund 10 percent of the permit and inspection fees to a permit holder who fails an inspection if the inspector or building official fails to provide a reason based on compliance with code or ordinance for why the work failed inspection within 3 business days after the inspection. If any permit and inspection fees are refunded, DBPR surcharges must be recalculated to reflect the refund.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation,

and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹

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

Building Code Administrators, Inspectors, and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR. A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.² A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with building codes and state accessibility laws.³

Building Code Enforcement

Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare. Every local government must enforce the Building Code and issue building permits. A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity. State agencies may also enforce the Building Code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity.

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁸

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the government entity. A local enforcement agency must allow applicants to submit permit applications electronically to the local enforcement agency, which must provide

¹ See s. 553.72(1), F.S.

² Section 468.603(2), F.S.

³ Section 468.603(4), F.S.

⁴ Section 553.72, F.S.

⁵ Sections 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

⁶ Section 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code.

⁷ Section 553.80(1), F.S.

⁸ See sections 125.56(4)(a) & 553.79(1), F.S.

⁹ Section 713.135, F.S.

¹⁰ A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code. s. 553.71(5), F.S.

accepted methods of electronic submission. Accepted methods of electronic submission include, but are not limited to email, fill-in form available online, or third party submission software.¹¹

If a building official or plans reviewer denies a permit application or revokes a building permit, the building official or plans reviewer must give the permit applicant a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the Building Code or a local ordinance, is grounds for discipline against the building official or plans reviewer's license. 12

Building Inspections

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections. Construction work may not be done beyond a certain point until it passes an inspection.

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.¹³

Inspection Fees

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule on its website.¹⁴

A local government's permit and inspection fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Building Code. This includes:¹⁵

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

DBPR Surcharges

¹¹ Sections 125.56(4)(b) & 553.79(1)(b), F.S.

¹² Id.

¹³ Section 110.3.10, Seventh Edition of the Florida Building Code (Building).

¹⁴ Sections 125.56(2), 166.222, 553.79(1), and 553.80(7), F.S

¹⁵ Section 553.80(7), F.S.

Current law requires that all local governments assess and collect a 1.0% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Florida Building Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations. ¹⁶

Current law also requires that all local governments assess and collect a separate 1.5% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the BCAIB and the Florida Homeowners' Construction Recovery Fund.¹⁷

Electronic Requests for Inspections

Current law requires all local enforcement agencies to allow contractors to apply for permits electronically. However, there is no provision requiring local enforcement agencies to allow contractors to request inspections electronically. Multiple building departments in Florida already allow permit holders to electronically request inspections, while others do not. ¹⁸ Instead, they require permit holders to call the building department during its business hours, which limits the time when a permit holder can request an inspection, or use an interactive voice response. ¹⁹

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building departments to continue operating during the COVID-19 epidemic, which allows contractors to keep working.²⁰

Virtual inspections can range from roofing inspections, windows and doors inspections, to A/C change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-

¹⁶ Section 553.721, F.S.

¹⁷ Section 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. S. 489.1401(2), F.S

¹⁸ See Orange County Government Florida, Division of Building Safety,

https://www.orangecountyfl.net/PermitsLicenses/DivisionOfBuildingSafety.aspx#inspections (last visited March 5, 2021); Brevard County, Brevard County Building Inspection Request,

https://www.brevardfl.gov/PlanningDev/BuildingPermits/InspectionRequest (last visited March 5, 2021); Town of Davie Florida, Online Self Service, https://www.davie-fl.gov/213/Online-Self-Service (last visited March 5, 2021). Fort Myers Community Development, Building, Permitting & Inspections (BPI), https://cityftmyers.com/1293/Building-PermittingInspections (last visited March 5, 2021); Monroe County, Building and Permitting Quick Links, https://www.monroecountyfl.gov/149/Building-and-Permitting (last visited March 5, 2021)

²⁰ Monica Casey, Tallahassee creates virtual building inspections to save jobs and keep social distancing, WCTV.tv (Apr. 8, 2020) https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing569485561.html (last visited March 5, 2021)

person inspections by reducing jobsite travel time, by allowing contractors to immediately request an inspection once they finish work, and by allowing the contractor to remain on the jobsite.²¹

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

Reasons for Failing an Inspection

Current law requires a building official or plans reviewer, who denies or revokes a building permit, to provide the permit applicant or permit holder a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. If a building official or plans reviewer fails to provide a reason for denying or revoking a building permit based on compliance with the Building Code or a local ordinance, the building official or plans reviewer's license may be disciplined.²²

The Building Code requires an inspector who to notify the permit holder or his or her agent if there are any violations that need to be corrected in order to comply with the Building Code.²³ However, current law does not require a building official or inspector to provide the permit holder a specific reason for failing the inspection.

III. Effect of Proposed Changes:

The bill requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to email, fill-in form available online, or mobile device application. Requests for inspections may be submitted in person in nonelectronic form at the discretion of the local official.

The bill provides that any government entity with the authority to enforce the Florida Building Code may perform virtual inspections at their own discretion, except for structural inspections on a threshold building.²⁴ "Virtual inspection" is defined as a form of visual inspection using visual or electronic aids to allow building code administrators or inspectors to perform the inspection without physical presence.

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

• The inspector or building official determines that the work, which requires the permit, fails an inspection; and

²¹ Miami Beach, Modified Procedures for Building Code Inspections During COVID-19 Emergency Period, https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf (last visited March 5, 2021); Boca Raton, Virtual Inspections, https://myboca.us/1846/Virtual-Inspections (last visited March 5, 2021) ²² Section 553.79(1)(a), F.S.

²³ Section 110.3, Seventh Edition of the Florida Building Code (Building).

²⁴ A threshold building is a building that is greater than three stories or 50 feet in height, exceeds 5,000 square feet, has an occupancy of greater than 500 persons, and is for the gathering of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption, or awaiting transportation. A special inspector, who is licensed as an architect or engineer, must perform structural inspections on threshold buildings. S. 553.71(12), F.S.

• The inspector or building official fails to provide a reason based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance for why the work failed inspection within 3 business days after the inspection.

If any permit and inspection fees are refunded because of the above, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution states in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds. The bill may implicate this constitutional restriction, to the extent that local governments must expend funds to update processing systems to allow permit holders to electronically request building inspections. However, these expenses may be offset by any efficiencies gained by allowing electronic requests. Additionally, the mandate requirements do not apply to laws having an insignificant impact, ²⁵ which for Fiscal Year 2020-2021 is forecast at \$2.2 million. ²⁶

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

²⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited March 10, 2021)

²⁶ Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited March 10, 2021).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The ability for permit holders to electronically request building inspections and for government entities to perform virtual inspections in limited circumstances may create efficiencies and reduce the time needed to complete construction projects. Incentivizing local governments to timely provide the reasons for which a permit holder failed an inspection may also lead to greater efficiencies and cost savings for permit holders.

C. Government Sector Impact:

Local governments that do not already allow permit holders to electronically request building inspections may need to expend funds to update their processing systems to accommodate such requests. However, this expense may be offset by any efficiencies gained by allowing electronic requests.

Permit fee amounts to be refunded by local governments for failing to timely provide the reasons for which a permit holder failed an inspection is indeterminate. It is unclear if refunding a percentage of permit fees will have an impact on the surcharges received by DBPR. However, any impact will likely be insignificant.

Government entities may experience cost savings associated with performing certain building inspections virtually, at their discretion.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.56, 553.79, 440.103, and 553.80.

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 March 10, 2021:

The committee substitute clarifies that 10 percent of permit and inspection fees must refunded after both a failed inspection *and* the inspector fails to provide a reason for such failure within three business days. The committee substitute also specifies three *business* days.

B. Amendments:

None.

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

300712

	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/11/2021		
	•	
	•	
	•	

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

Senate Amendment

Delete lines 109 - 111

and insert:

1 2 3

4

5

6

7

8 9 that the work, which requires the permit, fails an inspection; and

2. The inspector or building code administrator fails to provide, within 3 business days after the inspection, the permit holder

By Senator Perry

8-01417-21 20211382

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

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

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

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

(4)

10

11

12

13

14

15

16

17

18 19

20 21

22

23

24

25

26

27

28

(f) A county that issues building permits must allow requests for inspections to be submitted electronically to the county building department. Acceptable methods of electronic

Page 1 of 8

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1382

	8-01417-21 20211382
30	submission include, but are not limited to, e-mail or fill-in
31	form available on the website of the building department or
32	through a third-party submission management software or
33	application that can be downloaded on a mobile device. Requests
34	for inspections may be submitted in person in a nonelectronic
35	format, at the discretion of the building official.
36	Section 2. Present subsections (6) through (22) of section
37	553.79, Florida Statutes, are redesignated as subsections (8)
38	through (24), respectively, paragraph (d) is added to subsection
39	(1) of that section, new subsections (6) and (7) are added to
40	that section, and subsection (2) of that section is amended, to
41	read:
42	553.79 Permits; applications; issuance; inspections
43	(1)
44	(d) A local enforcement agency must allow requests for
45	inspections to be submitted electronically to the local
46	enforcement agency's appropriate building department. Acceptable
47	methods of electronic submission include, but are not limited
48	to, e-mail or fill-in form available on the website of the
49	building department or through a third-party submission
50	management software or application that can be downloaded on a
51	mobile device. Requests for inspections may be submitted in
52	person in a nonelectronic format, at the discretion of the
53	building official.
54	(2) Except as provided in subsection (8) subsection (6), an
55	enforcing agency may not issue any permit for construction,
56	erection, alteration, modification, repair, or demolition of any
57	building or structure until the local building code
58	administrator or inspector has reviewed the plans and

Page 2 of 8

8-01417-21 20211382 59 specifications required by the Florida Building Code, or local 60 amendment thereto, for such proposal and found the plans to be 61 in compliance with the Florida Building Code. If the local 62 building code administrator or inspector finds that the plans 63 are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the 64 6.5 specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon 67 which the finding is based, and provide this information to the 68 local enforcing agency. The local enforcing agency shall provide 69 this information to the permit applicant. In addition, an 70 enforcing agency may not issue any permit for construction, 71 erection, alteration, modification, repair, or demolition of any 72 building until the appropriate firesafety inspector certified 73 pursuant to s. 633.216 has reviewed the plans and specifications 74 required by the Florida Building Code, or local amendment 75 thereto, for such proposal and found that the plans comply with 76 the Florida Fire Prevention Code and the Life Safety Code. Any 77 building or structure which is not subject to a firesafety code 78 shall not be required to have its plans reviewed by the 79 firesafety inspector. Any building or structure that is exempt 80 from the local building permit process may not be required to 81 have its plans reviewed by the local building code 82 administrator. Industrial construction on sites where design, 8.3 construction, and firesafety are supervised by appropriate 84 design and inspection professionals and which contain adequate 85 in-house fire departments and rescue squads is exempt, subject 86 to local government option, from review of plans and inspections, providing owners certify that applicable codes and

Page 3 of 8

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2021 SB 1382

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

20211382

8-01417-21

90

93

96

99

100

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

(6) A state or local enforcement agency may perform virtual inspections at the discretion of the enforcement agency.

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

- (7) (a) A local enforcement agency must refund 10 percent of the permit and inspection fees to a permit holder if:
- 1. The inspector or building code administrator determines that the work, which requires the permit, fails an inspection.
- 2. The inspector or building code administrator fails to provide, within 3 days after the inspection, the permit holder or his or her agent with a reason, based on compliance with the Florida Building Code, Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection.
- (b) If any permit and inspection fees are refunded under paragraph (a), the surcharges provided in s. 553.721 must be

Page 4 of 8

8-01417-21 20211382

recalculated based on the amount of the permit and inspection fees after the refund.

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

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

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(23) s. 553.79(21), for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

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

553.80 Enforcement.-

Page 5 of 8

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1382

8-01417-21 20211382

146

147

148

149

150

151

152

153

154

155

156

157

158

159

161

162

163

164

165

166

168

169

170

171

172

173

174

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

- (a) Construction regulations relating to correctional facilities under the jurisdiction of the Department of Corrections and the Department of Juvenile Justice are to be enforced exclusively by those departments.
- (b) Construction regulations relating to elevator equipment under the jurisdiction of the Bureau of Elevators of the Department of Business and Professional Regulation shall be enforced exclusively by that department.
- (c) In addition to the requirements of s. 553.79 and this section, facilities subject to the provisions of chapter 395 and parts II and VIII of chapter 400 shall have facility plans reviewed and construction surveyed by the state agency authorized to do so under the requirements of chapter 395 and parts II and VIII of chapter 400 and the certification requirements of the Federal Government. Facilities subject to the provisions of part IV of chapter 400 may have facility plans reviewed and shall have construction surveyed by the state agency authorized to do so under the requirements of part IV of chapter 400 and the certification requirements of the Federal Government.

Page 6 of 8

8-01417-21 20211382

175

176

177

178

179

180

181

182

183

184

185

186 187

188

189

190

191

192

193

194

195

196

197

198

199

200 201 202

203

- (d) Building plans approved under s. 553.77(3) and stateapproved manufactured buildings, including buildings manufactured and assembled offsite and not intended for habitation, such as lawn storage buildings and storage sheds, are exempt from local code enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. Erection, assembly, and construction at the site are subject to local permitting and inspections. Lawn storage buildings and storage sheds bearing the insignia of approval of the department are not subject to s. 553.842. Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.
- (e) Construction regulations governing public schools, state universities, and Florida College System institutions shall be enforced as provided in subsection (6).
- (f) The Florida Building Code as it pertains to toll collection facilities under the jurisdiction of the turnpike enterprise of the Department of Transportation shall be enforced exclusively by the turnpike enterprise.
- (g) Construction regulations relating to secure mental health treatment facilities under the jurisdiction of the Department of Children and Families shall be enforced exclusively by the department in conjunction with the Agency for Health Care Administration's review authority under paragraph

The governing bodies of local governments may provide a schedule of fees, as authorized by s. 125.56(2) or s. 166.222 and this

Page 7 of 8

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

Florida Senate - 2021 SB 1382

	8-01417-21 20211382_
204	section, for the enforcement of the provisions of this part.
205	Such fees shall be used solely for carrying out the local
206	government's responsibilities in enforcing the Florida Building
207	Code. The authority of state enforcing agencies to set fees for
208	enforcement shall be derived from authority existing on July 1,
209	1998. However, nothing contained in this subsection shall
210	operate to limit such agencies from adjusting their fee schedule
211	in conformance with existing authority.
212	Section 5. This act shall take effect July 1, 2021.

Page 8 of 8

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.)

	Prepare	d By: The P	rofessional Staf	f of the Committee of	on Community Aff	airs
BILL:	SB 760					
INTRODUCER:	Senators Burgess and Baxley					
SUBJECT:	Florida High School Athletic Association (FHSAA)					
DATE:	March 5, 2	2021	REVISED:			
ANAL	YST	STAFF	DIRECTOR	REFERENCE		ACTION
1. Westmark Bouch		Bouck		ED	Favorable	
2. Hackett Ryon			CA	Favorable		
3.				RC		

I. Summary:

SB 760 enables public schools, virtual schools, and home education cooperatives to choose to maintain sport-selected membership, not only full membership, in the Florida High School Athletic Association (FHSAA) without penalty from the FHSAA.

The bill takes effect July 1, 2021.

II. Present Situation:

The Florida High School Athletic Association

The Florida High School Athletic Association (FHSAA) is designated by law as the governing nonprofit organization of athletics in Florida public schools. The FHSAA is not a state agency, but performs similar functions. The FHSAA is required to adopt bylaws regulating student eligibility, student residency and transfer, recruiting, health and safety, and investigations and sanctions. The bylaws of the FHSAA govern high school athletic programs in its member schools, unless otherwise specifically provided by statute.

If the FHSAA fails to meet requirements specified in law, the Commissioner of Education must designate a nonprofit organization to govern athletics with the approval of the State Board of Education.⁵

¹ Section 1006.20(1), F.S.

 $^{^{2}}$ Id.

³ Section 1006.20(2)(a), F.S.

⁴ Section 1006.20(1), F.S.

⁵ *Id*.

BILL: SB 760 Page 2

FHSAA Membership

Any high school⁶ in the state, including charter schools, virtual schools, and home education cooperatives,⁷ may become a member of the Florida High School Athletic Association (FHSAA) and participate in the activities of the FHSAA. However, membership in the FHSAA is not mandatory for any school.⁸ The FHSAA must allow a private school the option of maintaining full membership in the association or joining by sport, and may not discourage a private school from simultaneously maintaining membership in another athletic association.⁹ The FHSAA may allow a public school the option to apply for consideration to join another athletic association.¹⁰

Qualifications for membership in the FHSAA for a Florida secondary school that is accredited and registered with the Florida Department of Education, as well as a home education cooperative, include, but are not limited to:¹¹

- Approval by its governing body of the FHSAA bylaws as the rules governing its interscholastic athletic program;
- Payment of all dues and fees required of member schools;
- Maintenance of insurance coverage required of member schools; and
- Successful completion of the application and provisional period.

Among other responsibilities, the FHSAA Board of Directors approves schools or cooperatives for initial and continuing membership, adopts and amends administrative regulations to govern FHSAA programs, and serves as its highest appellate authority. 12

The FHSAA defines full member schools as those enjoying all privileges of membership, including the privilege to:¹³

⁶ A senior high school is defined as "any traditional public school, charter school, virtual school, private school or university laboratory school that provides instruction to students at one or more grade levels from 9 through 12." A combination school is defined as "any traditional public school, charter school, virtual school, private school or university laboratory school that provides instruction to students in both middle/junior high school grades and/or senior high school grades (i.e. K-12, K-8, 6-12, 7-12, etc.) under the direction of a single principal as defined in Bylaw 1.4.25 and located on the same campus, except for 9-12 high schools which have 9th grade centers at a separate location, with participation and enrollment based on a single campus site." Middle/junior high schools may also join the FHSAA, such schools are defined as "any traditional public school, charter school, virtual school, private school or university laboratory school that provides instruction to students in middle school configurations (terminal grade of 6, 7 or 8) or junior high school configurations (terminal grade of 9)." Florida High School Athletic Association, *Inc.* (2020-21 Ed.), *available at* https://fhsaa.com/documents/2020/10/1//2021_handbook_website_1001.pdf?id=292, at 9.

⁷ Defined as "a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12." *Id*.

⁸ Section 1006.20(1), F.S.

⁹ *Id*.

¹⁰ *Id*.

¹¹ Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc.* (2020-21 Ed.), *available at* https://fhsaa.com/documents/2020/10/1//2021_handbook_website_1001.pdf?id=292, at 9.

¹² *Id.*, at 9,12, and 14. The FHSAA is composed of 16 individuals: four elected public school representatives, four elected private school representatives, two elected district school superintendents, two elected district school board members, three representatives appointed by the Commissioner of Education, and the Commissioner of Education or his/her designated representative. Florida High School Athletic Association, *Board of Directors*, https://fhsaa.com/sports/2020/3/11/Board of Directors.aspx (last visited Feb. 11, 2021).

¹³ Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc.* (2020-21 Ed.), available at https://fhsaa.com/documents/2020/10/1//2021 handbook website 1001.pdf?id=292, at 8 and 12. Other

BILL: SB 760 Page 3

- Compete in FHSAA championships;
- Vote in FHSAA elections:
- Seek election to positions in the FHSAA governance structure and substructures; and
- Make applications for and serve as host of multi-school events that require FHSAA office approval.

FHSAA bylaws state that the privilege to participate in the Florida High School State Championship Series is limited only to those senior high schools and combination schools duly elected to full membership in the FHSAA.¹⁴

A school may exercise the option of independent status.¹⁵ However, the FHSAA prohibits member schools from declaring independence in a sport and organizing a conference or league to conduct a playoff or championship without approval of the FHSAA Board of Directors.¹⁶

Athletic Associations

Other athletic associations within the state include the Florida Independent Christian Athletic Association and the Sunshine State Athletic Conference. Outside of Florida, at least a dozen states host multiple state-based athletic associations.¹⁷

III. Effect of Proposed Changes:

SB 760 requires the Florida High School Athletic Association (FHSAA) to allow a public school, a charter school, a virtual school, and a home education cooperative the option of maintaining full membership in the FHSAA or joining by sport. The bill specifies that the FHSAA may not discourage such school or cooperative from simultaneously maintaining membership in another athletic association.

The bill requires the FHSAA to allow a public school to join another athletic association, rather than providing the public school the option to apply for consideration to join.

The bill prohibits the FHSAA from taking any retributory or discriminatory action against any of its member schools that join another athletic association, not only against those who participate in interscholastic competition with non-FHSAA member Florida schools. The bill also prohibits the FHSAA from punishing, discouraging, intimidating, or penalizing any private school; public school, including a charter school; virtual school; and home education cooperative from choosing not to participate in the FHSAA for any sport.

categories of membership defined by the FHSAA include restricted member, applying member, provisional member, and membership by sport.

¹⁴ Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc.* (2020-21 Ed.), *available at* https://fhsaa.com/documents/2020/10/1//2021_handbook_website_1001.pdf?id=292, at 8.

¹⁵ *Id.*, at 58. Reasons for independence include a newly opening school; a school that has consistently been unable to compete in the classification to which it is assigned; a school that is geographically isolated and chooses not to participate for financial reasons; a school whose educational philosophies prohibit such extended athletic participation; or a school that does not or cannot compete for religious reasons. *Id.*¹⁶ *Id.*

¹⁷ See National Federation of State High School Associations, State High School Associations Come in All Shapes and Sizes, https://www.nfhs.org/articles/state-high-school-associations-come-in-all-shapes-and-sizes/ (last visited Feb. 12, 2021).

BILL: SB 760 Page 4

The bill may offer a school that is a member of the FHSAA the flexibility to choose the athletic association appropriate for each of its offered sports, while ensuring the school can maintain privileges under the FHSAA.

The bill takes effect July 1, 2021.

None.

IV.	Constitutional Issues:						
	A.	A. Municipality/County Mandates Restrictions:					
	None.						
	B.	8. Public Records/Open Meetings Issues:					
		None.					
	C.	Trust Funds Restrictions:					
		None.					
	D.	State Tax or Fee Increases:					
		None.					
	E.	Other Constitutional Issues:					
		None identified.					
٧.	Fisca	al Impact Statement:					
	A.	Tax/Fee Issues:					
		None.					
	B.	Private Sector Impact:					
		None.					
	C.	Government Sector Impact:					
		None.					
VI.	Tech	nical Deficiencies:					
	None	•					
VII.	Rela	ted Issues:					

BILL: SB 760 Page 5

VIII. **Statutes Affected:**

This bill substantially amends section 1006.20 of the Florida Statutes.

Additional Information: IX.

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.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

3/10/2021
Meeting Date

APPEARANCE RECORD

SB 760

· · · · · · · · · · · · · · · · · · ·				_	
Meeting Date				Bill Nur	nber (if applicable)
Topic FHSAA				Amendment Bai	rcode (if applicable)
Name George Tomyn					
Job Title Executive Direct	or, FHSAA	· · · · · · · · · · · · · · · · · · ·			
Address 1801 NW 80th B	oulevard		Phone S	352-372-9	9551
<u>Gainesville</u>	FL	32606	Email <u>G</u>	tomyn@f	hsaa.org
Speaking: For Against	State Information	•		In Support	Against the record.)
Representing Florida Hig	h School A	thletic Ass	ociatio	on	
Appearing at request of Chair:	Yes No	Lobbyist registe	ered with I	Legislature:	_Yes ✓No
While it is a Senate tradition to encourage meeting. Those who do speak may be ask	-				

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

S-001 (10/14/14)

APPEARANCE RECORD

Meeting Date (Deliver BOTH copies of this form to the Senator of Senate Professional Staff conducting the meeting)	760
Meeting Date	Bill Number (if applicable)
0	ment Barcode (if applicable)
Name Jason Smith	
Job Title	
Address Phone Phone	777-5823
CityState Zip	L sunshine stall altitle
Speaking: Against Information Waive Speaking: In Su (The Chair will read this information)	, ,
Representing Sunshire State Athletic Conference	
Appearing at request of Chair: Yes No Lobbyist registered with Legislatu	ıre: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speeting. Those who do speak may be asked to limit their remarks so that as many persons as possible of	eak to be heard at this an be heard.
This form is part of the public record for this meeting.	S-001 (10/14/14)

APPEARANCE RECORD

Recal after bill was heard

Mosting Plate

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

Bill Number (if applicable)

				(
Topic THSAA			Amer	ndment Barcode (if applicable)
Name <u>10881CQ</u> <u>10</u>	nas ewi	(2)	_	
Job Title GOUDYNMONTO	l Cons	witant	_	
Address 19 S. Monro	e 84. Sur	to 202	_ Phone 850	-567-7174
Street Tallah USO B		32301	_ Email \essec	Re rutledge-
City	State	Zip	U -	ecinia, com
Speaking: For Against	Information			upport Against
Representing THE	\	(The Ona	in win read this imon	nation into the record.)
,				
Appearing at request of Chair:	Yes No	Lobbyist regist	ered with Legisla	ture: 🗹 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.

