

| | | | | | | | |
|--------------|---|---|-----|-----------|-------------------------|----------------|--|
| Tab 1 | SB 286 by Perry ; (Similar to CS/H 00137) Fire Sprinklers | | | | | | |
| 456088 | D | S | RCS | RI, Perry | Delete everything after | 03/02 10:14 AM | |

| | | | | | | | |
|--------------|--|--|--|--|--|--|--|
| Tab 2 | SB 346 by Rodriguez (CO-INTRODUCERS) Hutson ; (Identical to H 00491) Florida Real Estate Appraisal Board | | | | | | |
|--------------|--|--|--|--|--|--|--|

| | | | | | | | |
|--------------|---|--|--|--|--|--|--|
| Tab 3 | SB 1212 by Rodriguez (CO-INTRODUCERS) Hutson ; (Identical to H 00369) Construction Contracting Exemptions | | | | | | |
|--------------|---|--|--|--|--|--|--|

| | | | | | | | |
|--------------|---|--|--|--|--|--|--|
| Tab 4 | SB 572 by Baxley ; (Similar to H 00931) Engineers | | | | | | |
|--------------|---|--|--|--|--|--|--|

| | | | | | | | |
|--------------|---|---|-----|------------|--------------|----------------|--|
| Tab 5 | SB 574 by Baxley ; (Identical to H 00933) Fees/Professional Structural Engineer Licensing | | | | | | |
| 481480 | A | S | RCS | RI, Baxley | Delete L.53: | 03/02 10:14 AM | |

| | | | | | | | |
|--------------|---|--|--|--|--|--|--|
| Tab 6 | SB 616 by Gruters ; (Similar to H 00317) Public Accountancy | | | | | | |
|--------------|---|--|--|--|--|--|--|

| | | | | | | | |
|--------------|--|---|-----|----------|-------------------|----------------|--|
| Tab 7 | SB 964 by Diaz (CO-INTRODUCERS) Taddeo ; (Identical to H 01051) Environmental Compliance Costs | | | | | | |
| 859804 | A | S | RCS | RI, Diaz | Delete L.42 - 49: | 03/02 10:14 AM | |

| | | | | | | | |
|--------------|--|--|--|--|--|--|--|
| Tab 8 | SB 996 by Garcia (CO-INTRODUCERS) Hutson ; (Compare to H 00649) Community Associations | | | | | | |
|--------------|--|--|--|--|--|--|--|

| | | | | | | | |
|--------------|--|--|--|--|--|--|--|
| Tab 9 | SB 1062 by Brodeur ; (Similar to H 00073) Cooperative Advertising Agreements | | | | | | |
|--------------|--|--|--|--|--|--|--|

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Book, Vice Chair

MEETING DATE: Monday, March 1, 2021
TIME: 4:00—6:00 p.m.
PLACE: *Pat Thomas Committee Room, 412 Knott Building*

MEMBERS: Senator Hutson, Chair; Senator Book, Vice Chair; Senators Albritton, Gruters, Hooper, Passidomo, Rodrigues, Rouson, and Stewart