S-001 (10/14/14)

APPEARANCE RECORD

Rec'd after bull was heard.

3 16 2 (Deliver BOTH copies of this form to the Senator	or Senate Professional Staff conducting the meeting)
Meeting Date	Bill Number (if applicable)
Topic FHSAA Name Book	Amendment Barcode (if applicable)
Job Title	
Address 104 W. Jebberson	Phone 856 22+3+27
Street 11	32301 Email 1000 @ RUBWKH. 6014
City State	Zip
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 meeting. Those who do speak may be asked to limit their remark	e may not permit all persons wishing to speak to be heard at this ks so that as many persons as possible can be heard.
This form is part of the public record for this meeting.	S-001 (10/14/14)

By Senator Burgess

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

2.8

20-00571A-21 2021760

A bill to be entitled An act relating to the Florida High School Athletic Association (FHSAA); amending s. 1006.20, F.S.; requiring the FHSAA to allow certain schools and home education cooperatives to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging such school or cooperative from simultaneously maintaining membership in another athletic association; requiring, rather than authorizing, the FHSAA to allow public schools to join other athletic associations; prohibiting the FHSAA from taking retributory or discriminatory actions against member schools that join other athletic associations; prohibiting the FHSAA from taking certain actions against specified entities that choose not to participate in the association for any sport; providing an effective date.

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

Section 1. Subsection (1) of section 1006.20, Florida Statutes, is amended to read:

1006.20 Athletics in public K-12 schools.-

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State

Page 1 of 3

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 760

20-00571A-21 2021760 Board of Education. The FHSAA is not a state agency as defined 31 in s. 120.52. The FHSAA shall be subject to the provisions of s. 32 1006.19. A private school that wishes to engage in high school athletic competition with a public high school may become a 33 member of the FHSAA. Any high school in the state, including 35 charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. However, membership in the FHSAA is not mandatory for any school. The FHSAA must allow a private 39 school or a public school, including a charter school, a virtual 40 school, and a home education cooperative, the option of maintaining full membership in the association or joining by sport and may not discourage such school or cooperative a 42 4.3 private school from simultaneously maintaining membership in another athletic association. The FHSAA must $\frac{may}{may}$ allow a public school the option to apply for consideration to join another 46 athletic association. The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another 49 athletic governing organization, and may not take any retributory or discriminatory action against any of its member schools that join another athletic association or that 51 participate in interscholastic competition with non-FHSAA member 53 Florida schools. The FHSAA may not punish, discourage, intimidate, or penalize any private school or public school, 55 including a charter school, a virtual school, and a home 56 education cooperative, from choosing not to participate in the 57 association for any sport. The FHSAA may not unreasonably withhold its approval of an application to become an affiliate

Page 2 of 3

20-00571A-21 2021760 member of the National Federation of State High School 59 60 Associations submitted by any other organization that governs 61 interscholastic athletic competition in this state. The bylaws 62 of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by 64 65 statute. For the purposes of this section, "high school" includes grades 6 through 12. 67 Section 2. This act shall take effect July 1, 2021.

Page 3 of 3

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 F	Professional Staff	f of the Committee	on Community Af	ffairs
BILL:	SJR 1182					
INTRODUCER:	Senator Brandes					
SUBJECT:	Limitation on the Assessment of Real Property/Residential Purposes					
DATE:	March 8, 20	021	REVISED:			
ANAL	YST	STAF	F DIRECTOR	REFERENCE		ACTION
1. Hackett		Ryon		CA	Favorable	
2.				FT		
3.				AP		

I. Summary:

SJR 1182 proposes an amendment to the Florida Constitution to authorize the Legislature to prohibit an increase in the assessed value of residential real property as a result of any change or improvement made to improve the property's resistance to flood damage.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2022.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2023.

The Revenue Estimating Conference has not reviewed the proposed fiscal impact of the joint resolution.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year. The property appraiser annually determines the "just value" of property

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla.

within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value." Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ on real estate or tangible personal property, and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.⁵

One way the Florida Constitution specifically authorizes the Legislature to provide for property valuations at less than just value is by specifying certain improvements that cannot be considered in evaluating a property's assessed value. Currently, the improvements under this provision are those made to improve a residential property's resistance to wind damage, and any installation of solar or renewable energy devices.⁶

Resistance to Flood Damage

Hurricanes and severe storms cause flooding throughout Florida routinely, and sea-level rise may increase the potency of flood damage over time. Florida holds nearly one-third of flood insurance policies issued by the National Flood Insurance Program (NFIP), a federal entity created in 1968 to provide standardized flood insurance. According to the Federal Emergency Management Agency, 1,719,376 properties in Florida are at risk of flooding in a 100-year storm.

Flood damage can be resisted through multiple strategies. These might include large structural mitigation public works projects, such as dams, seawalls, levees. ¹⁰ Mitigation can also include improvements made to individual properties. Examples of such improvements are elevating structures, filling basements, and waterproofing. ¹¹ They might also include non-structural mitigation, such as maintaining land to allow for stormwater runoff, waterproofing basements,

^{1965);} Deltona Corp. v. Bailey, 336 So. 2d 1163 (Fla. 1976); Southern Bell Tel. & Tel. Co. v. Dade County, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ See FLA. CONST. art. VII. s. 4.

⁶ FLA. CONST. art. VII, s. 4(i).

⁷ Rebecca Lindsey, *Climate Change: Global Sea Level*, National Oceanic and Atmospheric Administration, Jan. 25, 2021, available at https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level (last visited March 8, 2021).

⁸ Facts + Statistics: Flood Insurance, Insurance Information Institute (available at https://www.iii.org/fact-statistic/facts-statistics-flood-insurance, last accessed March 5, 2021).

⁹ Emily Mahoney and Zachary Sampson, "Florida has thousands more properties with high flood risk than FEMA says, according to new study," Tampa Bay Times, Jun. 29, 2020 (available at

https://www.tampabay.com/news/environment/2020/06/29/florida-has-thousands-more-properties-with-high-flood-risk-than-fema-says-according-to-new-study/). A "100-year storm" refers to rainfall totals that have a one percent probability of occurring at that location in that year.

U.S. Floods: The Necessity of Mitigation, Beverly Cigler, State and Local Government Review Volume 49 Issue 2, Sept. 22, 2017 (available at https://www.napawash.org/uploads/Standing_Panel_Blogs/cigler-floods-and-mitigation-Sept.-20172.pdf, last accessed March 4, 2021).
 Id.

installing check valves capable of preventing water backup, and elevating furnaces, heaters, and electrical panels.¹²

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to the Florida Constitution to authorize the Legislature to prohibit an increase in the assessed value of residential real property as a result of any change or improvement made to improve the property's resistance to flood damage.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2022.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article XI, s. 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. Article XI, s. 5(a) of the Florida Constitution requires the amendment be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose. Constitutional amendments submitted to the electors must be printed in clear and unambiguous language on the ballot. 14

¹² Id.

¹³ Section 97.021(16), F.S., defines "general election" as an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

¹⁴ Section 101.161(1), F.S.

Article XI, s. 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Article XI, s. 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed the proposed fiscal impact of the joint resolution.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published in the 10th week and again in the sixth week immediately preceding the week the election is held.

The Division of Elections (division) within the Department of State paid approximately \$351,834.45 to advertise six constitutional amendments in 2020. Full publication costs for advertising a single constitutional amendment, on average, was approximately \$58,639.08. This cost was paid from non-recurring General Revenue funds. Accurate cost estimates for the next constitutional amendment advertising cannot be determined until the total number of amendments to be advertised is known and updated quotes are obtained from newspapers. The statewide average cost to the division to advertise constitutional amendments, in English and Spanish, in newspapers for the 2020 election cycle was \$86.85 per English word of the originating document.

¹⁵ E-mail from Legislative Affairs Director, Department of State, to staff of Senate Committee on Health Policy (Feb. 1, 2021) (on file with Senate Committee on Community Affairs).

¹⁶ See Ch. 2020-111, Specific Appropriation 3132, Laws of Fla.

¹⁷ Id.

¹⁸ Pursuant to Section 203 of the Voting Rights Act (52 U.S.C.A. § 10503).

¹⁹ *Supra*, note 14.

There is an unknown additional cost for the printing and distributing of the constitutional amendments, in poster or booklet form, in English and Spanish, for each of the 67 Supervisors of Elections to post or make available at each polling room or each voting site, as required by s. 101.171, F.S. Historically, the division has printed and distributed booklets that include the ballot title, ballot summary, text of the constitutional amendment, and, if applicable, the financial impact statement. Beginning in 2020, the summary of such financial information statements was also included as part of the booklets.²⁰.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution substantially amends section 4, Article VII of the Florida Constitution.

This resolution also creates section 42, Article XII of the Florida Constitution.

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.

²⁰ Section 100.371(13)(e)4., F.S. See also Chapter 2019-64, s. 3, Laws of Fla.

Wells, Lynn

From:

Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>

Sent:

Monday, February 1, 2021 5:05 PM

To: Subject: Smith, Kelly RE: SJR 340

Kelly,

Our cost to advertise Constitutional Amendments in 2020 was right around \$351,834.45 (we still have a few outstanding balances we are working with vendors on).

From: Smith, Kelly <Smith.Kelly@flsenate.gov> Sent: Monday, February 1, 2021 5:02 PM

To: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>

Subject: RE: SJR 340

EMAIL RECEIVED FROM EXTERNAL SOURCE

Hi, Brittany. Could you clarify for me -

When you say "The cost to the Division of Elections to advertise constitutional amendment in 2020 was approximately \$351,834.45." – Does that reflect the cost of advertising for one single amendment or for all of the amendments?

Thanks for your help!

Kelly Kibbey Smith | Senior Attorney Senate Committee on Health Policy Room 530, Knott Building 850-487-5334

From: Smith, Kelly

Sent: Monday, January 25, 2021 10:20 AM

To: 'Dover, Brittany N.' < Prittany.Dover@dos.myflorida.com

Subject: RE: SJR 340

Thank you for that info! I would love to see a full analysis if you're able to put it together this week. Thanks for helping us out with this.

Kelly Kibbey Smith | Senior Attorney Senate Committee on Health Policy Room 530, Knott Building 850-487-5334 From: Dover, Brittany N. < Brittany.Dover@dos.myflorida.com>

Sent: Monday, January 25, 2021 10:06 AM **To:** Smith, Kelly <Smith.Kelly@flsenate.gov>

Subject: RE: SJR 340

Absolutely! I missed that part about looking at SJR 340- I am sorry!

The statewide average cost to the Division of Elections to advertise constitutional amendments, in English and Spanish, in newspapers for the 2020 election cycle was \$86.85 per English word of the originating document. This cost does not reflect the cost of the initial Spanish translation. This cost also does not include the cost of printing and distributing required by <u>s. 101.71</u>, <u>F.S.</u>, to provide a sufficient number of copies in poster or booklet form of the constitutional amendments for each of the 67 Supervisors of Elections to post or make available at each polling room or each voting site.

The state law requirement has historically been implemented to print and distribute booklets which include the ballot title, ballot summary, the full text of the constitutional amendment, and if applicable the financial impact statement. With the 2019 legislative change in section 100.371(13)(e)4., F.S., the summary of the initiative financial information statement (distinct from the financial impact statement) was also included as part of the booklets but not the newspaper advertising for 2020 and thereafter. This increased the costs of printing/distributing the booklets and the cost of Spanish translation, as required by law, including the Voting Rights Act.

The cost to the Division of Elections to advertise constitutional amendment in 2020 was approximately \$351,834.45.

Accurate cost estimates for the next constitutional amendment advertising cannot be determined until the total number of amendments to be advertised is known and updated quotes are obtained from the newspapers.

In the meantime, I can have my team start working on a full analysis for 340 if you need additional information relating to the Constitutional Amendments.

Thank you,

Brittany N. Dover Legislative Affairs Director Department of State 850.245.6509 (office) 850.274.3105 (cell)

From: Smith, Kelly < Smith.Kelly@flsenate.gov > Sent: Monday, January 25, 2021 9:35 AM

To: Dover, Brittany N. < Brittany.Dover@dos.myflorida.com>

Subject: RE: SJR 340

EMAIL RECEIVED FROM EXTERNAL SOURCE

Good morning, Brittany! SJR 340 proposes the creation of a constitutional amendment. On my end, ABAR is showing that the selected agencies are AHCA, DOH, and DOS.

I was looking at an analysis for 2018 SJR 1742 and it seems that information like, "Based on 2016 advertising costs, staff estimates full publication costs for advertising the proposed constitutional amendment to be approximately \$43,732,

which will likely be funded by appropriations from the General Revenue Fund." Was provided to the Senate through the DOS analysis.

Would it be possible for you to get us an analysis to help us out with information pertaining to constitutional amendments, rather than the health care aspects of the SJR? It would be so appreciated.

Kelly Kibbey Smith | Senior Attorney Senate Committee on Health Policy

530 Knott Building 404 S. Monroe Street Tallahassee, FL 32399-1100 850-487-5334

From: Dover, Brittany N. < Brittany.Dover@dos.myflorida.com >

Sent: Monday, January 25, 2021 9:27 AM **To:** Smith, Kelly < Smith. Kelly@flsenate.gov >

Subject: RE: SJR 340

Good Morning Kelly,

I currently do not have that on our request list from ABAR for SJR 340...I looked it up to see it's a healthcare bill. Are you sure you are referring to the correct one? If so, I will get my team on it to provide feedback but quick glance, I don't think there will be much impact at the Department of State.

Thank you,

Brittany N. Dover Legislative Affairs Director Department of State 850.245.6509 (office) 850.274.3105 (cell)

From: Smith, Kelly < Smith.Kelly@flsenate.gov >

Sent: Friday, January 22, 2021 4:42 PM

To: Dover, Brittany N. < Brittany.Dover@dos.myflorida.com >

Subject: SJR 340

EMAIL RECEIVED FROM EXTERNAL SOURCE

Hi, Brittany. We are planning to hear 2021 SJR 340 in an upcoming meeting. If it is at all possible for DOS to get me an analysis next week, or as soon as possible, I would greatly appreciate it.

Kelly Kibbey Smith | Senior Attorney Senate Committee on Health Policy 530 Knott Building 404 S. Monroe Street Tallahassee, FL 32399-1100 850-487-5334

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

3-10-2021	APPEARA	NCE RECO	RD	1182
Meeting Date		•		Bill Number (if applicable)
Topic Limitation on the Assessment	of Real Property/Resid	ential Purposes	-	Amendment Barcode (if applicable)
Name Natalie Fausel		•		,
Job Title Partner				
Address 201 West Park Avenue		\	Phone <u>56</u>	1-317-0889
Street Tallahassee	FL	32301	Email nata	llie@anfieldflorida.com
Speaking: For Against	State Information			In Support Against information into the record.)
Representing Florida Associ	ation of Property A	ppaisers		
Appearing at request of Chair:	Yes ✔ No	Lobbyist regist	ered with Le	egislature: Yes No
While it is a Senate tradition to encourage meeting. Those who do speak may be a	ge public testimony, tin asked to limit their rem	me may not permit all arks so that as many	persons wishi persons as po	ng to speak to be heard at this ssible can be heard.
This form is part of the public record				S-001 (10/14/14)

APPEARAN CE RECORD

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

Meeting Date (Deliver BOTH copies of this form to the S	Senator or Senate Professional Staff conducting the meeting)
Topic	5JP 11:00
Name Loren Levy	Bill Number (if applicab
Job Title General Counsel Pres	Amendment Barcode (if applicab
Address 1928 Piggins Po	ety Approvers Assnot Fla.
Tallahassee FL	Phone 450 - 16
Speaking: For Against Information	Zip Email //evye/evy/aud
Representing	Waive Speaking: In Support Against (The Chair will read this information into the record.)
Appearing at request of Chair: Yes No	
140	Lobbyist registered with Legislature: Yes No No e may not permit all persons wishing to speak to be heard at this ks so that as many persons as possible can be heard.
While it is a Senate tradition to encourage public testimony, time meeting. Those who do speak may be asked to limit their remarkable form is part of the public record for this meeting.	rks so that as many persons wishing to speak to be heard at this



Tallahassee, Florida 32399-1100

COMMITTEES: Appropriations Subcommittee on Criminal and Civil Justice, Chair Ethics and Elections, Vice Chair Appropriations Community Affairs Criminal Justice Regulated Industries Rules

SENATOR JEFF BRANDES

24th District

March 10, 2021

Dear Chair Bradley,

I respectfully request that Senator Hooper be permitted to present SJR 1182 and SB 1186 in my place during today's meeting of the Senate Community Affairs committee.

Kind Regards,

PBS

Jeff Brandes

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.)

	Prepare	d By: The Professional Staff	f of the Committee	on Community	Affairs
BILL:	CS/SB 118	36			
INTRODUCER:	Community Affairs Committee and Senator Brandes				
SUBJECT:	Property Assessments for Elevated Properties				
DATE:	March 10,	2021 REVISED:			
ANALYST		STAFF DIRECTOR	REFERENCE		ACTION
. Hackett		Ryon	CA	Fav/CS	
			FT	_	
2.			AP		

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1186 is linked to SJR 1182, which proposes an amendment to the Florida Constitution to authorize the Legislature to prohibit an increase in the assessed value of residential real property as a result of any change or improvement made to improve the property's resistance to flood damage.

The bill provides that the voluntary elevation of residential property to bring the property into compliance with National Flood Insurance Program requirements and Florida Building Code elevation requirements shall not increase the property's assessed value under certain circumstances. The bill applies to both homestead and nonhomestead residential property and allows for the elevation of existing nonconforming property or the removal and rebuilding of nonconforming property.

The bill will take effect on the effective date of the amendment proposed by SJR 1182 or a similar joint resolution having substantially the same specific intent and purpose. If approved by the electors in the next general election in November 2022, the proposed amendment (SJR 1128) and SB 1186 will take effect on January 1, 2023.

The Revenue Estimating Conference has not yet reviewed the fiscal impact of the bill.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year. The property appraiser annually determines the "just value" of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value." Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ on real estate or tangible personal property, and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.⁵

One way the Florida Constitution specifically authorizes the Legislature to provide for property valuations at less than just value is by specifying certain improvements that cannot be considered in evaluating a property's assessed value. Currently the improvements under this provision are those made to improve a residential property's resistance to wind damage, and any installation of solar or renewable energy devices.⁶

Changes, Additions, and Improvements to Real Property

A homestead property's tax assessment cannot be increased in one year by more than the greater of 3 percent or the percent change in the Consumer Price Index, except for under certain circumstances.⁷ One such exception is that changes, additions, and improvements to homestead property are assessed at market value, which can increase the total assessment by any amount.⁸

However, those changes, additions, and improvements that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the homestead property's assessed value as long as the new property's square footage does not exceed 110 percent of the property before the change. Additionally, the homestead property's assessed value may not

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ See FLA. CONST. art. VII, s. 4.

⁶ FLA. CONST. art. VII, s. 4(i).

⁷ FLA. CONST. art. VII, s. 4(d).

⁸ Section 193.155(4)(a), F.S.

⁹ Section 193.155(4)(b), F.S.

increase if the total square footage of the property as changed does not exceed 1,500 feet.¹⁰ After a change, addition, or improvement that results in property more than 110 percent of its previous square footage or more than 1,500 feet, the assessed value is required to be increased by the value of that portion in excess of 110 percent of the previous area or 1,500 feet.¹¹

This statutory provision also applies to non-homestead property if, during the year when the damage or destruction took place, the owner applies for and is granted a homestead exemption.¹² These provisions apply as long as the changes, additions or improvements are commenced within three years after the January 1 following the damage or destruction of the homestead.¹³ When property is destroyed or removed and not replaced, the assessed value of the parcel is reduced by the value attributable to the destroyed or removed property.¹⁴

Nonhomestead Residential Property

The assessment on nonhomestead residential property cannot increase by more than 10 percent each year, except for in the same circumstances as provided for homestead property. The same provisions discussed above with respect to changes, additions, and improvements which replace damaged or destroyed property also apply to nonhomestead property. Nonhomestead residential property means residential real property containing nine or fewer dwelling units, including vacant property zoned and platted for residential use, that does not receive the homestead exemption.

Property Damaged or Destroyed by Hurricane Michael

Section 193.1557, F.S., provides that rather than the standard three year limitation, property damaged or destroyed by Hurricane Michael may be changed, added to, or improved commencing up to <u>five</u> years after January 1, 2019. Hurricane Michael was a category 5 hurricane which struck Florida in October 2018, causing \$18.4 billion of damage in the state.

Resistance to Flood Damage

Hurricanes and severe storms cause flooding throughout Florida routinely, and sea-level rise may increase the potency of flood damage over time. ¹⁸ Florida holds nearly one-third of flood insurance policies issued by the National Flood Insurance Program (NFIP), a federal entity created in 1968 to provide standardized flood insurance. ¹⁹ According to the Federal Emergency

¹⁰ Id.

¹¹ Id.

¹² Section 193.155(4)(c), F.S.

¹³ Fla. Admin. Code R. 12D-8.0063(3).

¹⁴ Section 193.155(5), F.S.

¹⁵ FLA. CONST. art. VII, s. 4(h).

¹⁶ Section 193.1554(6), F.S.

¹⁷ Section 193.1554(1), F.S.

¹⁸ Rebecca Lindsey, *Climate Change: Global Sea Level*, National Oceanic and Atmospheric Administration, Jan. 25, 2021, available at https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level (last visited March 8, 2021).

¹⁹ Facts + Statistics: Flood Insurance, Insurance Information Institute, available at: https://www.iii.org/fact-statistic/facts-statistics-flood-insurance (last accessed March 5, 2021).

Management Agency (FEMA), 1,719,376 properties in Florida are at risk of flooding in a 100-year storm.²⁰

Flood damage can be resisted via multiple strategies. These might include large structural mitigation public works projects, such as dams, seawalls, levees. Hitigation can also include improvements made to individual properties, such as by elevating structures, filling basements, and waterproofing. They might also include non-structural mitigation as well, such as maintaining land to allow for stormwater runoff, waterproofing basements, installing check valves capable of preventing water backup, and elevating furnaces, heaters, and electrical panels. And the panels water backup, and elevating furnaces, heaters, and electrical panels.

Voluntary Property Elevation

In general, residential buildings cannot simply be waterproofed in flood-prone areas; they must be elevated above the level required by the NFIP or Florida Building Code.²⁴ Surveyors and architects use Flood Insurance Rate Maps, maps produced by FEMA which delineate base flood elevations,²⁵ to determine minimum building height. Buildings constructed before a community was under elevation regulations or before FEMA produced the area's first flood map may now be considered below safe elevation, and at high risk for flood damage.

Buildings may be raised after construction either by lifting an existing house and producing new foundation below it, or by leaving the house in place and building an elevated floor within the house or adding an upper story.²⁶ When a house is lifted up, its new foundation may be made of continuous walls, or columns or pilings which would allow access to the area below the newly elevated house.²⁷

NFIP Elevation Certificate

An NFIP Elevation Certificate is a form produced by FEMA used to provide information which can ensure compliance with community floodplain ordinances, determine a property's insurance

²⁰ Emily Mahoney and Zachary Sampson, "Florida has thousands more properties with high flood risk than FEMA says, according to new study," Tampa Bay Times, Jun. 29, 2020 (available at

https://www.tampabay.com/news/environment/2020/06/29/florida-has-thousands-more-properties-with-high-flood-risk-than-fema-says-according-to-new-study/). A "100-year storm" refers to rainfall totals that have a one percent probability of occurring at that location in that year.

²¹ U.S. Floods: The Necessity of Mitigation, Beverly Cigler, State and Local Government Review, Volume 49 Issue 2 (Sept. 22, 2017), available at: https://www.napawash.org/uploads/Standing-Panel-Blogs/cigler-floods-and-mitigation-Sept.-20172.pdf (last accessed March 4, 2021).

²² Id.

²³ Id

²⁴ Requirements for the Design and Certification of Dry Floodproofed Non-Residential and Mixed-Use Buildings, FEMA, p. 1, (Jan. 2021), available at: https://www.fema.gov/sites/default/files/documents/fema_technical-bulletin-3_1-2021.pdf (last accessed March 5, 2021).

²⁵ The "base flood elevation" is the elevation of surface water resulting from a flood that has a 1 percent chance of happening annually. See *Base Flood Elevation (BFE)*, FEMA, *available at*: https://www.fema.gov/node/404233 (last accessed March 5, 2020).

²⁶ Chapter 5: Elevating Your House, Homeowner's Guide to Retrofitting, FEMA, available at: https://www.fema.gov/pdf/rebuild/mat/sec5.pdf (last accessed March 5, 2020).

²⁷ Id.

rate, and be used as evidence to have a FEMA flood plain map altered.²⁸ An elevation certificate must in most cases be completed by a licensed land surveyor, engineer, architect, or designated local official.²⁹ The completed document includes location and elevation data from the property, the corresponding Flood Insurance Rate Map, community information, and photographic proof elevation certificates are typically required when new construction or substantial improvements occur on a property resting at least in part below a limit set by local authorities.³⁰ Nationwide, the average cost for having an elevation certificate completed is roughly \$600.³¹

Florida Building Code Elevation Requirements

The Florida Building Code provides requirements that meet or exceed NFIP requirements.³² The Florida Building Code provides that buildings and structures in flood hazard areas must have their lowest floors elevated to or above the base flood elevation plus one foot, or the design flood elevation, whichever is higher.³³ Basement floors are included unless such areas are designed and used only for parking, access, and storage, and certain other requirements are met.³⁴ The Florida Building Code further provides stricter requirements for buildings and structures in coastal high-hazard areas.³⁵

III. Effect of Proposed Changes:

Section 1 amends s. 193.155, F.S., to provide that the assessed value of a residential homestead property that is voluntarily elevated to meet NFIP and Florida Building Code elevation requirements may not increase if:

- The property, prior to elevation, was out of compliance with NFIP and Florida Building Code elevation requirements; and
- The square footage of the property after elevation does not exceed 110 percent of the property's prior square footage, or if the total square footage after elevation does not exceed 1,500 feet.

Areas below an elevated structure designed only for parking, storage, or access may not be included in the elevated property's area unless such area designed for parking, storage, or access by itself exceeds 110 percent of the original property's square footage.

To qualify for this benefit, the owner must provide the property appraiser with elevation certificates for both the original and elevated property.

²⁸ Elevation Certificate and Instructions, FEMA National Flood Insurance Program, available at: https://www.pinellascounty.org/drs/PDF/FEMA Elevation Certificate 086-0-33.pdf (last accessed March 5, 2020). ²⁹ Id.

³⁰ For example, within Leon County any construction on property resting less than 3 feet above the base flood elevation requires an elevation certificate. *See* Leon County Flood Protection, *available at:* http://www.leoncountyfl.gov/floodprotection/certificates.asp (last accessed March 5, 2020).

³¹ Josh Price, *What Does an Elevation Certificate Cost?*, MassiveCert.com, *available at:* https://www.massivecert.com/blog/what-does-elevation-certificate-cost (last accessed March 5, 2020).

³² Floodplan Management in Florida Quick Guide, Florida Division of Emergency Management Bureau of Mitigation, 2017, available at: https://www.floridadisaster.org/contentassets/5a671dfdfadf45ab9a2c61635e2a4fed/quick-guide-for-floodplain-management.pdf (last accessed March 5, 2020).

³³ Florida Building Code R322.2.1.

³⁴ Florida Building Code R322.2.2.

³⁵ See Florida Building Code R322.3.

"Voluntary elevation" means the elevation of an existing nonconforming property or the removal and rebuilding of a nonconforming property.

If a voluntary elevation results in the property exceeding more than 110 percent of its previous square footage, the assessed value must be increased by the value of that portion in excess of 110 percent the previous area.

Section 2 amends s. 193.1554, F.S., to apply the same assessment limitations to residential nonhomestead properties that are voluntarily elevated to meet NFIP and Florida Building Code elevation requirements.

Section 3 reenacts s. 193.1557, F.S., relating to property damaged or destroyed by Hurricane Michael, to incorporate the provisions of sections 1 and 2 of the bill.

Section 4 provides that the bill takes effect on the effective date of SJR 1182 or a similar joint resolution having substantially the same specific intent and purpose, if such amendment to the Florida Constitution is approved at the general election³⁶ held in November 2022, or at an earlier special election specifically authorized by law for that purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that, except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact.^{37, 38}

The mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill reduces local governments' authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited March 8, 2021).

³⁶ Section 97.021(16), F.S., defines "general election" as an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

³⁷ FLA. CONST. art. VII, s. 18(d).

³⁸ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. The Florida Demographic Estimating Conference adopted estimations that the 2021 population will be 21,893,919, which makes the threshold for insignificant fiscal impact \$2.19 million. Executive Summary, Demographic Estimating Conference, Nov. 13, 2020, *available at*

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:

The Revenue Estimating Conference has not yet evaluated the fiscal impact of this bill.

B. Private Sector Impact:

If the proposed amendment (SJR 1182) is approved by 60 percent of voters in November 2022, homeowners will be able to voluntarily elevate their residential property without raising the property's assessed value. This will result in an indeterminate positive fiscal impact as homeowners take advantage of ad valorem tax savings.

C. Government Sector Impact:

If the proposed amendment (SJR 1182) is approved by 60 percent of voters in November 2022, homeowners will be able to voluntarily elevate their residential property without raising the property's assessed value. This will result in an indeterminate negative fiscal impact on local governments as homeowners may be subject to ad valorem taxes at less than just value after voluntary elevation of their homes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that before voluntary elevation a property must have been out of compliance with "the Federal Emergency Management Agency's National Flood Insurance Program requirements *and* Florida Building Code elevation requirements..." (Lines 121-123) (emphasis added). In order to encourage voluntary elevation of properties out of compliance with only one of those two sets of requirements, the sponsor may consider replacing the "and" with "or."

VIII. Statutes Affected:

This bill substantially amends sections 193.155 and 193.1554 of the Florida Statutes.

This bill reenacts section 193.1557 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.)

CS by Community Affairs on March 10, 2021:

The committee substitute inserts the bill number for the senate joint resolution to which this bill is linked.

B. Amendments:

None.

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

867370

	LEGISLATIVE ACTION	
Senate	•	House
Comm: RCS	•	
03/11/2021	•	
	•	
	•	
	•	

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

Senate Amendment

Delete line 178

and insert:

1 2 3

4

5

of the amendment to the State Constitution proposed by SJR 1182

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

3-10-2021	APPEARAN	ICE RECO	PD 1186
Meeting Date	•		Bill Number (if applicable)
Topic Property Assessments f	or Elevated Properties		Amendment Barcode (if applicable)
Name Natalie Fausel		7 T T T T T T T T T T T T T T T T T T T	_
Job Title Partner			-
Address 201 West Park Avenu	ıe		Phone <u>561-317-0889</u>
Tallahassee	FL	32301	Email natalie@anfieldflorida.com
City	State	Zip	
Speaking: For Against	Information		Speaking: In Support Against Air will read this information into the record.)
Representing Florida Asso	ciation of Property App	aisers	
Appearing at request of Chair:	☐Yes ✓ No	Lobbyist regis	tered with Legislature: Yes No
While it is a Senate tradition to encoumeeting. Those who do speak may be	rage public testimony, time e asked to limit their remark	may not permit al	I persons wishing to speak to be heard at this persons as possible can be heard.
This form is part of the public reco	rd for this meeting.		S-001 (10/14/14)

By Senator Brandes

10

11

12

13

14

15

16

17

18 19

20 21

22

23

24

25

26 27

28

29

24-01427-21 20211186

A bill to be entitled An act relating to property assessments for elevated properties; amending ss. 193.155 and 193.1554, F.S.; specifying that changes to elevate certain homestead and nonhomestead residential property, respectively, do not increase the assessed value of the property under certain circumstances; requiring property owners to provide certification for such property; defining the terms "voluntary elevation" and "voluntarily elevated"; prohibiting certain areas from being included in square footage calculation; making clarifying revisions; reenacting s. 193.1557, F.S., relating to assessment of certain property damaged or destroyed by Hurricane Michael, to incorporate amendments made by this act to ss. 193.155 and 193.1554, F.S., in references thereto; providing a contingent effective date.

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

Section 1. Subsection (4) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4) (a) Except as provided in paragraph (b) and s. 193.624,

Page 1 of 7

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2021 SB 1186

20211186

24-01427-21

30	changes, additions, or improvements to homestead property shall
31	be assessed at just value as of the first January 1 after the
32	changes, additions, or improvements are substantially completed.
33	(b) Changes, additions, or improvements that replace all or
34	a portion of homestead property damaged or destroyed by
35	misfortune or calamity shall not increase the homestead
36	property's assessed value when the square footage of the
37	homestead property as changed or improved does not exceed 110
38	percent of the square footage of the homestead property before
39	$\frac{1}{2}$ the damage, or destruction, or voluntary elevation of the
40	<pre>homestead property if:</pre>
41	$\underline{\text{1. The homestead property was damaged or destroyed by}}$
42	misfortune or calamity; or
43	2. Before the voluntary elevation, the homestead property
44	$\underline{\text{did not comply with the Federal Emergency Management Agency's}}$
45	National Flood Insurance Program requirements and Florida
46	Building Code elevation requirements and was elevated in
47	compliance with such requirements. The property owner shall
48	provide elevation certificates for both the original and the
49	elevated homestead property. For purposes of this subsection,
50	the term "voluntary elevation" or "voluntarily elevated" means
51	the elevation of an existing nonconforming homestead property or
52	the removal and rebuilding of a nonconforming homestead
53	property. Conforming areas below an elevated structure
54	designated only for parking, storage, or access may not be
55	included in the 110 percent calculation unless the area exceeds
56	110 percent of the square footage before the voluntary
57	elevation.
58	
ij.	

Page 2 of 7

24-01427-21 20211186

Additionally, the homestead property's assessed value <u>may shall</u> not increase if the total square footage of the homestead property as changed, <u>or elevated</u> does not exceed 1,500 square feet.

60

61

62

63

64

67

68

70

71

72

73

74

75

76

77

78

79

80

81

82

8.3

84

85

86

(c) Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the homestead property before the qualifying damage, or destruction, or voluntary elevation or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (1). The homestead property's assessed value shall be increased by the just value of that portion of the changed or improved homestead property which is in excess of 110 percent of the square footage of the homestead property before the qualifying damage, or destruction, or voluntary elevation or of that portion exceeding 1,500 square feet. Homestead property damaged, or destroyed, or voluntarily elevated by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the homestead property's total square footage before the qualifying damage, or destruction, or voluntary elevation shall be assessed pursuant to subsection (5). This subsection paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the qualifying damage, or destruction, or voluntary elevation of the homestead property.

(d) (e) Changes, additions, or improvements that replace all or a portion of real property that was damaged, or destroyed, or voluntarily elevated by misfortune or calamity shall be assessed upon substantial completion as if such qualifying damage, or destruction, or voluntary elevation had not occurred and in

Page 3 of 7

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1186

24-01427-21 20211186_ accordance with paragraph (b) if the owner of such property:

1. Was permanently residing on such property when the $\underline{\text{qualifying}}$ damage, $\underline{\text{or}}$ destruction, or voluntary elevation occurred:

89

90

92

93

96

97

100

101

103

104

105

106

107

108

110

111

112

113

114

115

116

- 2. Was not entitled to receive homestead exemption on such property as of January 1 of that year; and
- 3. Applies for and receives homestead exemption on such property the following year.
- (e) (d) Changes, additions, or improvements include improvements made to common areas or other improvements made to property other than to the homestead property by the owner or by an owner association, which improvements directly benefit the homestead property. Such changes, additions, or improvements shall be assessed at just value, and the just value shall be apportioned among the parcels benefiting from the improvement.

Section 2. Subsection (6) of section 193.1554, Florida Statutes, is amended to read:

193.1554 Assessment of nonhomestead residential property.-

- (6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.
- (b) Changes, additions, or improvements that replace all or a portion of nonhomestead residential property damaged or destroyed by misfortune or calamity shall not increase the property's assessed value when the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage, or

Page 4 of 7

24-01427-21 20211186

destruction, or voluntary elevation of the property if:

- 1. The property was damaged or destroyed by misfortune or calamity; or
- 2. Before the voluntary elevation, the property did not comply with the Federal Emergency Management Agency's National Flood Insurance Program requirements and Florida Building Code elevation requirements and was elevated in compliance with such requirements. The property owner must provide elevation certificates for both the original and the elevated property. For purposes of this subsection, the term "voluntary elevation" or "voluntarily elevated" means the elevation of an existing nonconforming nonhomestead residential property or the removal and rebuilding of a nonconforming nonhomestead residential property. Conforming areas below an elevated structure designated only for parking, storage, or access may not be included in the 110 percent calculation unless the area exceeds 110 percent of the square footage before the voluntary elevation.

Additionally, the property's assessed value <u>may shall</u> not increase if the total square footage of the property as changed, or improved, or elevated does not exceed 1,500 square feet.

(c) Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the property before the <u>qualifying</u> damage, or destruction, or <u>voluntary elevation</u> or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (3). The property's assessed value shall be increased by the just value of that portion of the changed or improved

Page 5 of 7

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2021 SB 1186

24-01427-21 property which is in excess of 110 percent of the square footage of the property before the qualifying damage, or destruction, or voluntary elevation or of that portion exceeding 1,500 square feet. Property damaged, or destroyed, or voluntarily elevated by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the qualifying damage, or destruction, or voluntary elevation shall be assessed pursuant to subsection (8). This subsection paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the qualifying damage, $\frac{1}{2}$ destruction, or voluntary elevation of the property. (d) (c) Changes, additions, or improvements include improvements made to common areas or other improvements made to property other than to the nonhomestead residential property by the owner or by an owner association, which improvements

improvements made to common areas or other improvements made to property other than to the nonhomestead residential property by the owner or by an owner association, which improvements directly benefit the property. Such changes, additions, or improvements shall be assessed at just value, and the just value shall be apportioned among the parcels benefiting from the improvement.

Section 3. For the purpose of incorporating the amendments made by this act to sections 193.155 and 193.1554, Florida Statutes, in references thereto, section 193.1557, Florida Statutes, is reenacted to read:

193.1557 Assessment of certain property damaged or destroyed by Hurricane Michael.—For property damaged or destroyed by Hurricane Michael in 2018, s. 193.155(4)(b), s. 193.1554(6)(b), or s. 193.1555(6)(b) applies to changes, additions, or improvements commenced within 5 years after

Page 6 of 7

24-01427-21 20211186
January 1, 2019. This section applies to the 2019-2023 tax rolls
and shall stand repealed on December 31, 2023.
Section 4. This act shall take effect on the effective date
of the amendment to the State Constitution proposed by SJR
or a similar joint resolution having substantially the same
specific intent and purpose, if such amendment to the State
Constitution is approved at the general election held in
November 2022 or at an earlier special election specifically
authorized by law for that purpose.

Page 7 of 7

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.)

INTRODUCER: Com	B 1208 munity Affairs Co	mmittee and			
	munity Affairs Co	mmittee and			
SUBJECT: Prop		minuce and	Senators Rodri	guez, Burges	s, Gruters, and Polsky
	erty Assessed Clea	an Energy Pr	ogram		
DATE: Marc	eh 11, 2021	REVISED:			
ANALYST	STAFF D	IRECTOR	REFERENCE		ACTION
. Hackett	Ryon		CA	Fav/CS	
•	<u></u>		FT		
			AP		

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1208 makes substantial changes to the Property Assessed Clean Energy (PACE) program, which is a mechanism used by local governments to provide financing for energy efficiency, renewable energy, and wind resistance related improvements to real property. The bill expands the universe of what types of projects PACE can finance to include wastewater treatment, flood and water damage mitigation, health and environmental hazards mitigation, and water conservation and efficiency projects.

The bill also introduces a suite of consumer protection measures to equip residential homeowners with tools and safeguards preventing them from entering into PACE contracts unwisely.

The bill updates the legislative intent of the PACE statute to reflect the expanded scope of the program, and introduces definitions used to clarify the language of the statute.

The bill takes effect July 1, 2021.

II. Present Situation:

Property Assessed Clean Energy (PACE) Financing

In Florida, Property Assessed Clean Energy (PACE) financing is a mechanism used by local governments to provide financing for energy efficiency, renewable energy, and wind resistance-related improvements to commercial and residential real property. PACE programs for commercial buildings are enabled in 37 U.S. States and the District of Columbia, while only three states – California, Florida, and Missouri – operate PACE programs for residential homeowners.¹

PACE programs allow a property owner to borrow the up-front cost of qualifying improvements on a property and then pay the costs back over time through a voluntary non-ad valorem property assessment.² Property owners that voluntarily choose to participate in a PACE program repay their improvement costs over a set period of time, typically 10 to 20 years, through property assessments, which are secured by the property itself and paid as an addition to the owner's property tax bills.³ A PACE assessment is a debt of property, meaning the debt is tied to the property as opposed to the property owner.⁴ The repayment obligation may transfer with property ownership if the buyer agrees to assume the PACE obligation and the new first mortgage holder allows the PACE obligation to remain on the property.⁵

While PACE was originally designed for clean energy improvements, some states have expanded the types of improvements that may qualify for PACE financing. In Florida, PACE financing qualified improvements include energy conservation and efficiency improvements, like energy-efficient HVAC systems, replacement of windows, electric vehicle charging equipment, and efficient lighting equipment; renewable energy improvements utilizing hydrogen, solar, geothermal, and wind energy; and wind resistance improvements such as wind-resistant shingles, gable-end bracing, storm shutters, and opening protections. In other states, PACE financing can be used for improvements to mitigate seismic damage, flooding, and tornado resilience.

PACE in Florida

In 2010, the Legislature enacted s. 163.08, F.S., to authorize local governments⁸ to create PACE programs, subject to local government ordinance or resolution.⁹ The statute finds that "...the

¹ Property Assessed Clean Energy Programs, Office of Energy Efficiency & Renewable Energy, available at https://www.energy.gov/eere/slsc/property-assessed-clean-energy-programs (last accessed March 6, 2021).

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ Section 163.08(2)(b), F.S.

⁷ Supra note 1.

⁸ "Local government" means a county, municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

⁹ Although Florida's law does not use the terms "PACE" or "Property Accessed Clean Energy," it is generally understood that the financing scheme in s. 163.08, F.S., is Florida's PACE program authorizing statute. *See generally* Erin Deady, *Property Assessed Clean Energy: Is There Finally a Clear Path to Success?* Florida Bar Journal Vol. 90, No. 6, June 2016, pg 114, available at https://www.floridabar.org/the-florida-bar-journal/property-assessed-clean-energy-is-there-finally-a-clear-path-to-success/ (last accessed March 6, 2021).

financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest."¹⁰

Through a PACE program, a property owner may apply to a local government for funding to finance certain qualifying improvements to their home or commercial property and enter into a financing agreement with the local government. The local government may levy non-ad valorem tax assessments to fund such qualifying improvements. Thus, a local government may enter into an agreement with a property owner for the advance funding of a qualifying improvement, as defined in statute, in exchange for repayment over time in the form of non-ad valorem assessments collected annually on the same bill as property taxes. The non-ad valorem PACE assessment is collected in the same manner as the property's ad valorem taxes, pursuant to s. 197.3632, F.S. 13

There is no central "Florida PACE administrator" because PACE is not a state-run program. PACE programs in Florida are formed by local governments to operate for local governments, typically in partnership with several localities pursuant to an interlocal agreement under s. 163.01, F.S. Additionally, all PACE programs in Florida are operated by a third-party PACE administrator, which can be a for-profit or not-for-profit entity acting on behalf of the local government. However, it remains the local government that enters into a financing agreement directly with the property owner. 15

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment. The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement ... is not enforceable." However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

Qualifying Improvements

The types of projects PACE financing may fund are referred to as "qualifying improvements." A local government may not offer PACE financing for any project not included in the statutory definition of qualifying improvements. As provided in current law, qualifying improvements include the following:

- Energy conservation and efficiency improvements, ¹⁸ to include:
 - o Air sealing;
 - Installation of insulation;

¹⁰ Section 163.08(1)(c), F.S.

¹¹ Section 163.08(4), F.S.

¹² Section 163.08(3), F.S.

¹³ Section 163.08(4), F.S.

¹⁴ 163.08(6), F.S.

¹⁵ Section 163.08(8), F.S.

¹⁶ Section 163.08(13), F.S.

¹⁷ Section 163.08(15),F.S.

¹⁸ Section 163.08(2)(b)1., F.S.

- o Installation of energy efficient HVAC systems;
- o Building modifications which increase the use of daylight;
- o Replacement of windows;
- o Installation of energy controls or energy recovery systems;
- o Installation of electric vehicle charging equipment; and
- o Installation of efficient lighting equipment.
- Renewable energy improvements, ¹⁹ which means installation of any system in which the electrical, mechanical, or thermal energy is produced from a method utilizing hydrogen, solar energy, geothermal energy, bioenergy, or wind energy.
- Wind resistance improvements, ²⁰ to include
 - o Improving the strength of the roof deck attachment;
 - o Creating a secondary water barrier to prevent water intrusion;
 - o Installing wind-resistant shingles;
 - o Installing gable-end bracing;
 - o Reinforcing roof-to-wall connections;
 - o Installing storm shutters; and
 - o Installing opening protections.

Wind resistance improvements applied to buildings under new construction do not qualify for PACE financing.²¹

Florida PACE Consumer Protections

Current law provides that, before entering into a financing agreement, the local government must reasonably determine that:

- All property taxes and other assessments are current and have been paid for the preceding 3 years;
- There are no involuntary liens including construction liens;
- There are no notices of default or other evidence of property-based debt delinquency recorded and not released in the preceding 3 years; and
- The property owner is current on all mortgage debt on the property.²²

Further, any work requiring a license to make a qualifying improvement must be performed by a properly certified or registered contractor.²³ The total amount of PACE assessments for any property may not exceed 20 percent of the property's market value, in most cases.²⁴

Consumer Protections for Residential PACE Financing Generally

Concerns have arisen over time with regards to issues consumers may face regarding residential PACE financing. Because the PACE financing is structured as a tax assessment instead of a loan,

¹⁹ Section 163.08(2)(b)2., F.S.

²⁰ Section 163.08(2)(b)3., F.S.

²¹ Section 163.08(10), F.S.

²² Section 163.08(9), F.S.

²³ Section 163.08(11), F.S.

²⁴ Section 163.08(12), F.S.

PACE programs historically have not been required to provide to homeowners the same disclosures about the financing costs that traditional lenders must provide.

Additionally, the tax liens for PACE financing take priority over other lien-holders, which is to say that in potential bankruptcy the PACE financer has priority over the property's mortgage holder. Because of this, large financers like Fannie Mae and Freddie Mac have refused to purchase loans for properties with existing PACE-based tax assessments, and properties encumbered with PACE obligations are not eligible for Federal Housing Administration insured financing. However, priority lien position protects local governments, who are authorized to take on debt for the financing they provide. Advocates also state that the priority lien position enables local governments to offer competitive interest rates, ranging from approximately 6 to 9 percent. PACE obligations are not eligible for Federal Housing Administration insured financing.

Consumer Financial Protection Bureau Steps

In 2018, the United States Congress directed the Consumer Financial Protection Bureau (CFPB) to promulgate ability-to-repay regulations regarding PACE financing. ³⁰ The CFPB has issued advanced notices of proposed rulemaking in order to apply the Truth in Lending Act's ability-to-repay requirements, currently in place for residential mortgage loans, to PACE financing. ³¹

The existing federal ability-to-repay requirements prohibit creditors from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms, and all applicable taxes, insurance, and assessments.³² In making such a determination, the creditor must verify and consider specific factors including the consumer's income, assets, and existing debt obligations.³³ The Truth in Lending Act's stated purpose is "to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive."³⁴

The CFPB's regulations on residential PACE financing are still in development, and have not been finalized at this time.

²⁵ Debra Gruszecki, INLAND: Realtors Offer Word of Warning About Solar Financing Program," Jan. 19, 2015, The Press-Enterprise, available at https://www.pe.com/2015/01/19/inland-realtors-offer-word-of-warning-about-solar-financing-program/ (last accessed March 7, 2021).

²⁶ FHFA, Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens (Dec. 22, 2014) https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited March 11, 2021).

²⁷ "ML 2017-18: Property Assessed Clean Energy (PACE)," December 7, 2017, U.S. Department of Housing and Urban Development, available at https://www.hud.gov/sites/dfiles/OCHCO/documents/17-18ml.pdf (last accessed March 7, 2021). ²⁸ Section 163.08(7), F.S.

²⁹ AboutPACE, Florida PACE Funding Agency, available at https://floridapace.gov/about-pace/ (last visited March 8, 2021).

³⁰ Section 307, Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law No 115-174 (May 24, 2018).

³¹ Advance Notice of Proposed Rulemaking on Residential Proprety Assessed Clean Energy Financing, Docket No. CFPB-2019-0011, available at https://files.consumerfinance.gov/f/documents/cfpb_anpr_residential-property-assessed-clean-energy-financing.pdf (last accessed March 6, 2021).

³² Id., citing TILA section 129C(a), 15 U.S.C. 1639c(a).

³³ Id

³⁴ 7 TILA section 129B(a)(2), 15 U.S.C. 1639b(a)(2).

California's Consumer Protection Measures

California, as one of the three states currently offering residential PACE financing, has taken measures to protect consumers independent of federal regulation. In 2016, California's law changed to require PACE programs to provide mortgage-level disclosures and to conduct live recorded calls with homeowners to confirm financing terms and obligations.³⁵

2017 California legislation required that PACE program administrators be licensed by the California Department of Financial Protection and Innovation, provided oversight for contractors and third party solicitors, and authorized the same department to bring enforcement actions against PACE administrators and contractors. The law also required that a PACE administrator thoroughly determine the property owner's ability to repay the loan before approving a financing contract.³⁶

Wastewater Treatment Improvements

Among the types of improvements under consideration to qualify for PACE financing is wastewater treatment improvements. The Florida Department of Health provides "Onsite sewage treatment and disposal systems, commonly referred to as septic systems, are a safe and effective means of wastewater disposal for 30 percent of Florida's population. With an estimated 2.6 million systems in operation, Florida represents 12 percent of the United States' septic systems. Properly designed, constructed, and maintained systems protect Florida's ground water which provides 90 percent of Florida's drinking water."³⁷

There are estimated, however, to be thousands of septic tanks that are old and at risk of failing.³⁸ These systems risk leaking phosphorus and nitrogen into the water system, which can promote harmful algal blooms, aquatic weeds, and the alteration of the natural fauna and flora. Serious algal blooms can also cause human health issues.

For this reason, there has been a push over time to move from individual septic systems to community sewage treatment. Such a transition can cost in the range of \$15,000 to \$20,000.³⁹

³⁵ James Reed, "Consumer Protections for PACE Now Written into State Law," Orange County Register, October 7, 2016, available at https://www.ocregister.com/2016/10/07/consumer-protections-for-pace-now-written-into-state-law/ (last visited March 6, 2021).

³⁶ Assembly Bill 1284 (Dababneh, Chap 475, Stats. 2017) – California Financing Law: Property Assessed Clean Energy program: program administrators.

³⁷ Onsite Sewage, Florida Department of Health, last modified Oct 20, 2020, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last accessed March 7, 2021).

³⁸ Benita Goldstein, "Failing septic tanks damaging state's environment; will cost billions of dollars to replace," Apr. 22, 2019, South Florida Sun Sentinel, available at https://www.sun-sentinel.com/opinion/commentary/fl-op-com-septic-tanks-20190422-story.html (last accessed March 7, 2021).

³⁹ Terri Lowery, "Cities, Counties Need Plan to Switch Septic to Sewer," May 14, 2016, Florida Today, available at https://www.floridatoday.com/story/opinion/columnists/guest-columns/2016/05/14/cities-counties-need-plan-switch-septic-sewer/84295648/ (last accessed March 7, 2021).

III. Effect of Proposed Changes:

The bill makes substantial changes to s. 163.08, F.S., relating to Florida's Property Assessed Clean Energy (PACE) program. Namely, the bill defines key terms throughout the PACE statute, expands the types of qualifying improvements that may be financed under the PACE program, imposes new consumer protection measures for the benefit of residential property owners, and enacts new PACE contractor oversight and accountability provisions.

Definitions

The bill defines the following terms, not previously defined, to improve clarity and precision in the operation of the PACE statute:

- "Commercial real property" is defined, except as otherwise defined by a local government, as
 any property not included in residential real property that is or will be improved by a
 qualifying improvement including but not limited to multifamily residential property
 comprised of five or more units, commercial real property, industrial property, agricultural
 property, and residential property owned by a business.
- "PACE administrator" means an entity with whom a local government contracts to administer a PACE program.
- "PACE assessment" means the non-ad valorem assessment securing repayment of financing offered to a property owner for a qualifying improvement.
- "PACE assessment contract" means the financing contract under a PACE program between a local government and property owner for the acquisition or installation of qualifying improvements.
- "PACE contractor" means an independent contractor who contracts with a property owner to install qualifying improvements, not to include the owner of the property.
- "PACE program" means a program established by a local government, alone or in partnership with other local governments or a PACE administrator, to finance qualifying improvements.
- "Residential real property" means a residential property of four or fewer dwelling units that may be benefited by installation of a qualifying improvement.

Qualifying Improvements

The bill amends the definition of "qualifying improvements" to expand the universe of the types of projects a local government's PACE program may finance. Significantly, the bill adds the following four new categories of qualifying improvements to the PACE program statute:

- Wastewater treatment improvements.
- Flood and water damage mitigation and resiliency improvements.
- Health and environmental hazards measure or improvement.
- Water conservation or efficiency improvement.

The "wastewater treatment improvement" category includes the replacement or improvement of an onsite sewage treatment and disposal system with an advanced system of the same type, or replacement with a central sewage system. The term includes repairs or modifications made to an onsite sewage treatment and disposal system regulated by the Department of Health under s. 381.0065, F.S.

The "flood and water damage mitigation and resiliency improvement" category includes projects and installations:

- Raising a structure above the base flood elevation to reduce flood damage;
- Building or repairing a flood diversion apparatus;
- Utilizing flood damage resistant building materials;
- Mitigating or eliminating the potential for microbial growth;
- Using electrical, mechanical, plumbing, or other system improvements to reduce flood damage; and
- Qualifying for reductions in flood insurance premiums.

The "health and environmental hazards measures or improvements" category includes measures mitigating or removing:

- The presence of lead, heavy metals, polyfluoroalkyl substance contamination, contaminants in potable water systems, to include conversion of well water to municipal water systems, replacement of lead water service lines, and installation of water filters;
- Asbestos:
- Lead paint contamination in housing built before 1978; and
- Indoor air pollution or contaminants, including particulate matter, viruses, bacteria, and mold.

The "water conservation or efficiency improvements" category includes measures or improvements to reduce the usage of water or increase the efficiency of water usage.

Additionally, the bill alters existing qualifying improvement categories to some extent. Within the context of energy conservation and efficiency improvements, the bill adds "installation of battery storage systems" as an allowable improvement, and renames the "wind resistance improvement" category as "wind, storm, and flood resistance improvement" to expand the purpose of already qualifying improvements.

The bill also provides that a PACE contract can cover any qualifying improvements on buildings under new construction, and that PACE financing may be used for refinancing existing loans on qualifying improvements.

Consumer Protection Measures

To account for recent consumer protection concerns regarding residential PACE financing, the bill provides for a swath of regulations aimed at curbing these concerns and ensuring consumers are well-informed of their obligations prior to entering into a PACE agreement.

Specifically, the bill provides that, before entering into a residential PACE assessment contract, a PACE administrator must reasonably determine that the property owner has an ability to pay the estimated annual PACE assessment. This determination should be based on observations that:

- All property taxes and other assessments are current and have been paid for the preceding 3 years;
- There are no involuntary liens including construction liens;

• There are no notices of default or other evidence of property-based debt delinquency recorded and not released in the preceding 3 years;

- The property owner has recorded all other PACE assessments or all PACE assessments have been funded and not yet recorded;
- The property owner is current on all mortgage debt on the property; and
- The property owner is not currently in bankruptcy.

In addition, for contracts where the annual assessment is greater than \$4,800 (plus inflation), the administrator should determine that the total estimated annual payment amount for all PACE assessment contracts on the property does not exceed 10 percent of the property owner's annual household income. Such income should be confirmed by a reputable third party and may not be confirmed solely by the property owner.

Before entering into a residential PACE assessment contract, the PACE administrator must provide a financing estimate and disclosure to the property owner that includes:

- The total amount estimated to be funded including program fees and capitalized interest;
- The estimated annual PACE assessment;
- The term of the PACE assessment;
- The fixed interest charged and estimated annual percentage rate;
- A description of the qualifying improvement;
- A disclosure that if the property owner sells or refinance the property, the property owner may be required to pay off the full amount owed under each PACE assessment contract;
- A disclosure that the PACE assessment will be collected alongside other property taxes, and result in a lien on the property; and
- A disclosure that failure to pay the PACE assessment may result in penalties and fees, along
 with the issuance of a tax certificate that could result in the property owner losing the real
 property.

The PACE administrator must also conduct and record a telephone call with the property owner in plain language and in the language of the property owner's choice to confirm the following:

- That the property owner has access to the contract and financing estimates and disclosures;
- The qualifying improvement that is being financed;
- The total estimated annual costs, including fees;
- The total estimated average monthly equivalent amount required to pay such annual costs;
- The estimated date the property owner's first tax payment including the PACE assessment will come due;
- The term of the PACE assessment contract;
- That payments will cause the owner's annual tax bill to increase, that payments will be made through additional annual assessments, and that such payments will be made either directly to the county tax collector's office or through the owner's mortgage escrow account;
- That the owner has disclosed whether the property has received or is seeking additional PACE assessments and has disclosed all other PACE assessments or special taxes about to be placed on the property;
- That the property will be subject to a lien during the term of the PACE assessment contract which may require the contract to be paid in full before selling or refinancing the property;

• That any potential utility or insurance savings are not guaranteed and will not reduce the PACE or total assessment amount; and

• That neither the PACE administrator nor contractor provide tax advice and that the owner should seek professional tax advice with questions regarding tax credits, deductibility, or other impacts of the qualifying improvement or PACE assessment contract.

A property owner may cancel the PACE assessment contract within three business days after signing the contract, without financial penalty.

The term of a PACE assessment contract may not exceed the useful life of the qualifying improvement being installed or the weighted average useful life of all qualifying improvements being financed, if multiple exist. The financing term may not exceed 30 years. Additionally, a PACE administrator may not offer PACE assessment financing on any residential real property that includes a negative amortization schedule, 40 a balloon payment, 41 or prepayment fees 42 other than nominal administrative costs.

PACE Contractor Oversight

The bill provides that for residential real property, a PACE administrator may not enroll a PACE contractor unless the administrator first attempts to review that the PACE contractor maintains in good standing the appropriate licensure, permits, and registrations required for its business operations. Additionally, the administrator must obtain the contractor's written agreement that the contractor will act in accordance with all applicable laws to include advertising and marketing laws and regulations.

Further, the bill requires a PACE administrator to maintain a process to enroll new PACE contractors that includes reasonable review of each contractor's relevant work or project history, financial and reputational background, criminal background, and status on Better Business Bureau or other online platform tracking contractor reviews.

Before disbursing funds to a PACE contractor for a qualifying improvement on residential real property, a PACE administrator must confirm that the applicable work or service has been completed through either written or telephonic certification, or through a third-party site inspection.

⁴⁰ The Consumer Financial Protection Bureau provides that "amortization means paying off a loan with regular payments, so that the amount you owe goes down with each payment. Negative amortization means that even when you pay, the amount you owe will still go up because you are not paying enough to cover the interest." *See https://www.consumerfinance.gov/ask-cfpb/what-is-negative-amortization-en-*

^{103/#:~:}text=Amortization%20means%20paying%20off%20a,enough%20to%20cover%20the%20interest

⁴¹ The Consumer Financial Protection Bureau provides that "a balloon payment is a larger-than-usual one-time payment at the end of the loan term." *See* https://www.consumerfinance.gov/ask-cfpb/what-is-a-balloon-payment-when-is-one-allowed-en-

^{104/#:~:}text=A%20balloon%20payment%20is%20a,end%20of%20the%20loan%20term.&text=Most%20balloon%20loans%20require%20one,end%20of%20the%20loan%20term

⁴² The Consumer Financial Protection Bureau provides that "A prepayment penalty is a fee that some lenders charge if you pay off all or part of your mortgage early." *See* https://www.consumerfinance.gov/ask-cfpb/what-is-a-prepayment-penalty-en-1957/

A PACE administrator may not disclose to a PACE contractor or third party solicitor the maximum PACE financing amount for which a residential real property owner is eligible.

A PACE contractor should not present a higher price for a qualifying improvement on residential real property financed by a PACE assessment contract than they would otherwise present were the improvement not financed by PACE.

Finally, the bill imposes certain marketing and communications guidelines for PACE administrators and PACE contractors to follow. Under these provisions, PACE administrators and contractors may not suggest that PACE assessment financing is a government assistance program, that qualifying improvements are free or that PACE is a free program, or that utilizing PACE financing does not require the homeowner to repay the financial obligation. A PACE administrator or contractor may not make representations as to the tax deductibility of a PACE assessment on residential real property. They may only encourage a property owner to seek the advice of a tax professional.

The bill takes effect July 1, 2021.

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:

Property owners who live within a jurisdiction that offers PACE financing may apply for additional types qualifying improvements under the program. This may result in a positive fiscal impact for property owners utilizing improvements, as well as for contractors able to take jobs that would not have otherwise been pursued without PACE financing. PACE administrators will also see a positive fiscal impact as the use of PACE financing expands.

C. Government Sector Impact:

PACE programs are designed to be budget-neutral for local governments. As such, no government sector impact is expected for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.08 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.)

CS by Community Affairs on March 10, 2021:

The committee substitute removes an incorrect reference to the Florida Construction and makes other minor grammatical changes.

B. Amendments:

None.

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

526754

	LEGISLATIVE ACTION	
Senate	•	House
Comm: RCS	•	
03/12/2021	•	
	•	
	•	
	•	

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

Senate Amendment

Delete line 77

and insert:

1 2 3

4

5

purpose of improving a property's resistance to wind



	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/12/2021		
	•	
	•	
	•	

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

Senate Amendment

2 3

5

6

7

8

9

10

1

Delete lines 483 - 509

4 and insert:

> 1. The PACE administrator makes a reasonable effort to review that the PACE contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains all state required bond and insurance coverage.

20

21

22

23

24

2.5

26

27

28

29

30

31



- 11 2. A PACE administrator obtains the PACE contractor's 12 written agreement that the PACE contractor will act in accordance with all applicable laws, including applicable 13 14 advertising and marketing laws and regulations. (b) Must maintain a process to enroll new PACE contractors 15 16 that includes reasonable review of the following for each 17 contractor: 18 1. Relevant work or project history. 2. Financial and reputational background checks. 19
 - 3. Criminal background check.
 - 4. Status on Better Business Bureau or other online platforms that track contractor reviews.
 - (23) (a) Before disbursing funds to a PACE contractor for a qualifying improvement on residential real property, a PACE administrator must first confirm the applicable work or service has been completed, either through written certification from the property owner, a recorded telephone call with the property owner, or a site inspection through third-party means.
 - (b) A PACE administrator may not disclose to a PACE contractor or to a third party engaged in soliciting a PACE assessment contract the maximum PACE financing amount for

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

	- (0 - 2) ting Date	THE FLORIDA S		RD J 2 0 8 Bill Number (if applicable)
Topic	PACE			Amendment Barcode (if applicable)
Name Je	ess M. McCarty			
Job Title	Assistant County Attorn	ey		
Address	111 NW 1st Street			Phone 305-979-7110
	Street			
	Miami	FL	33156	Email jmm2@miamidade.gov
Speaking	City : Against	State Information	Zip Waive S (The Cha	
Repre	esenting Miami-Dade Co	ounty		
	ng at request of Chair:		•	ered with Legislature: Yes No

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.

S-001 (10/14/14)

3/10/21	(Deliver BOTH copies of this form to the Senator	or Senate Professional St	taff conducting the meeting)	SB 1208
Meeting Date			•	Bill Number (if applicable)
Topic	SB 1208		Amendr	ment Barcode (if applicable)
Name Leah	Wiggs		-	
Job Title <u>VP, G</u>	rovernment Affai	rs.	-	
Address 1221	Broadway Ane.	Snite 1400	Phone USO	576.2181
· .			Email 1wigg	s @ venuofinancio
City	State	Zip		20121
Speaking: For	Against Information	Waive Sp (The Chai	peaking: In Sup ir will read this informa	port Against tion into the record.)
Representing $\widehat{\mathbb{R}}$	lenew Financia	1		
Appearing at request	of Chair: Yes No	Lobbyist registe	ered with Legislatu	re: Yes No
While it is a Senate tradition	on to encourage public testimony, time leak may be asked to limit their remar	e may not permit all ks so that as many	persons wishing to sp persons as possible ca	eak to be heard at this an be heard.
This form is part of the p	ublic record for this meeting.			S-001 (10/14/14)

Meeting Date (Deliver BOTH copies of this form to the Senator or Senate Professional Sta	ff conducting the meeting) SG 120 Bill Number (if applicable)
Weeting Bate	bili Number (ii applicable)
Topic 5B 1208 PALE	Amendment Barcode (if applicable)
Name SIATER BAHLISS	
Job Title	
	Phone \$50 222 890
Street TALLAUSSEE FL	Email Swagcarderas Dark -
City State Zip	
Speaking: For Against Information Waive Speaking: (The Chair	eaking: In Support Against will read this information into the record.)
Representing GRENE ENERGY	
Appearing at request of Chair: Yes No Lobbyist register	red with Legislature: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit all p meeting. Those who do speak may be asked to limit their remarks so that as many p	ersons wishing to speak to be heard at this ersons as possible can be heard.
This form is part of the public record for this meeting.	S-001 (10/14/14)

3 102 (Deliver)	BOTH copies of this form to the Senator	or Senate Professional St	aff conducting the meeting)	1208
Meeting Date			-	Bill Number (if applicable)
Topic PACE			Amendr	ment Barcode (if applicable)
Name Marty Ca	ssini			
Job Title Manage			a 11 =	
Address 100 S. Andr	ers he		Phone 959-9	357-75 75
Street Fart Lawder	Pale 172	33301		nif Grovardio
City	State	Zip		
Speaking: For Agai	nst Information	•	eaking: [] In Sup	
Representing	ward Count	1		
Appearing at request of Cha	ir: Yes No	Lobbyist registe	ered with Legislatu	re: Yes No
While it is a Senate tradition to en meeting. Those who do speak ma				
This form is part of the public re	ecord for this meeting.			S-001 (10/14/14)

3/10	(Deliver BOTH copies of	i this form to the Senator or	Senate Professional	Statt conductin	ig the meeting)	1208
Meeting Date					•	Bill Number (if applicable)
Topic PACE					Amendi	ment Barcode (if applicable)
Name <u>MARK</u>	LAUSON					
Job TitleAm	ORNEY					
Address	E. College	C AVC		_ Phone		
Tau.	FL	32301		_ Email __	Mlawso	n@ markglawson.
City		State	Zip			com
Speaking: For _	Against I	nformation			In Sup	port Against tion into the record.)
Representing	MARK	G. LAWSON	PA			
Appearing at request o	of Chair:	s No L	obbyist regis	tered with	n Legislatu	re: Yes No
While it is a Senate traditio meeting. Those who do sp	n to encourage pul eak may be asked	blic testimony, time n to limit their remarks	nay not permit a so that as many	ll persons v / persons a	vishing to sp s possible ca	eak to be heard at this an be heard.
This form is part of the p					-	S-001 (10/14/14)

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)	1208
Meeting Date	Bill Number (if applicable)
Topic MACE Lending Amend	dment Barcode (if applicable)
Name Anthony DiMarco	
Job Title EVP of Govt Affairs	
Address 1001 Thurnasy, Me RO Phone 850	170/-3504
	mor wo oftenda
Speaking: For Against Information Waive Speaking: In Su (The Chair will read this inform	
Representing Florida Bankerr Association	
Appearing at request of Chair: Yes No Lobbyist registered with Legislate	ure: Yes No
While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speed meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible of	/ peak to be heard at this can be heard.
This form is part of the public record for this meeting.	0.004 (40/44/44)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

3/10/21

THE FLORIDA SENATE

APPEARANCE RECORD

Bill Number (if applicable)

Meeting Date			Bill Number (if applicable)
Topic Property Assessed Clea	n Energy		Amendment Barcode (if applicable)
Name Kate Wesner			_
Job Title Director of Governme	nt Affairs		
Address 7200 Corporate Center Street	er Dr Suite #510		Phone 561-722-3654
Miami	FL	33126	Email kate.wesner@ygrene.com
City Speaking: For Against	State Information		peaking: In Support Against ir will read this information into the record.)
Representing Ygrene Energ	gy Fund		
Appearing at request of Chair: While it is a Senate tradition to encour meeting. Those who do speak may be	 age public testimony, tin	ne mav not permit all	ered with Legislature: Yes No persons wishing to speak to be heard at this persons as possible can be heard.

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

S-001 (10/14/14)

By Senator Rodriguez

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

39-00420A-21 20211208

A bill to be entitled An act relating to property assessed clean energy program; amending s. 163.08, F.S.; revising legislative intent regarding the types of improvements that qualify for specified financing under this act; defining and redefining terms; specifying that a property owner may apply to a PACE program for certain purposes; providing that costs incurred by the PACE program may be collected as a non-ad valorem assessment; authorizing a local government to enter into agreements with PACE administrators and to incur debt; authorizing a local government to enter into a PACE assessment contract only with the record owner of the affected property; revising the items a local government or a PACE administrator must reasonably determine before entering into a PACE contract; requiring a qualifying improvement to be affixed or plan to be affixed to specified properties before final funding; authorizing a PACE assessment contract to cover qualifying improvements on real properties under new construction; specifying the information a PACE administrator must provide each real property owner or an authorized representative about the qualifying improvements; requiring a PACE administrator to make specified determinations about a property owner's ability to pay the annual PACE assessment; specifying information a PACE administrator must provide to the residential real property owner or an authorized representative before

Page 1 of 19

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2021 SB 1208

i	39-00420A-21 20211208
30	entering into a PACE assessment contract; specifying a
31	timeframe within which a residential real property
32	owner may cancel a PACE assessment contract;
33	prohibiting the term of a PACE assessment contract
34	from exceeding specified timeframes; prohibiting a
35	PACE administrator from offering specified types of
36	financing for residential real properties; prohibiting
37	a PACE administrator from enrolling certain PACE
38	contractors unless certain conditions are met;
39	providing requirements that must be met before a PACE
40	administrator may disburse funds; specifying marketing
41	and communications guidelines that PACE administrators
42	and PACE contractors must comply with when
43	communicating with residential real property owners;
44	prohibiting a PACE contractor from engaging in certain
45	practices regarding pricing of qualifying improvement
46	on residential real properties; providing an effective
47	date.
48	
49	Be It Enacted by the Legislature of the State of Florida:
50	
51	Section 1. Subsections (1), (2), (4), (6) through (10),
52	(12), (13), and (14) of section 163.08, Florida Statutes, are
53	amended, and subsections (17) through (25) are added to that
54	section, to read:
55	163.08 Supplemental authority for improvements to real
56	property
57	(1)(a) In chapter 2008-227, Laws of Florida, the
58	Legislature amended the energy goal of the state comprehensive

Page 2 of 19

39-00420A-21 20211208

59

60

61

62

63

64 65

67

68

70

71

72

73

74

75

76

77

78

79

80

81

82

8.3

84

85

86

plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind or flood damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All

Page 3 of 19

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1208

20211208

improved properties not protected from wind or flood damage by
wind or flood resistant resistance qualifying improvements
contribute to the burden affecting all improved property
resulting from potential wind or flood damage. Improved property
that has been retrofitted with wind or flood resistant
resistance qualifying improvements receives the special benefit
of reducing the property's burden from potential wind or flood
damage. Further, the installation and operation of qualifying
improvements not only benefit the affected properties for which
the improvements are made, but also assist in fulfilling the
goals of the state's energy and hurricane mitigation policies.

39-00420A-21

99

100

101

102

103

104

105

106

107

108

110

111

112

113

114

115

116

(c) Properties that do not use advanced technologies for wastewater removal contribute to the water quality problems affecting the state and particularly the coastal areas. Improved properties that have been retrofitted with advanced onsite treatment systems or have converted to central sewerage significantly benefit the quality of water that may enter streams, lakes, rivers, aquifers, canals, estuaries, or coastal areas. Properties that are not protected from harmful environmental health hazards contribute to the environmental health burdens affecting the state. Properties that have been improved to mitigate against or prevent environmental health hazards benefit the general environmental health of the people within this state.

(d) In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

Page 4 of 19

39-00420A-21 20211208

(e) (e) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of property assessed clean energy assessment contracts financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

- (2) As used in this section, the term:
- (a) "Commercial real property" means, unless otherwise determined by a local government, any property not defined as a residential real property, that will be or is improved by a qualifying improvement, including, but not limited to, the following:
- $\underline{\mbox{1. A multifamily residential property comprised of five or}}$ more dwelling units.
 - 2. A commercial real property.
 - 3. An industrial building or property.
 - 4. Agricultural property.

- 5. A residential property owned by a business entity.
- (b) (a) "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).
- $\underline{\text{(c) (b) "PACE administrator" means an entity with whom a}}\\ \text{local government contracts to administer a PACE program.}$
- (d) "PACE assessment" means the non-ad valorem assessment securing the annual repayment of financing obtained by an owner of commercial or residential real property for a qualifying improvement under this chapter.

Page 5 of 19

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.

Florida Senate - 2021 SB 1208

39-00420A-21 20211208_

- (e) "PACE assessment contract" means the financing contract, under a PACE program, between a local government and a property owner for the acquisition or installation of qualifying improvements.
- (f) "PACE contractor" means an independent contractor who contracts with a property owner to install qualifying improvements on real property and is not the owner of such property.
- (g) "PACE program" means a program established by a local government, alone or in partnership with other local governments or a PACE administrator, to finance qualifying improvements on commercial or residential real properties.
 - (h) "Qualifying improvement" includes any:

- 1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of battery storage systems; and installation of efficient lighting equipment.
- 2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

Page 6 of 19

39-00420A-21 20211208 175 3. Wind, storm, and flood resistance improvement, which 176 includes, but is not limited to: 177 a. Improving the strength of the roof deck attachment. b. Creating a secondary water barrier to prevent water 178 179 intrusion. + 180 c. Installing wind-resistant shingles. 181 d. Installing gable-end bracing. + 182 e. Reinforcing roof-to-wall connections. + 183 f. Installing storm shutters.; or 184 g. Installing opening protections. 185 h. Installing backup power or battery storage systems. 4. Wastewater treatment improvement, which includes the 186 replacement or improvement of an onsite sewage treatment and 187 188 disposal system with an advanced onsite treatment and disposal 189 system or technology or the replacement of an onsite sewage 190 treatment and disposal system with a central sewage system. For 191 purposes of this section, the term "wastewater treatment 192 improvement" includes repairs or modifications made to an onsite 193 sewage treatment and disposal system under s. 381.0065. 194 5. Flood and water damage mitigation and resiliency 195 improvement, which includes projects and installations: 196 a. To raise a structure above the base flood elevation to 197 reduce flood damage. 198 b. To build or repair a flood diversion apparatus or sea 199 wall improvement, which includes, but is not limited to, seawall 200 repairs and replacements, banks, berms, green-grey 201 infrastructure, upland stem walls, or other infrastructure that

Page 7 of 19

impedes tidal waters from flowing onto adjacent property or

202

203

public right-of-way.

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1208

20211208

39-00420A-21

	
204	c. That use flood damage resistant building materials.
205	d. That mitigate or eliminate the potential for microbial
206	growth.
207	e. That use electrical, mechanical, plumbing, or other
208	system improvements to reduce flood damage.
209	f. That may qualify for reductions in flood insurance
210	premiums.
211	6. Health and environmental hazards measure or improvement,
212	which is a measure or an improvement intended to mitigate
213	harmful health and environmental hazards to property occupants,
214	including measures or improvements that mitigate or remove:
215	a. The presence of lead, heavy metals, polyfluoroalkyl
216	substance contamination, or other harmful contaminants in
217	potable water systems. Improvements may include conversion of
218	well water to municipal water systems, replacement of lead water
219	service lines, or installation of water filters.
220	b. Asbestos.
221	c. Lead paint contamination in housing built before 1978.
222	d. Indoor air pollution or contaminants, including
223	<pre>particulate matter, viruses, bacteria, and mold.</pre>
224	7. Water conservation or efficiency improvement, which is a
225	measure or improvement to reduce the usage of water or increase
226	the efficiency of water usage.
227	(i) "Residential real property" means a residential
228	property of four or fewer dwelling units that may be benefited
229	by installation of a qualifying improvement.
230	(4) Subject to local government ordinance or resolution, a
231	property owner may apply to $\underline{\text{a PACE program}}$ the local government
232	for funding to finance a qualifying improvement and enter into a

Page 8 of 19

39-00420A-21 20211208

PACE assessment contract financing agreement with the local government. Costs incurred by the PACE program local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), is shall not be subject to a discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

- (6) A local government may enter into an agreement with a PACE administrator to administer a PACE program A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- (7) A local government may incur debt for the purpose of providing <u>financing for the such</u> improvements, <u>which is</u> payable from revenues received from the improved property, or any other available revenue source authorized by law.
- (8) A local government may enter into a <u>PACE assessment</u> contract to finance or refinance a qualifying improvement financing agreement only with the record owner of the affected property. Any <u>PACE assessment contract</u> financing agreement entered into pursuant to this section or a summary memorandum of such contract agreement shall be submitted for recording

Page 9 of 19

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1208

	39-00420A-21 20211208_
262	recorded in the public records of the county within which the
263	property is located by the sponsoring unit of local government
264	within 5 days after execution of the $\underline{\text{contract}}$ agreement. The
265	recorded <u>contract</u> agreement shall provide constructive notice
266	that the $\underline{\mathtt{PACE}}$ assessment to be levied on the property
267	constitutes a lien of equal dignity to county taxes and
268	assessments from the date of recordation.
269	(9) Before entering into a PACE assessment contract
270	$\frac{\text{financing agreement}}{\text{financing agreement}}$, the $\frac{\text{local government or the PACE}}{\text{financing agreement}}$
271	$\underline{\text{administrator}}$ $\underline{\text{local government}}$ shall reasonably determine that:
272	$\underline{\text{(a)}}$ All property taxes and any other assessments levied on
273	the same bill as property taxes are $\underline{\text{current}}$ and $\underline{\text{have been}}$ paid
274	and have not been delinquent for the preceding 3 years or the
275	property owner's period of ownership, whichever is less;
276	$\underline{\text{(b)}}$ That there are no involuntary liens, including, but not
277	limited to, construction liens on the property;
278	(c) That no notices of default or other evidence of
279	property-based debt delinquency have been recorded $\underline{\text{and not}}$
280	$\underline{\text{released}}$ during the preceding 3 years or the property owner's
281	period of ownership, whichever is less;
282	(d) The property owner has recorded all other PACE
283	assessments or that the PACE assessments have been funded and
284	not yet recorded on the property; and
285	$\underline{\text{(e)}}$ That the property owner is current on all mortgage debt
286	on the property.
287	(10) Before final funding, a qualifying improvement $\underline{\text{must}}$
288	$\frac{1}{2}$ shall be affixed $\frac{1}{2}$ or plan to be affixed to a $\frac{1}{2}$ commercial or
289	residential real building or facility that is part of the

Page 10 of 19

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

property and shall constitute an improvement to that property

39-00420A-21 20211208

the building or facility or a fixture attached to the building or facility. A PACE assessment contract An agreement between a local government and a qualifying property owner may not cover qualifying wind-resistance improvements on commercial or residential real properties in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

- (12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the just value of the property as determined by the county property appraiser.
- (b) Notwithstanding paragraph (a), a PACE non-ad valorem assessment for a qualifying improvement defined in subparagraph (2) (h)1. (2) (b)1. or subparagraph (2) (h)2. (2) (b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the PACE non-ad valorem assessment.
- assessment contract financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a PACE assessment contract financing agreement together with the maximum principal amount to be financed and the maximum annual PACE assessment necessary to repay that amount. A verified copy or other proof

Page 11 of 19

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1208

of such notice shall be provided to the local government. A provision in any PACE assessment contract agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a PACE assessment contract financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the annual PACE qualifying improvement assessment.

39-00420A-21

(14) At or before the time a purchaser executes a contract for the sale and purchase of any property for which a \underline{PACE} non-ad-valorem assessment has been levied under this section and has an unpaid balance due, the seller \underline{must} shall give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
RENEWABLE ENERGY, FLOOD MITIGATION, OR WIND
RESISTANCE, ADVANCED TECHNOLOGIES FOR WASTEWATER
TREATMENT, ENVIRONMENTAL HEALTH, OR WATER
CONSERVATION.—The property being purchased is located
within the jurisdiction of a local government that has
placed an assessment on the property pursuant to s.
163.08, Florida Statutes. The assessment is for a
qualifying improvement to the property relating to
energy efficiency, renewable energy, flood mitigation,

Page 12 of 19

39-00420A-21

or wind resistance, advanced technologies for

wastewater treatment, environmental health, or water

conservation, and is not based on the value of

property. You are encouraged to contact the county

property appraiser's office to learn more about this

and other assessments that may be provided by law.

- (17) Before entering into a PACE assessment contract for a qualifying improvement on a residential real property, a PACE administrator must reasonably determine that the property owner has an ability to pay the estimated annual PACE assessment based, at a minimum, on the following:
- (a) For property owners seeking PACE financing where the total estimated annual payment amount of all PACE assessments authorized on the property is \$4,800 or less, or the equivalent of \$400 per month, plus an additional amount that represents the rate of inflation established by the United States Bureau of Labor Statistics' Consumer Price Index, the PACE administrator, at a minimum, must use the underwriting requirements in subsection (9) and confirm the property owner is not currently in bankruptcy in determining whether the property owner has a reasonable ability to pay the PACE assessment.
- (b) For property owners seeking PACE financing where the total estimated annual payment amount of all PACE assessments authorized on the property is greater than \$4,800, or the equivalent of \$400 per month, plus an additional amount that represents the rate of inflation established by the United States Bureau of Labor Statistics' Consumer Price Index, the PACE administrator, at a minimum, must use the underwriting

Page 13 of 19

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2021 SB 1208

	39-00420A-21 20211208_
378	requirements in subsection (9), to confirm that the property
379	owner is not in bankruptcy and determine that the total
380	estimated annual payment amount for all the PACE assessment
381	contracts authorized on the property does not exceed 10 percent
382	of the property owner's annual household income. Income may be
383	confirmed using information gathered from reputable third
384	parties that provide reasonably reliable evidence of the
385	property owner's household income. Income may not be confirmed
386	solely from a property owner's statement.
387	(18) Before entering into a PACE assessment contract for a
388	qualifying improvement on a residential real property, the PACE
389	administrator must:
390	(a) Provide a financing estimate and disclosure to the
391	residential real property owner that includes:
392	1. The total amount estimated to be funded, including the
393	cost of the qualifying improvements, program fees, and
394	capitalized interest, if any.
395	2. The estimated annual PACE assessment.
396	3. The term of the PACE assessment.
397	4. The fixed interest charged and estimated annual
398	percentage rate.
399	5. A description of the qualifying improvement.
400	6. A disclosure that if the property owner sells or
401	refinances the property, the property owner, as a condition of
402	the sale or the refinance, may be required by a mortgage lender
403	to pay off the full amount owed under each PACE assessment
404	contract.
405	7. A disclosure that the PACE assessment will be collected
406	along with the property owner's property taxes and will result

Page 14 of 19

39-00420A-21 20211208

 $\underline{\text{in a lien on the property from the date the PACE assessment}}$ contract is executed.

- 8. A disclosure that failure to pay the PACE assessment may result in penalties and fees, along with the issuance of a tax certificate that could result in the property owner losing the real property.
- (b) Conduct, with a residential real property owner or an authorized representative, an oral, recorded telephone call during which time the PACE administrator must use plain language. The PACE administrator must ask the residential real property owner if he or she would like to communicate primarily in a language other than English. A PACE administrator may not leave a voicemail to the residential real property owner to satisfy this requirement. A PACE administrator, as part of this telephone call, must confirm with the residential real property owner:
- 1. That at least one residential real property owner has access to a copy of the PACE assessment contract and financing estimates and disclosures.
 - 2. The qualifying improvement that is being financed.
- 3. The total estimated annual costs that the residential real property owner will have to pay under the PACE assessment contract, including applicable fees.
- 4. The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the PACE assessment, including applicable fees.
- 5. The estimated date the residential real property owner's first property tax payment that includes the PACE assessment

Page 15 of 19

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1208

	39-00420A-21 20211208_
436	will be due.
437	6. The term of the PACE assessment contract.
438	7. That payments for the PACE assessment contract will
439	cause the residential real property owner's annual tax bill to
440	increase, that payments will be made through an additional
441	annual assessment on the property, and will be paid either
442	directly to the county tax collector's office as part of the
443	total annual secured property tax bill or may be paid through
444	the residential real property owner's mortgage escrow account.
445	8. That the qualifying residential property owner has
446	disclosed whether the property has received or is seeking
447	additional PACE assessments and has disclosed all other PACE
448	assessments or special taxes that are or about to be placed on
449	the property.
450	9. That the property will be subject to a lien during the
451	term of the PACE assessment contract and that the obligations
452	$\underline{\text{under the contract may be required to be paid in full before the}}$
453	residential real property owner sells or refinances the
454	<pre>property.</pre>
455	10. That any potential utility or insurance savings are not
456	guaranteed and will not reduce the PACE assessment or total
457	assessment amount.
458	$\underline{\text{11. That the PACE administrator or PACE contractor does not}}$
459	$\underline{\text{provide}}$ tax advice and that the residential real property owner
460	should seek professional tax advice if he or she has questions
461	regarding tax credits, tax deductibility, or other tax impacts
462	$\underline{\text{of}}$ the qualifying improvement or the PACE assessment contract.
463	(19) The residential real property owner may cancel the

Page 16 of 19

PACE assessment contract within 3 business days after signing

39-00420A-21

20211208__

465	the PACE assessment contract without any financial penalty for
466	doing so.
467	(20) The term of a PACE assessment contract on residential
468	real property may not exceed the useful life of the qualifying
469	improvement being installed or the weighted average useful life
470	of all qualifying improvements being financed if multiple
471	qualifying improvements are being financed. A financing term may
472	<pre>not exceed 30 years.</pre>
473	(21) A PACE administrator may not offer PACE assessment
474	financing on any residential real property that includes any of
475	the following:
476	(a) A negative amortization schedule;
477	(b) A balloon payment; or
478	(c) Prepayment fees, other than nominal administrative
479	costs.
480	(22) For residential real property, a PACE administrator:
481	(a) May not enroll a PACE contractor who offers PACE
482	financing on residential real property unless:
483	1. The PACE administrator must make a reasonable effort to
484	review that the PACE contractor maintains in good standing an
485	appropriate license from the state, if applicable, as well as
486	any other permits, licenses, or registrations required for
487	engaging in its business in the jurisdiction where it operates
488	and maintains all state required bond and insurance coverage.
489	2. A PACE administrator obtains the PACE contractor's
490	written agreement that the PACE contractor will act in
491	accordance with all applicable laws, including applicable
492	advertising and marketing laws and regulations.
493	(b) Must maintain a process to enroll new PACE contractors

Page 17 of 19

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.

Florida Senate - 2021 SB 1208

	39-00420A-21 20211208
494	that includes reasonable review of the following for each
495	<pre>contractor:</pre>
496	1. Relevant work or project history.
497	2. Financial and reputational background checks.
498	3. Criminal background check.
499	4. Status on Better Business Bureau or other online
500	platforms that track contractor reviews.
501	(23)(a) Before disbursing funds to a PACE contractor for a
502	qualifying improvement on residential real property, a PACE
503	administrator must first confirm the applicable work or service
504	has been completed, either through written certification from
505	the property owner, a recorded telephone call with the property
506	owner, or a site inspection through third-party means.
507	(b) A PACE administrator may not disclose to a PACE
508	contractor or to a third party engaged in soliciting a PACE
509	assessment contract the maximum PACE financing amount that a for
510	which a residential real property owner is eligible.
511	(24) Each PACE administrator and PACE contractor must
512	comply with the following marketing and communications
513	guidelines when communicating with residential real property
514	owners:
515	(a) A PACE administrator or PACE contractor may not suggest
516	or imply:
517	 That PACE is a government assistance program;
518	2. That qualifying improvements are free or that PACE
519	assessment financing is a free program; or
520	3. That the financing of a qualifying improvement using the
521	PACE program does not require the property owner to repay the
522	financial obligation.

Page 18 of 19

Florida Senate - 2021 SB 1208

523 (b) A PACE administrator or PACE contractor may not make
524 any representation as to the tax deductibility of a PACE
525 assessment on residential real property. A PACE administrator or
526 PACE contractor may encourage a property owner to seek the

20211208

PACE contractor may encourage a property owner to seek the advice of a tax professional regarding tax matters related to

528 PACE assessments.

527

529

530

531

532

533

534

39-00420A-21

(25) A PACE contractor should not present a higher price for a qualifying improvement on residential real property financed by a PACE assessment contract than the PACE contractor would otherwise reasonably present if the qualifying improvement were not being financed through a PACE assessment contract.

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

Page 19 of 19

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ 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: TI	ne Professional Staf	f of the Committee	on Community	Affairs	
BILL:	CS/SB 1214					
INTRODUCER:	Community Affairs Committee and Senator Gruters					
SUBJECT:	Nonprofit Taxation					
DATE:	March 10, 2021	REVISED:				
ANAL	YST S	TAFF DIRECTOR	REFERENCE		ACTION	
. Hackett	Ry	on	CA	Fav/CS		
2			FT			
3.			AP			

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1214 provides that a property's ad valorem tax exemption based on charitable, religious, scientific, or literary use is not affected so long as the predominant use of the property is for such charitable, religious, scientific, or literary purposes.

The provisions of the bill first apply to taxable years beginning on or after January 1, 2022.

The bill takes effect July 1, 2021.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year. The property appraiser annually determines the assessed or "just value"

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla.

BILL: CS/SB 1214 Page 2

of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value." Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Ad Valorem Exemption for Literary, Scientific, Religious, or Charitable Organizations

When calculating ad valorem taxes, a property's value is reduced by any exemptions provided by law, including exemptions for literary, scientific, religious, or charitable purposes.¹¹ The State Constitution allows the Legislature to exempt from ad valorem taxation "such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes."¹² The Legislature implements these exemptions and set forth the criteria to determine whether property is entitled to an exemption.¹³

Section 196.196, F.S., gives tax assessors a guide to assessing and exempting property. ¹⁴ In determining whether the use of a property qualifies the property for a literary, scientific, religious, or charitable exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities. ¹⁵ The portions of the property used predominantly for qualified purposes are exempt from ad valorem taxation, and if the property owned by an exempt organization is used exclusively for exempt purposes, it is totally exempt from ad valorem taxation. ¹⁶

1965); Deltona Corp. v. Bailey, 336 So. 2d 1163 (Fla. 1976); Southern Bell Tel. & Tel. Co. v. Dade County, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ See FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art. VII, s. 3.

¹² FLA. CONST. art. VII, s. 3(a).

¹³ Section 196.196, F.S.

¹⁴ State ex rel. Cragor Co. v. Doss, 150 Fla. 486, 8 So.2d 15 (1942).

¹⁵ Section 196.196(1), F.S.

¹⁶ Section 196.196(2), F.S.

BILL: CS/SB 1214 Page 3

Incidental use of otherwise exempt property for non-exempt purposes does not make the property non-exempt. Likewise, mere incidental literary, scientific, religious, or charitable use of property does not qualify the property for the exemption.¹⁷ For example, a nursing home which operated as a business, collecting fees for services and increasing in value, was not granted a charitable exemption even though, incidental to business operations, they allowed some residents to pay reduced or zero fees.¹⁸

By default, property used for profitmaking purposes is subject to ad valorem taxation.¹⁹ Profitmaking does not include uses not requiring a business or occupational license which produce revenue then used wholly for exempt purposes. For example, hosting bingo on exempt property, the profits from which being used for exempt purposes, does not impair the property's exempt status.²⁰

III. Effect of Proposed Changes:

The bill amends s. 196.196(2), F.S., to clarify that the portions of property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from ad valorem taxation. The bill further provides that an ad valorem exemption is not affected so long as the predominant use of the property is for charitable, religious, scientific, or literary purposes.

The provisions of the bill first apply to taxable years beginning on or after January 1, 2022.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

ns:
١

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁷ Section 196.196(2), F.S.

¹⁸ Haines v. St. Petersburg Methodist Home, Inc., 173 So.2d 176 (Fla 2d DCA 1965).

¹⁹ Section 196.196(4), F.S.

²⁰ Id.

BILL: CS/SB 1214 Page 4

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet reviewed the fiscal impact of this bill.

B. Private Sector Impact:

The bill appears to clarify current statutory provisions, as such, no or minimal fiscal impact is expected.

C. Government Sector Impact:

The bill appears to clarify current statutory provisions, as such, no or minimal fiscal impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.196 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.)

CS by Community Affairs on March 10, 2021:

The committee substitute removes the provisions of the underlying bill and provides that an ad valorem exemption for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of the property is for such exempt purpose. The committee substitute also provides that the provisions of the bill first apply to taxable years beginning on or after January 1, 2022.

B. Amendments:

None.

LEGISLATIVE ACTION Senate House Comm: RCS 03/11/2021

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

Senate Amendment (with title amendment)

3

1

2

4

7

8

9

10

Delete everything after the enacting clause and insert:

5 6

Section 1. Subsection (2) of section 196.196, Florida Statutes, is amended to read:

196.196 Determining whether property is entitled to charitable, religious, scientific, or literary exemption.-

(2) Only those portions of property used predominantly for charitable, religious, scientific, or literary purposes are



shall be exempt. The portions of property which are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt. However, an exemption is not affected so long as the predominant use of the property is for charitable, religious, scientific, or literary purposes. In no event shall an incidental use of property either qualify such property for an exemption or impair the exemption of an otherwise exempt property.

Section 2. The amendments made by this act to s. 196.196, Florida Statutes, first apply to taxable years beginning on or after January 1, 2022, and do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 3. This act shall take effect July 1, 2021.

2.5 26

27

28

29

30

31

32

33

34 35

36

37

11

12

13 14

15

16

17

18

19

20

21

22

23

24

======== 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 nonprofit taxation; amending s. 196.196, F.S.; specifying that portions of property not used for certain purposes are not exempt from ad valorem taxation; specifying that exemptions from ad valorem taxation are not affected so long as portions of property are used for certain purposes; providing applicability; 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)

3/10/21	nee of this form to the cond	ior or ochato i rolessionar	otali conducting the meeting	<u> 5B1214</u>
Meeting Date				Bill Number (if applicable)
Topic		9-9/14/14/14/14	Amer	dment Barcode (if applicable)
Name Loren Levy				
Job Title <u>General Com</u>	sel, Proper	ty Appraisers	· Assnof Fla	E
Address 1828 Peggs	RA	. ,	_ Phone_ 880-3	219-0220
Tallahassee	PL	32308	_ Email //evy@	2 levy law tap. com
City	State	Zip	S	
Speaking: For Against	Information		speaking: In Suair will read this inform	pport Against nation into the record.)
Representing				
Appearing at request of Chair:	Yes No	Lobbyist regis	tered with Legisla	ture: Yes No
While it is a Senate tradition to encourage meeting. Those who do speak may be as				
This form is part of the public record for	or this meeting.			S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

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

THE FLORIDA SENATE

3/10/21	APPEARANCE	RECO	RD	1214
Meeting Date				Bill Number (if applicable)
Topic Nonprofit Taxation			_	Amendment Barcode (if applicable)
Name Greg Black			-	
Job Title Lobbyist			<u>.</u>	
Address 1727 Highland Place			Phone 850	-509-8022
Street Tallahassee	FL	32308	Email Greg	@WaypointStrat.com
City Speaking: For Against	State Information		speaking:	In Support Against information into the record.)
Representing Florida Nonpro	ofit Alliance			
Appearing at request of Chair: [While it is a Senate tradition to encoura meeting. Those who do speak may be a	ge public testimony, time may r	ot permit all	l persons wishir	gislature: Yes No ng to speak to be heard at this ssible can be heard.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Meeting Date (Deliver BOTH copies of this form to the Senator or Senate Profes	ssional Staff conducting the meeting) 12/4 Bill Number (if applicable)
Topic PRESERVING CHARITABLE PROPERTY TAX EX Name JERRY PAUL	1 EGAGIA DE
Job Title	
Address	Phone 850 - 386-526>
City State Zip Speaking: Against Information Wa (The	ive Speaking: In Support Against e Chair will read this information into the record.)
Representing SELBY BOTANICAL GARDENS	
Appearing at request of Chair: Yes No Lobbyist r	egistered with Legislature: Yes No
While it is a Senate tradition to encourage public testimony, time may not per meeting. Those who do speak may be asked to limit their remarks so that as	mit all persons wishing to speak to be heard at this many persons as possible can be heard.
This form is part of the public record for this meeting.	S-001 (10/14/14)

Florida Senate - 2021 SB 1214

By Senator Gruters

23-00492-21 20211214_ A bill to be entitled

An act relating to nonprofit taxation; amending s. 196.196, F.S.; specifying conditions for retaining an ad valorem tax exemption for certain property used for certain purposes; defining the term "incidental use"; providing an effective date.

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

Section 1. Subsection (2) of section 196.196, Florida Statutes, is amended to read:

196.196 Determining whether property is entitled to charitable, religious, scientific, or literary exemption.—

(2) Only those portions of property used predominantly for charitable, religious, scientific, or literary purposes are shall be exempt. In no event may shall an incidental use of property either qualify such property for an exemption or impair the exemption of an otherwise exempt property. In order to retain the exemption of an otherwise exempt property, the revenue derived from the incidental use of the property must support the charitable, religious, scientific, or literary purposes for which the property is used. For purposes of this section, the term "incidental use" means any use that is ancillary, supportive, or subordinate to the predominant use and includes uses by vendors in privity with the applicant.

Page 1 of 1

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

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: Th	e Professional Staf	f of the Committee	on Communit	y Affairs	
BILL:	CS/SB 1788					
INTRODUCER:	Community Affairs Committee and Senator Boyd					
SUBJECT:	Construction Perm	nits				
DATE:	March 10, 2021	REVISED:				
ANAL	YST ST	AFF DIRECTOR	REFERENCE		ACTION	
. Hackett	Ryc	on	CA	Fav/CS		
2.			GO			
3.		_	RC			

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1788 makes various amendments to the Florida Building Codes Act and related statutes.

The bill requires local governments to review additional information for an application for a development permit or development order within a certain time-period.

The bill requires local enforcement agencies to:

- Post each building permit application, including a list of any required attachments, such as drawings or plans, on their websites;
- Allow applicants to submit completed building permit applications electronically including any required payments and attachments, such as plans;
- Post the current status of every received building permit application on their website; and
- Post their procedures for reviewing, processing, and approving building permit applications on their websites.

The bill requires government entities which enforce the Building Code that fail to meet current established deadlines for reviewing single-family residential building permit applications to reduce the fees and surcharges for such permits for every business day that they miss the deadline, except under certain circumstances.

The bill requires government entities that deny a building permit application for a single-family residential dwelling to allow the applicant 10 business days to correct the application.

The bill prohibits government entities from requiring a copy of a contractor's contract with owners, subcontractors, or suppliers in order to obtain a building permit for projects on commercial property. This does not apply to projects for improvements owned or leased by a government entity.

The bill takes effect October 1, 2021.

II. Present Situation:

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,¹ also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.² The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The intent of the Act is that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.³ A housing element is required as part of every comprehensive plan in the state. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."⁴

Municipalities established after the effective date of the Community Planning Act must adopt a comprehensive plan within three years after the date of incorporation.⁵ The county comprehensive plan controls until a municipal comprehensive plan is adopted.⁶

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.⁷

Issuing Development Orders and Permits

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special

¹ See ch. 85-55, s. 1, Laws of Fla.

² See ch. 2011-139, s. 17, Laws of Fla.

³ Section 163.3161(4), F.S.

⁴ Section 163.3177(6)(f)1.g., F.S.

⁵ Section 163.3167(3), F.S.

⁶ *I A*

⁷ Section 163.3202, F.S.

exceptions, and variances.⁸ A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.⁹

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.¹⁰

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues. ¹¹ If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant can request the county or municipality proceed to process the application for approval or denial. ¹² If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit. ¹³

Prior to 2019, there was no specified timeframes provided in current statute for reviewing an application for a development permit, development order, or additional information requested by a county or municipality.¹⁴

In 2019, the Legislature imposed requirements and time limits for a county or municipality to review an application for a development permit or development order, not including building permit applications, and provided procedures for addressing deficiencies in an application.¹⁵

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specify the deficiencies within 30 days after receiving the application. ¹⁶ If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information. ¹⁷

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.¹⁸

Current law specifies how long an applicant has to submit additional information to a local government. However, current law does not specify how long a local government has to review the additional information and determine if the application is complete or still deficient.

⁸ Section 163.3164(16), F.S.

⁹ See ss. 125.022, 163.3164(15), and 166.033, F.S.

¹⁰ Sections 125.022(1) and 166.033(1), F.S.

¹¹ *Id*.

¹² Id

¹³ Sections 125.022(2) and 166.033(2), F.S.

¹⁴ Sections 125.022(1) and 166.033(1), F.S. (2018).

¹⁵ See House Analysis of 2019 House Bill 7103 (Jul. 1, 2019).

¹⁶ Sections 125.022(1) and (2), and 166.033 (1) and (2), F.S.

¹⁷ *Id*.

¹⁸ *Id*.

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹⁹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.²⁰ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.²¹

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. ²²

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council, ²³ the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years. ²⁴

Enforcement of the Florida Building Code

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

¹⁹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).

²⁰ Id.; DBPR, Building Code Information System, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).

²¹ Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 21, 2021).

²² See S. 553.72(1), F.S.

²³ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 21, 2021).

²⁴ Sections 553.73, & 553.74, F.S.

welfare.²⁵ Every local government must enforce the Florida Building Code and issue building permits.²⁶

State universities, Florida College System institutions, and public school districts enforce the Building Code for their building projects, including conducting plan review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plan examiners, and may elect to use a local government's building department to review plans and perform inspections.²⁷

Current law also provides that state agencies may enforce the Building Code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity. ²⁸ Current law provides that: ²⁹

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

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency. A building permit is not valid until the fees for the permit have been paid. 31

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.³² A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.³³ Any construction work that requires a

²⁵ Section 553.72, F.S.

²⁶ Sections 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

²⁷ Section 553.80(6), F.S.

²⁸ Sections 255.31(1), and 553.80(1), F.S.

²⁹ *Id*.

³⁰ See Ss. 125.56(4)(a) & 553.79(1), F.S.

³¹ Section 109.1 of the Seventh edition of the Florida Building Code (Building).

³² Section 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).

³³ Section 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).

building permit also requires plans and inspections by the building official to ensure the work complies with the Building Code.³⁴

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule and a utilization report³⁵ on its website.³⁶

A local government's permit and inspection fees must be used solely for carrying out that local government's responsibilities in enforcing the Building Code. This includes:³⁷

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

DBPR Surcharges

Current law requires all local governments to assess and collect a 1% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Florida Building Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.³⁸

Current law also requires all local governments to assess and collect a separate 1.5% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code.

The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the BCAIB and the Florida Homeowners' Construction Recovery Fund.³⁹

Local government building departments are permitted to retain 10% of the amount of the surcharges they collect to fund participation by their agencies in the national and state building

³⁴ Sections 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).

³⁵ The utilization report must include the local government's direct and indirect costs for enforcing the Building. S. 553.80(7), F.S.

³⁶ Sections 125.56(2) and (4), 166.222, and 553.80(7), F.S.

³⁷ Section 553.80(7), F.S.

³⁸ Section 553.721, F.S.

³⁹ Section 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. Section 489.1401(2), F.S.

code adoption processes and to provide education related to enforcement of the Florida Building Code. 40

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction. Delays in the completion of a construction project may:⁴¹

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

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:⁴²

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

List of Required Items for Applications and Electronic Submission of Applications – Current Situation

A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code. 43

Current law requires local enforcement agencies to post each type of building permit on their website.⁴⁴ Current law also requires local enforcement agencies to allow applicants to submit

⁴⁰ Sections 468.631, and 553.721, F.S.

⁴¹ City of Austin Development Services Department, A Program for Expedited Permitting, http://austintexas.gov/sites/default/files/files/8-9-2016 Report on Expedited Permitting Program.pdf (last visited Feb. 22, 2021); PricewaterhouseCoopers, The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues, (Dec. 7, 2005).

⁴² *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf (last visited Feb. 24, 2021).

⁴³ Section 553.71(5), F.S.

⁴⁴ Sections 125.56(4)(b) & 553.79(1)(b), F.S.

applications electronically, except owners who are acting as contractor under the owner-builder exemption. ⁴⁵ Accepted methods of electronic submission include, but are not limited to: ⁴⁶

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

However, it is not clear if current law requires local enforcement agencies to:

- Post a list or identify other items required as part of the application for each type of building permit on their websites;
- Allow applicants to electronically submit items required as part of a building permit application including payments, attachments, or drawings; or
- Post the status of building permit applications on their websites.

Some local governments list the items required as part of an application, allow applicants to electronically submit items required as part of an application, and post the status of building permit applications on their websites, while others do not.⁴⁷

Proponents argue that posting a list containing all the required information for each type of building permit and the status of every received application saves time by reducing phone calls and emails to building department staff. It also reduces the number of applications that are denied due to misunderstanding about what materials and information must be provided.⁴⁸

Proponents argue that allowing applicants to submit applications electronically, including all required items, saves time and money for builders and developers by shortening the turn-around time for processing most building permits, and by preventing them from having to travel to and from a building department during business hours to drop off the required items.⁴⁹

They also argue that it helps building departments by reducing the cost of printing documents, eliminating archiving costs, easing the burden of managing paper documents, and consolidates

⁴⁵ Current law requires property owners who are acting as a contractor under the owner-builder exemption to personally appear at a local enforcement agency to sign the building permit. Sections 489.103(7), & 489.503(7), F.S.

⁴⁶ Sections 125.56(4)(b) & 553.79(1)(b), F.S.

⁴⁷ City of Miramar, *Building, Permits & Inspections*, https://www.miramarfl.gov/150/Building-Permits-Inspections (last visited Feb. 25, 2021); City of Orlando, *Permits & Inspections*, https://www.orlando.gov/Building-Development/Permits-Inspections (last visited Feb. 24, 2021); Union County, *Building Department*, https://www.cityofcounty-fl.gov/building-department/ (last visited Feb. 25, 2021); City of Crestview, *Building Permits & Inspections*, https://www.cityofcrestview.org/161/Building-Permits-Inspections (last visited Feb. 25, 2021).

https://www.cityofcrestview.org/161/Building-Permits-Inspections (last visited Feb. 25, 2021).

https://www.cityofcrestview.org/161/Building-Permits-Inspections (last visited Feb. 25, 2021).

https://www.builderonline.com/building/regulation-policy/seven-keys-to-alleviating-permitting-pain_o (last visited Feb. 24, 2021); E-Gov Link, How to Streamline your Local Government Permitting Process, (Aug. 28, 2019) https://www2.egovlink.com/how-to-streamline-your-local-government-permitting-process/ (last visited Feb. 24, 2021)

⁴⁹ Building Officials Association of Florida, Florida Engineering Society, AIA Florida, *Building Department Guide to Creating and Processing Electronic Construction Documents*,

http://www.aiafla.org/upload_documents/BuildingDepartmentGuidetoCreatingandProcessingElectronicDocuments.pdf (last visited Feb. 25, 2021); *See* The Florida Channel, 1/27/ 2021 House Regulatory Reform Subcommittee, https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/ (last visited Feb. 19, 2021).

the plan review process by having documents stored on a network server that is available to multiple departments and employees.⁵⁰

Building departments note that the cost to post the list of required items and the status of received building permit applications, and the cost to transition from paper documents to electronic documents is expensive and it is not easy or quick.⁵¹ Additionally a building department may have to devote limited resources to updating the list of required items and the status of received building permit applications.⁵²

Time-Period to Review Building Permit Applications

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:⁵³

- Accessory structure;
- Alarm permit;
- Nonresidential buildings less than 25,000 square feet;
- Electric:
- Irrigation permit;
- Landscaping;
- Mechanical;
- Plumbing;
- Residential units other than a single family unit;
- Multifamily residential not exceeding 50 units;
- Roofing;
- Signs;
- Site-plan approvals and subdivision plats not requiring public hearings or public notice;
- Lot grading and site alteration associated with the permit application set forth in this subsection;
- Master building permits; and
- Single-family residential buildings.

When a local government receives an application for one of the above building permits, except master building permits and single-family residential buildings, it must:⁵⁴

- Inform the applicant within 10 days of receiving the application, what information, if any, is needed to complete the application.
 - o 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.

⁵⁰ Id.

⁵¹ *Id.*; The Community Development Director for the City of Auburndale testified that the cost for them to purchase the software necessary for the switch to electronic documents cost \$90,000. *See* The Florida Channel, *supra* note 49.

⁵² The Massachusetts Association of Regional Planning Agencies, *A Best Practices for Streamlined Local Permitting*, (Nov. 30, 2007), http://www.pvpc.org/sites/default/files/BEST%20PRACTICES%20GUIDE 0.pdf (last visited Feb. 24, 2021).

⁵³ Section 553.792(2), F.S.

⁵⁴ Section 553.792(1), F.S.

• Notify the applicant within 45 days of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;

- o If additional information is needed the local government must specify what additional information is necessary.
- The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.
 - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

These time-periods do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.⁵⁵

If a local government receives a complete master building permit application, it must approve or deny the application within 120 days of receiving the completed application, unless the applicant agrees to a longer period.⁵⁶

If any government entity with authority to enforce the Building Code receives an application for a building permit for single-family residential dwelling, it must issue the permit within 30 business days of receiving the application, unless the application fails to satisfy the Building Code or the enforcing agency's laws or ordinances, or unusual circumstances require a longer time-period for processing the application.⁵⁷

Current law provides time-periods for when government entities must review certain building permit applications. However, current law does not provide any penalty if a government entity fails to comply with the deadlines established by current law.

Required Information in Building Permit Application

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:⁵⁸

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description; and
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and

⁵⁶ Section 553.794(5)(c), F.S. A master building permit is intended for builders who expect to construct identical single- or two-family dwellings or townhomes. Once a builder obtains a master building permit, he or she is not required to obtain a new permit for single- two-family dwelling or townhome as long as the dwelling or townhome is built to the specifications in the master building permit. *See* 553.794, F.S.

⁵⁵ *Id*.

⁵⁷ Section 553.79(14), F.S.

⁵⁸ Sections 713.135(5) and (6), F.S.

• The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.⁵⁹

According to testimony offered during the meeting of the Florida House of Representatives Regulatory Reform Subcommittee, many local governments use the cost of construction as a factor ⁶⁰ for determining the amount of a fee for a building permit. ⁶¹ Some local governments are requiring contractors to include their contracts with private owners in order to obtain building permits so that the local government can determine the contract's construction cost and construction value. ⁶² Although these contracts may contain private proprietary information, when local governments request them they may become public documents. ⁶³

III. Effect of Proposed Changes:

Issuing Development Orders and Permits

The bill provides that if a county or municipality makes a request for additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or municipality must review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within 30 days of receiving the information for the county or municipality's first request, within 10 days for the second request, and must deem the application complete within 10 days of receiving the information or proceed to process the application for approval or denial unless the applicant waived the county or municipality's time limitations in writing, if the request is the county or municipality's third request.

List of Items Required for Applications and Electronic Submission of Applications

The bill clarifies that local enforcement agencies must:

 Post each type of building permit application on their website, including a list of all required attachments, drawings, and any other requirements that are required for each type of application.

⁵⁹ *Id*.

⁶⁰ The International Code Council has created two equations to help jurisdictions determine their permit fee schedules. Two factors of the factors in the equations are the valuation of the construction cost of the project, and the value of all the construction in the jurisdiction in the previous year. *See* International Code Council, *Building Valuation Data – February* 2020, https://www.iccsafe.org/wp-content/uploads/BVD-BSJ-FEB20.pdf (last visited Feb. 21, 2021).

⁶¹ City of Miami, City of Miami Building Permit Fee Schedule, https://www.miamigov.com/Services/Building-Permit-Fee-Schedule (last visited Feb. 21, 2021); St. Lucie County, Building Permit Fees, https://www.stlucieco.gov/Home/ShowDocument?id=1330 (last visited Feb. 21, 2021); City of Seminole, City of Seminole Permit Fee Schedule, https://www.myseminole.com/Building/Docs/Permit_Fees.pdf (last visited Feb. 21, 2021).

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

⁶³ Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record made or received in connection with official business of any public body, including counties, municipalities, and districts. Current law does not contain an exemption from Florida's public records laws for proprietary business information included in a building permit application. *See generally*, ch. 119. F.S.

• Post the status of received building permit applications online, and update the status.

- A local enforcement agency does not have to post the status of a received building permit application if it has issued a permit for the application.
- Allow building permit applicants to electronically submit applications, including all attachments, payments, drawings, and any other requirements that are required as part of the application.
 - Applications, including attachments, payments, drawings, and any other requirements or parts that are required as part of the application, may also be submitted in person at the discretion of the building official.

The bill also requires that a county or local enforcement agency post its procedures for processing, reviewing, and approving submitted building permit applications on its website.

Time-Period to Review Building Permit Applications

The bill provides that if a government entity with authority to enforce the Building Code fails to approve an application for a single-family residential dwelling building permit within 30 business days of receiving the application, it must reduce the building permit fee by 10 percent of the original permit fee for each business day that the enforcing agency fails to meet the deadline.

A government entity does not have to reduce the fee for a single-family residential dwelling building permit, if:

- It provides written notice to the applicant, by email or USPS mail within 30 business days of receiving the application; and
- The written notice specifically states how the application fails to satisfy the Building Code, or the government entity's laws or ordinances.

An applicant has 10 business days to address the reasons specified in the government entity's notice. If the applicant submits revisions to the government entity within 10 business days of receiving the notice, the government entity must approve or deny the permit within 10 business days of receiving the applicant's revisions.

If a local enforcing agency fails to approve or deny the permit within 10 business days of receiving the applicant's revisions, it must:

- Reduce the permit fee by 20 percent of the original permit fee for the first business day that it fails to meet the deadline; and
- An additional 10 percent of the original permit fee for each business day that it fails to meet the deadline, for up to five business days.

A government entity does not have to reduce the permit fee if the applicant agrees to a longer period in writing.

The bill provides that if a local building department fails to meet building permit decision timelines, or fails to approve a master building permit application within 120 business days of receiving the application, it must reduce the building permit fee by 10 percent of the original permit fee for each business day that the enforcing agency fails to meet the deadline, unless the applicant agrees to a longer time period.

If any permit and inspection fees are refunded because of the above, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

Required Information in Building Permit Application

The bill prohibits a government entity from requiring a contract between an owner and a contractor or a contract between a contractor and a subcontractor or material supplier as a condition to apply for or obtain a building permit for construction work on a commercial property.

However, this does not apply to any construction projects for improvements that are owned or leased by a government entity.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(a) of the Florida Constitution states in part that no county or municipality shall be bound by a general law requiring the county or municipality to spend funds or take an action that requires the expenditure of funds. The bill may implicate this constitutional restriction, to the extent that local governments must expend funds to accommodate the posting of additional building permit information online or to update systems in order to accept additional building permit documentation electronically. However, the mandate requirements do not apply to laws having an insignificant impact, 64 which for Fiscal Year 2020-2021 is forecast at \$2.2 million. 65

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁶⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited March 10, 2021)

⁶⁵ Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited March 10, 2021).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive impact by decreasing the time it takes to obtain a building permit, possibly decreasing the time and cost to complete projects.

C. Government Sector Impact:

Local governments may need to expend funds to accommodate the additional requirements pertaining to electronic processing and posting of building permit information. The amount of permit fees to be refunded by local governments for failing to timely review a permit application is indeterminate, but likely insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.022, 125.56, 166.033, 553.79, 553.792, 553.794, and 713.135.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Community Affairs on March 10, 2021:

The committee substitute:

- Provides that when a local government makes an initial request for additional information and receives a response within 30 days, the local government must, within 30 days, review the additional information and issue a letter indicating that all required information has been submitted or specify areas that are deficient.
- Provides that if any permit and inspection fees are refunded under the provisions of the bill, the associated DBPR surcharges must be recalculated based on the amount of the permit and inspection fees after the refund.

B. Amendments:

None.

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

	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/11/2021		
	•	
	•	
	·	

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

Senate Amendment (with title amendment)

2 3

5

6

7

8

9

10

1

Delete lines 34 - 261

4 and insert:

> Section 1. Subsection (2) of section 125.022, Florida Statutes, is amended to read:

125.022 Development permits and orders.-

(2) (a) When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a county may not request additional

12

13

14 15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39



information from the applicant more than three times, unless the applicant waives the limitation in writing.

- (b) If a county makes a request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the county must review the application for completeness and issue a letter indicating that all required information has been submitted or specify with particularity any areas that are deficient within 30 days after receiving the additional information.
- (c) If a county makes a second request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the county must review the application for completeness and issue a letter indicating that all required information has been submitted or specify with particularity any areas that are deficient within 10 days after receiving the additional information.
- (d) Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. If a county makes a third request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the county must deem the application complete within 10 days after receiving the additional information or proceed to process the application for approval or denial unless the applicant waived the county's limitation in writing as described in paragraph (a).
- (e) Except as provided in subsection (5), if the applicant believes the request for additional information is not



authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

Section 2. Paragraph (b) of subsection (4) of section 125.56, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

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

(4)

40

41

42

43

44 45

46

47

48

49

50

51

52

53

54

55 56

57

58

59

60

61

62

6.3

64

65 66

67

68

(b) A county that issues building permits shall post each type of building permit application, including a list of all required attachments, drawings, or other requirements for each type of application, on its website. A county must post and update the status of every received application on its website until the issuance of the building permit. Completed applications, including payments, attachments, drawings, or other requirements or parts of the completed permit application, must be able to be submitted electronically to the county building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in Portable Document Format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Completed applications, including payments, attachments, or drawings, or other requirements or parts required as part of the completed permit application, may also be submitted in person in a nonelectronic format, at the discretion of the building official.

70

71 72

73

74

75

76

77 78

79

80

81 82

83

84

85

86

87

88

89

90

91

92 93

94 95

96

97



(f) A county that issues building permits must post its procedures for processing, reviewing, and approving submitted building permit applications on its website.

Section 3. Subsection (2) of section 166.033, Florida Statutes, is amended to read:

166.033 Development permits and orders.-

- (2)(a) When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.
- (b) If a municipality makes a request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the municipality must review the application for completeness and issue a letter indicating that all required information has been submitted or specify with particularity any areas that are deficient within 30 days after receiving the additional information.
- (c) If a municipality makes a second request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the municipality must review the application for completeness and issue a letter indicating that all required information has been submitted or specify with particularity any areas that are deficient within 10 days after receiving the additional information.
- (d) Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve

99

100

101

102

103

104

105

106 107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

125

126



outstanding issues. If a municipality makes a third request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the municipality must deem the application complete within 10 days after receiving the additional information or proceed to process the application for approval or denial unless the applicant waived the municipality's limitation in writing as described in paragraph (a).

(e) Except as provided in subsection (5), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

Section 4. Paragraph (b) of subsection (1) and subsection (14) of section 553.79, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) of that section, to read:

553.79 Permits; applications; issuance; inspections.-(1)

(b) A local enforcement agency shall post each type of building permit application, including a list of all required attachments, drawings, or other requirements for each type of application, on its website. A local enforcement agency must post and update the status of every received application on its website until the issuance of the building permit. Completed applications, including payments, attachments, drawings, or other requirements or parts of the completed permit application, must be able to be submitted electronically to the appropriate building department. Accepted methods of electronic submission

128

129

130

131

132

133

134

135 136

137

138

139

140

141

142

143

144

145

146

147

148

149 150

151 152

153

154

155



include, but are not limited to, e-mail submission of applications in Portable Document Format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Completed applications, including payments, attachments, or drawings, or other requirements or parts required as part of the completed permit application, may also be submitted in person in a nonelectronic format, at the discretion of the building official.

- (d) A local enforcement agency must post its procedures for processing, reviewing, and approving submitted building permit applications on its website.
- (14) A building permit for a single-family residential dwelling must be issued within 30 business working days after receiving the permit of application therefor unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.
- (a) If a local enforcement agency fails to issue a building permit for a single-family residential dwelling within 30 business days after receiving the permit application, it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee.
- (b) A local enforcement agency does not have to reduce the building permit fee if it provides written notice to the applicant, by e-mail or United States Postal Service, within 30

157

158 159

160

161

162

163

164

165

166

167

168

169

170

171

172 173

174

175

176

177

178

179 180

181

182

183

184



business days after receiving the permit application that specifically states the reasons why the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

- (c) The applicant has 10 business days after receiving the written notice to address the reasons specified by the local enforcement agency and submit revisions to correct the permit application. If the applicant submits revisions within 10 business days after receiving the written notice, the local enforcement agency has 10 business days after receiving such revisions to approve or deny the building permit unless the applicant agrees to a longer period in writing. If the local enforcement agency fails to issue or deny the building permit within 10 business days after receiving the revisions, it must reduce the building permit fee by 20 percent for the first business day that it fails to meet the deadline unless the applicant agrees to a longer period in writing. For each additional business day, but not to exceed 5 business days, that the local enforcement agency fails to meet the deadline, the building permit fee must be reduced by an additional 10 percent. Each reduction shall be based on the original amount of the building permit fee.
- (d) If any building permit fees are refunded under this subsection, the surcharges provided in s. 468.631 or s. 553.721 must be recalculated based on the amount of the building permit fees after the refund.

Section 5. Section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government.

186

187 188

189

190

191

192

193

194

195

196

197

198

199

200

201

202

203

204

205

206

207

208

209

210

211

212

213



(1)(a) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure major or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(b) If a local government fails to meet a deadline provided in paragraph (a), it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time.

215

216 217

218

219

220

221

222

223 224

225

226

227

228

229

230

231

232

233

234

235

236

237

238

239

240

241

242



(2) (a) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

(b) If a local government has different timeframes than the timeframes set forth in subsection (1) for reviewing building permit applications described in paragraph (a), the local government must meet the deadlines established by local ordinance. If a local government does not meet an established deadline to approve, approve with conditions, or deny an application, it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time. This paragraph does not apply to permits for any wireless communications facilities.

(3) If any building permit fees are refunded under this section, the surcharges provided in s. 468.631 or s. 553.721 must be recalculated based on the amount of the building permit fees after the refund.



243 Section 6. Paragraph (c) of subsection (5) of section 244 553.794, Florida Statutes, is amended to read: 553.794 Local government residential master building permit 245 246 program.-247 (5) MASTER BUILDING PERMIT APPLICATION APPROVAL PROCESS.— 248 (c) The local building department must approve or deny a 249 master building permit application within 120 days after the 250 local building department receives a completed application, 251 unless the applicant agrees to a longer period. If a local 252 building department fails to approve or deny a master building 253 permit application within 120 days after receiving the completed 254 permit application, it must reduce the master building permit 255 fee by 10 percent for each business day that it fails to meet 256 the deadline, unless the applicant agrees to a longer time 257 period. Each 10 percent reduction shall be based on the original 258 amount of the master building permit fee. If any master building 259 permit fees are refunded, the surcharges provided in s. 468.631 260 or s. 553.721 must be recalculated based on the amount of the 261 master building permit fees after the refund. 262 263 ======= T I T L E A M E N D M E N T ========= 264 And the title is amended as follows: 265 Delete lines 3 - 26 and insert: 266 267 125.022, F.S.; revising the requirements for when a 268 county may request certain information; amending s. 269 125.56, F.S.; requiring a county that issues building 270 permits to post certain building permit information on

its website; authorizing all components of a completed

271

272

273

274

275

276

277

278 279

280

281

282 283

284

285

286

287

288

289

290

291

292

293

294



application to be submitted electronically or in person; amending s. 166.033, F.S.; revising the requirements for when a municipality may request certain information; amending s. 553.79, F.S.; requiring a local enforcement agency to post certain building permit information on its website; authorizing all components of a completed application to be submitted electronically or in person; requiring a local enforcement agency to reduce a building permit fee by a specified percentage for failing to meet certain deadlines; providing an exception; requiring the reduction of a building permit fee to be based on the original amount of such fee; requiring certain surcharges to be recalculated under certain conditions; amending ss. 553.792 and 553.794, F.S.; requiring a local government or a local building department, respectively, to reduce a building permit fee or master building permit fee, as applicable, by a specified percentage for failing to meet certain deadlines; providing exceptions; requiring certain surcharges to be recalculated under certain conditions; making technical changes; amending s. 713.135,

By Senator Boyd

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

21-01733A-21 20211788

A bill to be entitled An act relating to construction permits; amending s. 125.022, F.S.; revising procedures for counties reviewing applications for development permits and orders; amending s. 125.56, F.S.; revising requirements for a county to post certain information on its website; requiring that certain items be able to be submitted electronically to the building department; amending s. 166.033, F.S.; revising procedures for municipalities reviewing applications for development permits and orders; amending s. 553.79, F.S.; revising requirements for a local enforcement agency to post certain information on its website; requiring that certain items be able to be submitted electronically to the building department; revising procedures for the issuance of building permits for single-family residential dwellings; requiring local enforcing agencies to reduce building permit fees under certain circumstances; providing requirements for such reductions; amending s. 553.792, F.S.; requiring local governments to reduce building permit fees under certain circumstances; providing requirements for such reductions; providing applicability; amending s. 553.794, F.S.; requiring local building departments to reduce building permit fees under certain circumstances; amending s. 713.135, F.S.; prohibiting authorities from requiring applicants to provide certain contracts as a condition of receiving a building permit; providing

Page 1 of 10

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2021 SB 1788

20211788

21-01733A-21

30	applicability; providing an effective date.
31	
32	Be It Enacted by the Legislature of the State of Florida:
33	
34	Section 1. Subsection (2) of section 125.022, Florida
35	Statutes, is amended to read:
36	125.022 Development permits and orders
37	(2) $\underline{\text{(a)}}$ When reviewing an application for a development
38	permit or development order that is certified by a professional
39	listed in s. 403.0877, a county may not request additional
40	information from the applicant more than three times, unless the
41	applicant waives the limitation in writing.
42	(b) If a county makes a second request for additional
43	$\underline{\text{information}}$ and the applicant submits the required additional
44	information within 30 days after receiving the request, the
45	$\underline{\text{county must review the application for completeness and issue }\underline{\text{a}}$
46	letter indicating that all required information has been
47	submitted or specify with particularity any areas that are
48	deficient within 10 days after receiving the additional
49	information.
50	(c) Before a third request for additional information, the
51	applicant must be offered a meeting to attempt to resolve
52	outstanding issues. <u>If a county makes a third request for</u>
53	additional information and the applicant submits the required
54	additional information within 30 days after receiving the
55	request, the county must deem the application complete within 10
56	days or proceed to process the application for approval or
57	denial unless the applicant waived the county's limitation in
58	writing as described in paragraph (a).

Page 2 of 10

21-01733A-21 20211788

(d) Except as provided in subsection (5), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

Section 2. Paragraph (b) of subsection (4) of section 125.56, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

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

(4)

59

60

61

62

63

64 65

67

68

69

70

71

72

73 74

75

77

78

79

80

81

82

8.3

85

86

(b) A county that issues building permits shall post each type of building permit application, including a list of all required attachments, drawings, or other requirements for each type of application, on its website. A county must post and update the status of every received application on its website until the issuance of the building permit. Completed applications, including payments, attachments, drawings, or other requirements or parts of the completed permit application, must be able to be submitted electronically to the county building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in Portable Document Format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Completed applications, including payments, attachments, or drawings, or other requirements or parts required as part of the completed permit

Page 3 of 10

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1788

20211788

21-01733A-21

88	application, may $\underline{\text{also}}$ be submitted in person in a nonelectronic
89	format, at the discretion of the building official.
90	(f) A county that issues building permits must post its
91	procedures for processing, reviewing, and approving submitted
92	building permit applications on its website.
93	Section 3. Subsection (2) of section 166.033, Florida
94	Statutes, is amended to read:
95	166.033 Development permits and orders
96	(2) $\underline{\text{(a)}}$ When reviewing an application for a development
97	permit or development order that is certified by a professional
98	listed in s. 403.0877, a municipality may not request additional
99	information from the applicant more than three times, unless the
100	applicant waives the limitation in writing.
101	(b) If a municipality makes a second request for additional
102	information and the applicant submits the required additional
103	information within 30 days after receiving the request, the
104	municipality must review the application for completeness and
105	issue a letter indicating that all required information was
106	submitted or specify with particularity any areas that are
107	deficient within 10 days after receiving the additional
108	information.
109	$\underline{\text{(c)}}$ Before a third request for additional information, the
110	applicant must be offered a meeting to attempt to resolve
111	outstanding issues. If a municipality makes a third request for
112	additional information and the applicant submits the required
113	additional information within 30 days after receiving the
114	request, the municipality must deem the application complete
115	within 10 days or proceed to process the application for
116	approval or denial unless the applicant waived the

Page 4 of 10

21-01733A-21 20211788

 $\frac{\text{municipality's limitation in writing as described in paragraph}}{\text{(a)}\,.}$

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

(d) Except as provided in subsection (5), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

Section 4. Paragraph (b) of subsection (1) and subsection (14) of section 553.79, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) of that section, to read:

553.79 Permits; applications; issuance; inspections.—
(1)

(b) A local enforcement agency shall post each type of building permit application, including a list of all required attachments, drawings, or any other requirement for each type of application, on its website. A local enforcement agency must post the current status of every received application on its website until the issuance of the building permit. Completed applications, including payments, attachments, drawings, or any other requirements or parts of the completed permit application, must be able to be submitted electronically to the appropriate building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in Portable Document Format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Completed applications, including payments, attachments, or drawings, or any other

Page 5 of 10

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1788

	21-01733A-21 20211788_
146	requirements or parts required as part of the completed permit
147	application $\underline{}$ may $\underline{}$ also be submitted in person in a nonelectronic
148	format, at the discretion of the building official.
149	(d) A local enforcement agency must post its procedures for
150	processing, reviewing, and approving submitted building permit
151	applications on its website.
152	(14) A building permit for a single-family residential
153	dwelling must be issued within 30 business working days of
154	receiving the application unless application therefor unless
155	unusual circumstances require a longer time for processing the
156	application or unless the permit application fails to satisfy
157	the Florida Building Code or the enforcing agency's laws or
158	ordinances.
159	(a) If a local enforcing agency fails to issue a building
160	permit for a single-family residential dwelling within 30
161	business days after receiving the application, it must reduce
162	the building permit fee by 10 percent for each day that the
163	enforcing agency fails to meet the deadline. Each 10 percent
164	reduction shall be based on the original amount of the building
165	permit fee.
166	(b) A local enforcing agency does not have to reduce such
167	fee if the enforcing agency provides written notice to the
168	applicant, by e-mail or United States Postal Service within 30
169	business days after receiving the application, that specifically
170	states why the application fails to satisfy the Florida Building
171	Code or the enforcing agency's laws or ordinances.

Page 6 of 10

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

(c) The applicant has 10 business days to address the

revisions to correct the application. If the permit applicant

reasons specified by the local enforcing agency to submit

172

173

174

Florida Senate - 2021 SB 1788 Florida Senate - 2021

204

205

206

208

209

210

211

212

213

214

215

216

217

218

219

220

221

222

223

224

226

227

228

229

230

231

232

21-01733A-21 20211788

175

176

177

178

179

180

181

182

183

184

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

201

202

submits revisions within 10 business days after receiving the notice, the local enforcing agency has 10 business days to approve or deny the permit unless the applicant agrees in writing to a longer period. If the local enforcing agency fails to issue or deny the building permit within 10 business days after receiving the revisions, it must reduce the permit fee by 20 percent for the first day that the enforcing agency fails to meet the deadline unless the applicant agrees in writing to a longer period. For each additional business day after the first day that the enforcing agency fails to meet the deadline, the permit fee must be reduced by an additional 10 percent for each business day that the enforcing agency fails to meet the deadline, for up to 5 business days. Each reduction shall be based on the original amount of the building permit fee. Section 5. Section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government.-(1) (a) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify

Page 7 of 10

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

21-01733A-21 20211788

SB 1788

the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure major or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(b) If a local government does not meet a deadline provided for in paragraph (a), it must reduce the building permit fee by 10 percent for each business day that the enforcing agency fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time.

(2) (a) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different

Page 8 of 10

21-01733A-21 20211788

2.57

timeframes for review of local building permit applications.

(b) If a local government has different timeframes than the procedures set forth in subsection (1) for reviewing building permit applications described in paragraph (a), the local government must meet the deadlines established by local ordinance. If a local government does not meet an established deadline to approve, approve with conditions, or deny an application, it must reduce the building permit fee by 10 percent for each business day the enforcing agency fails to meet the deadline. Each 10 percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time. This paragraph does not apply to permits for any wireless communications facilities.

Section 6. Paragraph (c) of subsection (5) of section 553.794, Florida Statutes, is amended to read:

 $553.794 \ \mathrm{Local}$ government residential master building permit program.—

- (5) MASTER BUILDING PERMIT APPLICATION APPROVAL PROCESS.-
- (c) The local building department must approve or deny a master building permit application within 120 days after the local building department receives a completed application, unless the applicant agrees to a longer period. If a local building department fails to approve or deny a master building permit application within 120 days after receiving the completed application, it must reduce the building permit fee by 10 percent for each day the enforcing agency fails to meet the deadline, unless the applicant agrees to a longer time period. Each 10 percent reduction shall be based on the original amount of the building permit fee.

Page 9 of 10

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 SB 1788

262	Section 7. Present subsections (6) and (7) of section
263	713.135, Florida Statutes, are redesignated as subsections (7)
264	and (8), respectively, and a new subsection (6) is added to that
265	section, to read:
266	713.135 Notice of commencement and applicability of lien.—
267	(6) An authority that issues building permits may not
268	require an applicant to provide a direct contract or a contract
269	between a contractor and any other lienor as a condition of the
270	application for, or processing or issuance of, a building permit
271	for the construction of improvements or for the alteration or
272	repair of improvements on or to commercial property. This
273	subsection does not apply to the construction of improvements or
274	the alteration or repair of improvements owned or leased by the
275	Federal Government; the state or any county, city, or political
276	subdivision thereof; or other public authority.
277	Section 8. This act shall take effect October 1, 2021.

21-01733A-21

Page 10 of 10

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 Pr	ofessional Staf	f of the Committee	on Community A	ffairs	
CS/SB 168						
Banking and Insurance Committee and Senator Hooper						
ECT: Hurricane Loss Mitigation Program						
February 22	, 2021	REVISED:				
ST	STAFF	DIRECTOR	REFERENCE		ACTION	
	Knudso	on	BI	Fav/CS		
	Ryon		CA	Favorable		
			AP			
	CS/SB 168 Banking and Hurricane L	CS/SB 168 Banking and Insurance Hurricane Loss Mitig February 22, 2021 ST STAFF Knudso	CS/SB 168 Banking and Insurance Committee Hurricane Loss Mitigation Program February 22, 2021 REVISED: ST STAFF DIRECTOR Knudson	CS/SB 168 Banking and Insurance Committee and Senator Hood Hurricane Loss Mitigation Program February 22, 2021 REVISED: ST STAFF DIRECTOR REFERENCE Knudson BI Ryon CA	Banking and Insurance Committee and Senator Hooper Hurricane Loss Mitigation Program February 22, 2021 REVISED: ST STAFF DIRECTOR REFERENCE Knudson BI Fav/CS Ryon CA Favorable	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

Ī. Summary:

CS/SB 168 extends the Hurricane Loss Mitigation Program (HLMP) within Florida's Division of Emergency Management (DEM) until June 30, 2031. The HLMP funds programs that improve the wind resistance of residences and public hurricane shelters. The HLMP program operations are funded through an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund to the Division of Emergency Management. The HLMP and the associated \$10 million appropriation from the Florida Hurricane Catastrophe Fund are set to expire on June 30, 2021.

The bill takes effect upon becoming law.

II. **Present Situation:**

Hurricane Loss Mitigation Program

In 1999, the Legislature created the HLMP within the DEM² for funding programs for improving the wind resistance of residences and mobile homes. The HLMP can provide funding through loans, subsidies, grants, demonstration projects, and direct assistance. It also funds

¹ Chapter 99-305, L.O.F.

² In 2011, the Legislature transferred the DEM to the Executive Office of the Governor, where it presently resides. See Chapter 2011-142, L.O.F.

cooperative programs with local governments and the federal government to reduce hurricane losses or the costs of rebuilding after a disaster.

The HLMP is funded by an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund.³ Specifically, current law requires the funds to be used as follows:

- \$3 million must be directed toward retrofitting existing facilities used as public hurricane shelters. DEM must prioritize the use of these funds for projects included in the annual Shelter Retrofit Report. DEM must similarly prioritize these funds to projects in regional planning council regions with shelter deficits and projects that maximize the use of state funds. 5
- \$7 million must be directed toward programs that improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance; educating persons concerning the Florida Building Code; and other efforts to prevent or reduce losses or reduce the cost of building after a disaster.⁶

Of the \$7 million allocated to improve the wind resistance of residences and mobile homes, provide education regarding Florida Building Code cooperative programs, and reduce the cost of rebuilding after a disaster:

- 50 percent (\$3.5 million) is directed to grant funding for governmental entities, nonprofit organizations, and qualified for-profit organizations to improve the resiliency of residential, community, and government structures within their communities.
- 40 percent (\$2.8 million) must be directed to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program (Mobile Home Tie-Down Program) to mitigate future losses for mobile homes and inspect and improve tie-downs for mobile homes. The program is administered by Tallahassee Community College (TCC).
- 10 percent (\$700,000) must be directed to the Florida International University (FIU) for hurricane research.⁸

On January 1 of each year, DEM submits an annual report⁹ and accounting of activities under the HLMP and an evaluation of the activities. The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate. The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate. ¹⁰

The HLMP expires on June 30, 2021.¹¹

³ Section 215.559(1), F.S.

⁴ The Shelter Retrofit Report is prepared annually and separately submitted to the Governor and the Legislature. *See* Section 252.385, F.S.

⁵ Section 215.559(1)(b), F.S.

⁶ Section 215.559(1)(a), F.S.

⁷ Section 215.559(2), F.S.

⁸ Section 215.559(3), F.S.

⁹ Hurricane Loss Mitigation Reports reside on the DEM website: https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last accessed January 28, 2021).

¹⁰ Section 215.559(6), F.S.

¹¹ Section 215.559(7), F.S.

Mobile Home Mitigation and Enhancement Program (Mobile Home Tie-Down Program)

The Mobile Home Tie-Down Program operates as a constituent part of the HLMP to mitigate future losses and inspect and improve tie-downs for mobile homes built before 1999 to meet the current standards established in Rules 15C-1.0101 through 15C-1.0109, F.A.C. Mitigation under the Mobile Home Tie-Down Program includes problems associated with weakened trusses, studs, and other structural component caused by wood rot or termite damage; site-built additions, such as porches or carports; tie-down systems; and any additional issues deemed appropriate by TCC, the Federation of Manufactured Home Owners of Florida, the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles (DHSMV). 12

The Mobile Home Tie-Down Program is funded by a direct \$2.8 million allocation under the HLMP to TCC, which serves as program administrator. The Mobile Home Tie-Down Program does not, and mobile homes are ineligible to, receive federal mitigation funds under Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation Grant, Building Resilient Infrastructure and Communities, or Hazard Mitigation Grant programs.

Since 1999, the Mobile Home Tie-Down Program has served over 40,000 mobile homes in over 275 mobile home communities.¹⁴ Activities during the 2019-2020 fiscal year included 1,702 completed mobile homes in 14 mobile home communities.¹⁵ COVID-19 travel, inspection, and community access restrictions prevented the Mobile Home Tie-Down Program from expensing 100% of the allocated funds.¹⁶

Third-party studies of the Mobile Home Tie-Down Program report improved wind resistance following participation in the program. In 2005, a FEMA Mitigation Branch Technical Services Division study of impacted mobile home communities during the 2004 hurricane season reported 4 percent to 5 percent of inspected mobile homes with retrofitted tie-downs were substantially damaged.¹⁷ The same study reported that the primary cause of damage to mobile homes was caused by roof failure associated with the destruction of carports and sunrooms not constructed to code.¹⁸

As of December 2020, the Mobile Home Tie-Down Program reported a current waiting list of seven years. ¹⁹ TCC is not accepting new applications until the waiting list shortens to three years. ²⁰

¹² Section 215.559(2)(b)1, F.S.

¹³ Section 215.559(2)(a), F.S.

¹⁴ Florida Housing Coalition, *Hurricane Member Update Webinar* (August 28, 2020), https://www.flhousing.org/wpcontent/uploads/2020/09/FHC-Hurricane-Member-Update-8-28-20.pdf (last visited December 21, 2020).

¹⁵ Division of Emergency Management, *Florida Hurricane Loss Mitigation Program: 2019 Annual Report* (January 1, 2020), https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited December 21, 2020).

¹⁶ *Id.* at note 14.

¹⁷ Federal Emergency Management Agency, Mitigation Section, Technical Services Branch, *Third Party Analysis of Manufactured Home Retrofit Tie Downs* (June 2005) at p.3. On file with the Senate Committee on Banking and Insurance (February 16, 2021).

¹⁸ *Id.* at p. 5.

¹⁹ Telephone conversation with Amy Bradbury, Director of Financial Planning and Sponsored Programs, Tallahassee Community College, in Tallahassee, Fla. (December 14, 2020).

²⁰ Tallahassee Community College, *Mobile Home Tie-Down Program*, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited December 21, 2020).

Program Audits

Several third-party audits have made recommendations for improving the Mobile Home Tie-Down Program. FEMA's 2005 study, *Third Party Analysis of Manufactured Home Retrofit Tie Downs*, observed up to 90 percent of all original tie-down straps and a significant percentage of retrofit tie-down straps were loose, increasing the likelihood of rotation of the upper structure upon wind loading of the side and flexure of the entire structural system. The study recommended sizing of tie-down anchors according to soil probe tests during installation to reduce pullout.²¹

In 2016, the Florida Auditor General audited 3,033 DEM contracts between July 2013 and January 2015 for compliance with state law requiring the DEM to timely provide the public with access to state contracts and grant financial information.²² The subsequent report recommended DEM enhance procedures to ensure that contract information is timely made public, citing 72 percent timeliness rates for contracts executed prior to July 2013 and 64 percent timeliness rates for contracts executed after July 2013, respectively.²³

Also, in 2016, the Department of Financial Services Bureau of Auditing (Bureau) audited 10 DEM contracts and grants between January 2015 and December 2015, including the Mobile Tie-Down Program, as a follow-up to its previous audit disclosing a contract deficiency rate of 95% and a management deficiency rate of 43%. The Bureau determined the Mobile Home Tie-Down Program should be classified as "grant and aid," with future payments from DEM to TCC subject to a written agreement for services to include a clear scope of work, deliverables, financial consequences, and monitoring. ²⁵

Fiscal Year 2016-2017 Adopted Recommendations and Program Improvements

In the 2016-2017 fiscal year, DEM executed a written agreement for services with TCC to administer the Mobile Home Tie-Down Program, which included a clear scope of work, deliverables, financial consequences, and monitoring. Other notable program changes that were adopted include:²⁶

- Payment of funds are subject to cost reimbursement procedures instead of an automatic draw.
- Quarterly submission of invoices and program reports to DEM.
- RFP open to multiple vendors.
- RFP requirement of licensed mobile home installers
- DEM monitoring of the program, including on-site visits and limited scope audits.

²¹ Federal Emergency Management Agency, Mitigation Section, Technical Services Branch, *Third Party Analysis of Manufactured Home Retrofit Tie Downs* (June 2005) at p. 8. On file with the Senate Committee on Banking and Insurance (February 16, 2021).

²² See State of Florida Auditor General, Operational Audit: Division of Emergency Management Contract and Grant Management and Prior Audit Follow-Up (April 2016), https://flauditor.gov/pages/pdf_files/2016-188.pdf at p. 2. (last visited December 21, 2020).

²³ *Id.* at p. 3.

²⁴ May 10, 2016 Letter from Department of Financial Services Bureau of Auditing to Division of Emergency Management Director Bryan Koon, https://www.myfloridacfo.com/division/aa/Aud_Act/docs/DEM%20Report%20dtd%205-10-2016_Redacted.pdf (last visited December 16, 2020).

 $[\]frac{1}{25}$ *Id.* at p. 3.

²⁶ Department of Financial Services, *Florida Accountability Contract Tracking System Grant Disbursement Information*, https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=310000&ContractId=D9042 (last visited December 21, 2020).

- Required pre-inspection process.
- Submission of reports to DEM identifying homes prior to mitigation.
- DHSMV audits of mobile home installers' post-inspection reports
- Removal of the percentage of participating homes within a community as a factor in serving a community.
- Participation by individual mobile homeowners and communities without an established HOA.

Florida Hurricane Catastrophe Fund (FHCF)

The FHCF is a tax-exempt²⁷ fund created in 1993²⁸ after Hurricane Andrew²⁹ as a form of mandatory reinsurance for residential property insurers. The FHCF is administered by the State Board of Administration (SBA)³⁰ and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent)³¹ of hurricane losses above the insurer's retention (deductible). The FHCF provides insurers an additional source of reinsurance that is less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the FHCF, the fund acts to lower residential property insurance premiums for consumers.

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.³² The FHCF is authorized by statute to sell \$17 billion of mandatory layer coverage.³³ Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent³⁴ of the reimbursed losses for loss adjustment expenses.³⁵

The FHCF must charge insurers the actuarially indicated premium³⁶ for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.³⁷ The actuarially indicated premium is determined by

²⁷ Section 215.555(1)(f), F.S.

²⁸ Chapter 93-409, L.O.F.

²⁹ Ed Rappaport, *Preliminary Report, Hurricane Andrew* (updated Dec. 10, 1993; addendum Feb. 7, 2005), https://www.nhc.noaa.gov/1992andrew.html.

³⁰ State Board of Administration of Florida, *About the SBA*, https://www.sbafla.com/fsb/ (last visited December 22, 2020).

³¹ Section 215.555(2)(e), F.S.

³² Section 215.555(4)(a), F.S.

³³ Section 215.555(4)(c)1., F.S.

³⁴ Section 215.555(4)(b)1., F.S.

³⁵ Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.

³⁶ Section 215.555(5)(a), F.S.

³⁷ See State Board of Administration, Florida Commission on Hurricane Loss Methodology, https://www.sbafla.com/method/ (last visited December 22, 2020).

the principles of actuarial science to be adequate to pay current and future obligations and expenses of the fund.³⁸

When the moneys in the FHCF are or will be insufficient to cover losses, the law³⁹ authorizes the FHCF to issue revenue bonds funded by emergency assessments on all lines of insurance except medical malpractice and workers compensation.⁴⁰ Emergency assessments may be levied up to 6 percent of the premium for losses attributable to any one contract year and up to 10 percent of the premium for aggregate losses from multiple years. The FHCF's broad-based assessment authority is one reason the FHCF was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.⁴¹

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. ⁴² Citizens is not a private insurance company. ⁴³ Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors ⁴⁴ that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board. Citizens is subject to regulation by the OIR.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits. Assets may not be commingled or used to fund losses in another account. 46

• The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of

³⁸ Section 215.555(2)(a), F.S.

³⁹ Section 215.555(6), F.S.

⁴⁰ Section 215.555(6)(b), F.S.

⁴¹ The U.S. Internal Revenue Service has, by a Private Letter Ruling, authorized the FHCF to issue tax-exempt bonds. The initial ruling was granted on March 27, 1998, for 5 years until June 30, 2003. On May 28, 2008, the Internal Revenue Service issued a private letter ruling holding that the prior exemption, which was to expire on June 30, 2008, could continue to be relied upon on a permanent basis (on file with the Committee on Banking and Insurance).

⁴² Admitted market means insurance companies licensed to transact insurance in Florida.

⁴³ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.

⁴⁴ The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.

⁴⁵ The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

⁴⁶ Section 627.351(6)(b)2b., F.S.

coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

• The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes nonresidential commercial policies covering business properties.

• **The Coastal Account** offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind-only policies) and may offer multiperil policies.⁴⁷

Citizens Insurance Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351, F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S. From 2007 until 2020, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to an actuarially sound level. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. ⁴⁹

Citizens Eligibility

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more.⁵⁰ In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Current Citizens policyholders cannot renew a Citizens insurance policy if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.⁵¹

The Legislature established the Citizens policyholder eligibility clearinghouse program in 2013.⁵² Under the program, new and renewal policies for Citizens are placed into the

⁴⁷ In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

⁴⁸ Among the factors OIR considers when reviewing a rate filing is the degree of competition among the insurers for the risk insured, per s. 627.062(3)(b), F.S.

⁴⁹ Section 627.351(6)(n)6., F.S.

⁵⁰ Section 627.351(6)(c)5., F.S.

⁵¹ Section 627.351(6)(c)5., F.S.

⁵² Section 10, ch. 2013-60, L.O.F.

clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Mobile Home Coverage under Citizens

Florida law currently requires Citizens to offer mobile home dwellings coverage with a minimum insured value of at least \$3,000,⁵³ limited to the primary dwelling and certain attached structures.⁵⁴ Such coverage must include attached screened enclosures, attached carports, and attached patios.⁵⁵ Losses to the mobile home dwelling are adjusted based on the actual cash value. The actual cash value of the mobile home is determined by subtracting depreciation from the estimated replacement cost.⁵⁶ Separate from its statutorily mandated mobile home coverage, Citizens automatically includes sinkhole loss coverage in such policies, except for wind-only policies.⁵⁷ Citizens also offers optional coverages for other structures not physically attached to the primary dwelling.⁵⁸ As of January 28, 2021, Citizens insures 70,585 mobile homes across Florida.⁵⁹

III. Effect of Proposed Changes:

Section 1 extends until June 30, 2031, the Hurricane Loss Mitigation Program (HLMP) within the Florida's Division of Emergency Management (DEM). The HLMP funds programs that improve the wind resistance of residences and public hurricane shelters. The HLMP program operations are funded through an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund to the Division of Emergency Management. The HLMP and the associated \$10 million appropriation from the Florida Hurricane Catastrophe Fund are set to expire on June 30, 2021.

Section 2 provides the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵³ Section. 627.351(6)(c)(17), F.S.

⁵⁴ Citizens Property Insurance Corporation, *Citizens Mobile Home Policies: Types of Coverage* (August 2019),https://www.citizensfla.com/documents/20702/31376/Mobile+Home+Policies+Coverage+Types/e61c3b40-50aa-4789-8508-51ad26ac3450 (last visited January 28, 202).

⁵⁵ Section 627.351(6)(c)(17), F.S.

⁵⁶ *See* note 55.

⁵⁷ See note 55.

⁵⁸ *Id*.

⁵⁹ Email from Candace Bunker, Director of Legislative and Cabinet Affairs, Citizens Property Insurance Corporation, to Florida Senate Committee on Banking and Insurance (January 28, 2021)

	B.	Public Records/Open Meetings Issues:		
		None.		
	C.	Trust Funds Restrictions:		
		None.		
	D.	State Tax or Fee Increases:		
		None.		
	E.	Other Constitutional Issues:		
		None.		
٧.	Fisca	Il Impact Statement:		
	A.	Tax/Fee Issues:		
		None.		
	B.	Private Sector Impact:		
		Indeterminate with respect to insurance premiums. A reduction in wind loss attributable to retrofitted tie-downs may be offset by wind loss attributable to carports and sunrooms not constructed to code, which FEMA has concluded as being the primary causes of damage to mobile homes from a wind event.		
	C.	Government Sector Impact:		
		None.		
VI. Technical Deficiencies:				
	None.			
VII.	Relat	ed Issues:		
	None.			

VIII. Statutes Affected:

This bill substantially amends section 215.559 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.)

CS by Banking and Insurance on February 2, 2021:

The committee substitute removes a cross-reference to a defunct rate standard for mobile home insurance policies issued by Citizens Property Insurance Corporation.

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

3 10 2021 (Deliver BOTH copies of this form to the Senator or Se	enate Professional Staff conducting the meeting) CSSBCB Bill Number (if applicable)
Topic Hurricane Loss Mitigation	Amendment Barcode (if applicable)
Name Nancy Stewart	
Job Title Legislative Counse	
Address 1400 Village Square, Suite	3-156 Phone 850 · 385 · 7805
Street O //	nancy. Stewarte Ball nancyblackstewart.
City	Zip
Speaking: For Against Information	Waive Speaking: In Support Against (The Chair will read this information into the record.)
Representing Federation of Manufacture	ed Home Dwners of FL, Inc. (FMO)
•	obbyist 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.

S-001 (10/14/14)

Florida Senate - 2021 CS for SB 168

By the Committee on Banking and Insurance; and Senator Hooper

597-01967-21 2021168c1

A bill to be entitled
An act relating to the Hurricane Loss Mitigation
Program; amending s. 215.559, F.S.; deleting
construction relating to Citizens Property Insurance
Corporation coverage rates; delaying the future repeal
of the Hurricane Loss Mitigation Program; providing an
effective date.

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

Section 1. Paragraph (b) of subsection (2) and subsection (7) of section 215.559, Florida Statutes, are amended to read:

215.559 Hurricane Loss Mitigation Program.—A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(2)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

2.8

(b)1. The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by Tallahassee Community College, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing

Page 1 of 3

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

Florida Senate - 2021 CS for SB 168

597-01967-21 2021168c1
Association, and the Department of Highway Safety and Motor

Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

31

32

34

35

37

38

39

42

46

49

50

51

53

55

56

57

- 2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to Tallahassee Community College for the uses set forth under this subsection.
- 3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.
- 4. On or before January 1 of each year, Tallahassee

 Community College shall provide a report of activities under
 this subsection to the Governor, the President of the Senate,
 and the Speaker of the House of Representatives. The report must

Page 2 of 3

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2021 CS for SB 168

597-01967-21 2021168c1

set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

Tallahassee Community College shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys appropriated for the programs set forth in this subsection shall be distributed directly to Tallahassee Community College to be used as set forth in this subsection.

72 forth in this subsection.
73 (7) This section is repealed June 30, 2031 2021.

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

Page 3 of 3

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 P	rofessional Staf	f of the Committee of	on Community Aff	airs	
BILL:	SB 738						
INTRODUCER:	: Senator Baxley						
SUBJECT: Bicycle O		eration Re	egulations				
DATE:	March 8, 20	21	REVISED:				
ANAL	YST	STAFF	DIRECTOR	REFERENCE		ACTION	
1. Price		Vickers		TR	Favorable		
2. Hackett		Ryon		CA	Favorable		
3.				RC			

I. Summary:

SB 738 amends a current prohibition against a person operating a bicycle other than upon or astride a permanent and regular attached seat, providing that the prohibition applies unless the bicycle was designed by the manufacturer to be ridden without a seat. Under the bill, a person riding a bicycle manufactured without a seat would not be subject to an existing penalty for a violation of the prohibition.

The bill is expected to present an unknown but likely insignificant negative fiscal impact to state and local revenues, and an insignificant positive fiscal impact to riders of bicycles manufactured to be ridden without a seat.

The bill takes effect July 1, 2021.

II. Present Situation:

While the "traditional" bicycle that comes to mind may be of the two-tandem-wheel variety with an attached seat, other devices generally recognized as bicycles, such as elliptical bicycles, may be sold with two tandem wheels or with two front or two rear wheels¹ and may be manufactured without an attached seat for a rider's use. For these, no seat is attached by the manufacturer, as the rider stands while propelling the bicycle by human power.

¹ See Bicycling, *Take Your Low-Impact Workout Outside with an Elliptical Bike*, to view examples of three differently-configured elliptical bikes, available at https://www.bicycling.com/bikes-gear/g23895814/elliptical-bike/ (retrieved February 16, 2021).

BILL: SB 738 Page 2

Attached Bicycle Seats

Florida Bicycle Law

Section 316.003(4), F.S., defines the term "bicycle" to mean "every vehicle² propelled solely by human power, having two tandem wheels, *and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.*³ The term does not include a scooter or similar device." An elliptical bicycle, for example, appears to meet the definition.

Section 316.2065(2), F.S., however, prohibits a person operating a bicycle from riding *other than upon or astride a permanent and regular seat attached thereto.*⁴ At least one rider has reportedly been cited for a violation of this provision while riding an elliptical bicycle.⁵

Section 316.2065(19), F.S., provides that a violation of that section is a noncriminal traffic infraction, which is punishable as a pedestrian violation, and subjects a violator to a \$15 penalty,⁶ plus court costs, portions of which are distributed monthly to various entities and trust funds.⁷

California Bicycle Law

Research identifies one other state, California,⁸ with a statute that includes the same prohibition against riding other than upon or astride a permanent and regular seat attached to the bicycle, but *also* provides an exception when the bicycle was designed by the manufacturer to be ridden without a seat.

While use of elliptical bicycles may not be as prevalent as use of "traditional" bicycles, elliptical bicycles are readily available on the market. However, a person operating an elliptical bicycle is explicitly in violation of current Florida law if the bicycle has no attached seat for the rider's use.

III. Effect of Proposed Changes:

The bill amends s. 316.2065(2), F.S., to require a person operating a bicycle to ride upon or astride a permanent and regular attached seat, unless the bicycle was designed by the manufacturer to be ridden without a seat. Thus, under the bill, persons riding a bicycle manufactured to be ridden without a seat will no longer be subject to the \$15 penalty.

² The term "vehicle" is defined in s. 316.003(103), F.S., as "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks."

³ Emphasis added.

⁴ Emphasis added.

⁵ See email to committee staff, January 29, 2021 (on file in the Senate Community Affairs Committee).

⁶ Section 318.18(1)(b), F.S.

⁷ Revenues for a violation of the current prohibition against riding other than on or astride a seat attached to a bicycle are distributed monthly in portions specified in s. 318.21, F.S., to various local entities (such as court clerks, and counties and municipalities in which a violation occurs) and various state trust funds (such as the Child Welfare Training Trust Fund, Grants and Donations Trust Fund, and Emergency Medical Services Trust Fund).

⁸ See California Vehicle Code, VEH s. 21204.

BILL: SB 738 Page 3

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:

An insignificant positive fiscal impact is expected for riders of bicycles manufactured to be ridden without a seat, as such riders would no longer be subject to the applicable penalty.

C. Government Sector Impact:

The number of citations previously issued for violations of the prohibition is unknown; thus, the extent of any reduction to state and local revenues resulting from the exception provided under the bill is unknown. However, any revenue reduction is likely insignificant.

The Florida Department of Highway Safety and Motor Vehicles advises it will incur insignificant expenses associated with updating the Florida Driver's Handbook and Uniform Traffic Infraction guide, as well as training law enforcement personnel on the bill's provisions.⁹

⁹ See Department of Highway Safety and Motor Vehicles Legislative Bill Analysis for 2020 SB 738.

BILL: SB 738 Page 4

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends s. 316.2065 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	the form to the condition of	Tochate Froiessional Ot	an conducting th	Bill Number (if applicable)
Topic Bicycle Operations	Regulatio	ns		Amendment Barcode (if applicable)
Name Phillip Suderman				
Job Title Policy Director	,			
Address	· · · · · · · · · · · · · · · · · · ·		Phone	
City	State	Zip	Email	
	formation	Waive Sp		In Support Against is information into the record.)
Representing Americans	for Prog	perity		·
Appearing at request of Chair: Yes	/	/ Lobbyist registe	ered with L	egislature: Ves No
While it is a Senate tradition to encourage publimeeting. Those who do speak may be asked to	ic testimony, time i o limit their remarks	may not permit all p s so that as many p	persons wisł persons as p	hing to speak to be heard at this possible can be heard.
This form is part of the public record for this	s meeting.			S-001 (10/14/14)

By Senator Baxley

12-01100-21 2021738 A bill to be entitled An act relating to bicycle operation regulations; amending s. 316.2065, F.S.; providing an exception to the requirement that a person operating a bicycle ride upon or astride a seat attached thereto; providing an effective date. Be It Enacted by the Legislature of the State of Florida: 10 Section 1. Subsection (2) of section 316.2065, Florida 11 Statutes, is amended to read: 12 316.2065 Bicycle regulations.-13 (2) A person operating a bicycle may not ride other than 14 upon or astride a permanent and regular seat attached thereto 15 unless the bicycle was designed by the manufacturer to be ridden 16 without a seat. 17 Section 2. This act shall take effect July 1, 2021.

Page 1 of 1

CourtSmart Tag Report

Room: SB 37 Case No.: Type:

Caption: Senate Community Affairs Judge:

Started: 3/10/2021 8:00:21 AM

Ends: 3/10/2021 9:56:20 AM Length: 01:56:00

8:00:19 AM The meeting will come to order

8:00:37 AM Roll call

8:00:41 AM Quorum is present Pledge of Allegiance

8:01:41 AM Pledge

8:01:42 AM Take up tab 7 SB1214 by Senator Gruters

8:02:26 AM Take up amendment barcode 594614 by Senator Gruters **8:02:57 AM** Senator Gruters explain amendment barcode 594614

8:03:34 AM Any questions on amendment Senator Powell with question Senator Gruters responds Any other questions, none

8:05:36 AM Appearance forms on amendment

8:06:15 AM Loren Levy, General Counsel, Property speaking against

8:07:47 AM Any debate

8:07:54 AM Senator Hutson with debate

8:08:08 AM Senator Gruters closes on amendment **8:09:17 AM** Amendment barcode 594614 is adopted

8:09:22 AM Back on bill as amended
8:09:31 AM Senator Powell with question
8:09:53 AM Senator Gruters with response
8:10:12 AM Senator Powell with follow up
8:10:29 AM Senator Gruters with response

8:10:44 AM Senator Powell with follow up question

8:10:54 AM Senator Gruters with response Senator Powell with question Senator Gruters with response Any other questions, none

8:12:31 AM Appearance forms

8:12:35 AM Greg Black, Florida Nonprofit Taxation waives in support

8:12:58 AM Jerry Paul. SELBY BOTANICAL GARDENS speaking in support

8:14:59 AM Senator Hutson ask question to Mr. Paul

8:15:21 AM Mr. Paul with response

8:17:18 AM Debate on bill as amended? none

8:17:29 AM Senator Gruters closes on bill as amended

8:17:53 AM Roll call for SB1214

8:18:12 AM SB 1214 reported favorably **8:18:23 AM** Take up tab 3 SB 760

8:18:39 AM Senator Burges explains SB 760

8:19:47 AM Questions?

8:19:52 AM Senator Powell with question 8:20:06 AM Senator Burgess with response 8:21:28 AM Senator Hooper with question 8:21:47 AM Senator Burgess with response 8:23:12 AM Senator Polsky with question 8:23:42 AM Senator Burgess with response 8:24:55 AM Senator Cruz with question 8:25:23 AM Senator Burgess with response 8:26:24 AM Senator Cruz with follow up

8:27:12 AM Senator Burgess responds to follow up

8:27:42 AM Senator Cruz clarifies question **8:28:02 AM** Senator Burgess responds

```
8:28:52 AM
               Senator Cruz with follow up question
8:29:05 AM
               Senator Burgess responds to follow up question
8:31:09 AM
               Senator Hutson with question
8:31:20 AM
               Senator Burgess with response
               Senator Hutson with follow up
8:33:05 AM
8:33:30 AM
               Senator Burgess with response
8:34:06 AM
               Senator Hutson with follow up
8:34:29 AM
               Senator Burgess with response
               Appearance forms received after bill was heard: Ron Book, FHSAA speaking against, Jessica
8:35:58 AM
Janasiewilz, FHSAA Speaking against, submitted into committee record
8:36:04 AM
               Jason smith, Sunshine State Athletic Conference speaking for the bill
8:41:27 AM
               Senator Hutson with question to Mr. Smith
8:42:33 AM
               Mr. Smith with response
8:43:52 AM
               George Tomyn, Florida High School Athletic Association speaking against SB760
               Any debate on bill
8:49:32 AM
               Senator Baxley with debate
8:49:39 AM
8:52:41 AM
               Senator Hutson with debate
               Senator Cruz with debate
8:53:26 AM
8:53:58 AM
               Senator Burgess closes on SB 760
8:56:37 AM
               Roll call on SB760
               SB 760 is reported favorably
8:56:49 AM
8:57:19 AM
               Take up tab 2 SB 1382 by Senator Perry
               Senator Perry explains bill
8:57:28 AM
8:58:06 AM
               Questions on bill
8:58:13 AM
               Senator Garcia with question
8:58:32 AM
               Senator Perry with response
8:59:36 AM
               Senator Garcia with follow up
9:00:05 AM
               Take up amendment Barcode 169668
9:00:40 AM
               Senator Perry explains amendment 169668
9:01:04 AM
               Questions on amendment
9:01:11 AM
               Senator Cruz with question
               Senator Perry with response
9:01:24 AM
9:03:04 AM
               Senator Powell with question
9:03:15 AM
               Senator Perry with response
               Senator Powell with follow up
9:04:35 AM
9:05:46 AM
               Senator Perry with response to follow up
               Any questions, none
9:07:02 AM
9:07:08 AM
               Appearance forms
9:07:13 AM
               Tim Nungesser, NFIB speaking for information
               David Cruz, Florida League of Cities, Inc. speaking in favor of amendment
9:08:44 AM
9:09:30 AM
               Mark Anderson, Chief Executive Officers of Management Companie waives in support
9:09:50 AM
               Phillip Suderman, Americans for Prosperity speaking against the amendment
               Senator Powell with question to Mr. Phillip
9:11:29 AM
               Mr. Phillip with response
9:11:55 AM
               Debate on amendment, none
9:12:41 AM
9:12:47 AM
               Senator Perry waives close on amendment barcode 169668
9:12:53 AM
               Amendment barcode 169668 is adopted
9:12:57 AM
               Questions on bill as adopted
9:13:06 AM
               Senator Polsky with question
               Senator Perry with response
9:13:17 AM
9:13:25 AM
               Appearance forms
               Jason Steels, Satellite BCH, IndiAlantic speaking against
9:13:33 AM
9:15:11 AM
               Jane West, 1000 Friends of Florida waives against
9:15:19 AM
               Christian Camara, Institute For Justice waives in support
9:15:29 AM
               David Cruz withdraws appearance form
9:15:49 AM
               Tim Nungesser, NFIB speaking for the bill
9:17:09 AM
               Debate on bill as amended?
9:17:16 AM
               Senator Baxley with debate
9:18:39 AM
               Senator Hooper with debate
               Senator Cruz with debate
9:18:56 AM
               Senator Powell with debate
9:21:07 AM
9:22:17 AM
               Senator Polsky with debate
```

```
9:24:27 AM
               Senator Garcia with debate
               Senator Perry closes on CS/SB266
9:24:33 AM
9:27:19 AM
               Roll call on CS/SB 266
               CS/SB 266 is reported favorably
9:27:38 AM
9:27:55 AM
               Take up tab 2 SB1382
9:28:11 AM
               Senator Perry explains bill
               Take up amendment barcode 300712
9:28:29 AM
9:28:50 AM
               Senator Perry explains amendment
9:28:59 AM
               Appearance forms, none
9:29:09 AM
               Debate, none
9:29:12 AM
               Senator Perry closes
               Amendment barcode 300712 is adopted
9:29:16 AM
9:29:21 AM
               Question on bill as amendment
9:29:28 AM
               Senator Powell with question
9:29:39 AM
               Senator Perry responds
               No appearance forms
9:29:47 AM
               Debate, none
9:29:51 AM
               Senator Perry closes on bill
9:29:55 AM
               Roll call on CS/SB 1382
9:30:00 AM
               CS/SB 1382 is reported favorably
9:30:07 AM
9:30:30 AM
               Take up tab 9 CS/SB 168
9:30:45 AM
               Senator Hooper explains bill
9:31:45 AM
               Questions, none
9:31:48 AM
               Appearance forms
9:31:54 AM
               Nancy Stewart, Federation of Manufactured Home Owners of FL, Inc speaking for the bill
9:32:28 AM
               Debate, none
9:32:34 AM
               Roll call for CS/SB 168
9:32:51 AM
               CS/SB 168 reported favorably
               Take up tab 4 SJR 1182
9:33:05 AM
               Senator Hooper (in Senator Brandes absence) explains SJR 1182
9:33:30 AM
               Questions on bill
9:33:57 AM
               Senator Cruz with question
9:34:02 AM
               Senator Hooper with response
9:34:12 AM
9:34:29 AM
               Appearance forms
               Loren Levy, General Counsel waives in support
9:34:33 AM
9:34:40 AM
               Natalie Fausl, Florida Association of Property Appraisers
9:34:50 AM
               Debate, none
9:34:54 AM
               Senator Hooper waives close
9:35:01 AM
               Roll call on SJR 1182
9:35:14 AM
               SJR 1182 is reported favorably
9:35:34 AM
               Take up tab 5 SB 1186
9:35:45 AM
               Senator Hooper (in Senator Brandes absence) explains bill 1186
               Take up amendment barcode 867370
9:36:08 AM
               Senator Hooper explains amendment
9:36:15 AM
9:36:34 AM
               Appearance forms, none
9:36:39 AM
               Debate, none
9:36:43 AM
               Amendment barcode 867370 is adopted
9:36:51 AM
               Questions on bill as amended? none
9:36:57 AM
               Appearance forms
               Natalie Fausel, Florida Association of Property Appraisers waives in support
9:37:06 AM
               Debate? none
9:37:18 AM
9:37:23 AM
               Senator Hooper waive close
9:37:30 AM
               Roll call on SB1186
               SB 1186 reported favorably
9:37:43 AM
9:37:54 AM
               Take up tab 8 SB/1788
9:38:14 AM
               Senator Boyd explains bill
9:38:31 AM
               Take up amendment barcode 643594 by Senator Boyd
9:38:43 AM
               Senator Boyd explains amendment
9:40:43 AM
               Questions on amendment
9:40:49 AM
               Senator Powell with question
9:40:57 AM
               Senator Boyd with response
9:42:02 AM
               Appearance forms, none
```

9:42:07 AM	Debate, none
9:42:11 AM	Senator Boyd closes on amendment
9:42:42 AM	Amendment barcode 643594 is adopted
9:42:47 AM	Back on bill as amended
9:42:52 AM	Senator Powell with question
9:43:11 AM	Senator Boyd with response
9:44:35 AM	Appearance forms, none
9:44:43 AM	Debate, none
9:44:48 AM	Senator Boyd waives close
9:44:56 AM	Roll call on CS/SB 1788
9:45:09 AM	CS/SB 1788 is reported favorably
9:45:18 AM	Take up tab 10 SB/738
9:45:29 AM	Senator Baxley explains bill
9:46:02 AM	Questions
9:46:05 AM	Senator Cruz with question
9:46:26 AM	Appearance form
9:46:30 AM	Philip Suderman, American for Prosperity waives in support
9:46:40 AM	Debate, none
9:46:45 AM 9:46:52 AM	Senator Baxley waives close Roll call on SB738
9:47:04 AM	SB 738 is reported favorably
9:47:15 AM	Take up tab 6 SB 1208
9:47:13 AM	Senator Rodriguez explains bill
9:48:39 AM	Take up amendment 526754
9:48:52 AM	Senator Rodriguez explains amendment
9:49:10 AM	Questions on amendment
9:49:15 AM	Debate, none
9:49:27 AM	Senator Rodriguez waives close on amendment
9:49:33 AM	Amendment barcode 526754 is adopted
9:49:40 AM	Take up amendment 679318
9:49:57 AM	Senator Rodriguez explains amendment
9:50:01 AM	Questions, none
9:50:11 AM	Debate, none
9:50:14 AM	Senator Rodriguez waives close
9:50:27 AM	Back on bill as amended
9:50:37 AM	Questions, none
9:50:41 AM	Appearance forms
9:50:46 AM	Marty Cassini, Broward County waives in support
9:50:50 AM	Slater Batliss, YGrene Energy waives in support
9:50:54 AM	Leah Wiggs, Renew Financial waives in support
9:50:59 AM	Jess McCarty, Miami-Dade County waives in support
9:51:04 AM	Mark Lawson, Mark G. Lawson PA speaking for on bill
9:52:48 AM	Anthony Dimarco, Florida Banker Association speaking against
9:54:17 AM	Kate Wesner, Ygrene Energy Fund speaking information
9:54:53 AM	Debate on bill as amended
9:55:01 AM	Senator Rodriguez waives close
9:55:07 AM	Roll call on CS/SB 1208
9:55:24 AM	CS/SB 1208 is reported favorably
9:55:37 AM 9:55:47 AM	Senator Brodeur to be recorded voting Yea on SB 1214 Senator Polsky to be recorded SB1182 in the affirmative
9:55:47 AM 9:55:59 AM	Motions adopted
9:56:03 AM	Senator Hooper moves meeting adjourned
9:56:08 AM	Meeting adjourned
5.00.00 AIII	moduling adjourned