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|--|---|----------------------------|
| PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL 32301 | | | |
| 1 | SB 286 Perry (Similar CS/H 137, Compare H 1209, S 1408) | Fire Sprinklers; Revising the definition of the term "Contractor V" to authorize such fire protection system contractors to design and alter certain systems; revising the definition of the term "fire protection system", etc. RI 03/01/2021 Fav/CS BI RC | Fav/CS Yeas 9 Nays 0 |
| 2 | SB 346 Rodriguez (Identical H 491) | Florida Real Estate Appraisal Board; Revising the composition of the board, etc. RI 03/01/2021 Favorable CM RC | Favorable Yeas 9 Nays 0 |
| 3 | SB 1212 Rodriguez (Identical H 369) | Construction Contracting Exemptions; Exempting a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida from certain construction contracting regulations when constructing specified structures, etc. RI 03/01/2021 Favorable CA RC | Favorable Yeas 9 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Monday, March 1, 2021, 4:00—6:00 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 4 | SB 572 Baxley (Similar H 931, Compare H 933, Linked S 574) | Engineers; Prohibiting a person who is not licensed as an engineer from using a specified name or title; prohibiting, after a specified date, a person who is not a licensed professional structural engineer from using specified names and titles or practicing professional structural engineering; authorizing the Board of Professional Engineers to refuse to certify an applicant for a professional structural engineer license for certain reasons; exempting certain applicants who apply for licensure before a specified date from having to pass a certain national examination, under certain conditions; specifying acts that constitute grounds for disciplinary action, including civil penalties, against a professional structural engineer, etc. RI 03/01/2021 Favorable CM RC | Favorable Yeas 9 Nays 0 |
| 5 | SB 574 Baxley (Identical H 933, Compare H 931, Linked S 572) | Fees/Professional Structural Engineer Licensing; Authorizing the Board of Professional Engineers to establish fees relating to professional structural engineer licensing; requiring applicants to pay a specified fee in order to be eligible to receive a professional structural engineer license, etc. RI 03/01/2021 Fav/CS CM RC | Fav/CS Yeas 9 Nays 0 |
| 6 | SB 616 Gruters (Similar H 317) | Public Accountancy; Requiring that certain applicants not be licensed in any state or territory in order to be licensed by endorsement; requiring that a majority of the hours required for continuing education include specific content; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status, etc. RI 03/01/2021 Favorable CM RC | Favorable Yeas 9 Nays 0 |
| 7 | SB 964 Diaz (Identical H 1051) | Environmental Compliance Costs; Redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements, etc. EN 02/15/2021 Favorable RI 03/01/2021 Fav/CS RC | Fav/CS Yeas 9 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Monday, March 1, 2021, 4:00—6:00 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---------------------------------|--|--|----------------------------|
| 8 | SB 996 Garcia (Compare H 649, S 1998) | Community Associations; Specifying requirements for the contents, delivery, and posting of certain association notices; providing that certain associations have the right to seek judicial review, appeal decisions, and represent unit or parcel owners in certain proceedings; providing and revising the parties considered as the defendants in a tax suit; providing unit or parcel owners' options for defending a tax suit; providing that a condominium association may take certain actions relating to a challenge to ad valorem taxes in its own name or on behalf of unit owners, etc. RI 03/01/2021 Favorable FT AP | Favorable Yeas 9 Nays 0 |
| 9 | SB 1062 Brodeur (Similar H 73) | Cooperative Advertising Agreements; Authorizing a manufacturer or importer of malt beverages and a vendor to enter into a written agreement for brand naming rights and associated cooperative advertising if certain requirements are met; providing requirements for such agreement; prohibiting certain manufacturers or importers of malt beverages from soliciting or receiving certain payments; specifying that such agreements do not affect distributors, etc. RI 03/01/2021 Temporarily Postponed CM RC | Temporarily Postponed |
| Other Related Meeting Documents | | | |



456088

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/02/2021 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Regulated Industries (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (3) and (11) of section 633.102,
Florida Statutes, are amended to read:

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

(3) (a) "Contractor I" means a contractor whose business
includes the execution of contracts requiring the ability to lay
out, fabricate, install, inspect, alter, repair, and service all



456088

11 types of fire protection systems, excluding preengineered
12 systems.

13 (b) "Contractor II" means a contractor whose business is
14 limited to the execution of contracts requiring the ability to
15 lay out, fabricate, install, inspect, alter, repair, and service
16 water sprinkler systems, water spray systems, foam-water
17 sprinkler systems, foam-water spray systems, standpipes,
18 combination standpipes and sprinkler risers, all piping that is
19 an integral part of the system beginning at the point of service
20 as defined in this section, sprinkler tank heaters, air lines,
21 thermal systems used in connection with sprinklers, and tanks
22 and pumps connected thereto, excluding preengineered systems.

23 (c) "Contractor III" means a contractor whose business is
24 limited to the execution of contracts requiring the ability to
25 fabricate, install, inspect, alter, repair, and service carbon
26 dioxide systems, foam extinguishing systems, dry chemical
27 systems, and Halon and other chemical systems, excluding
28 preengineered systems.

29 (d) "Contractor IV" means a contractor whose business is
30 limited to the execution of contracts requiring the ability to
31 lay out, fabricate, install, inspect, alter, repair, and service
32 automatic fire sprinkler systems for detached one-family
33 dwellings, detached two-family dwellings, and mobile homes,
34 excluding preengineered systems and excluding single-family
35 homes in cluster units, such as apartments, condominiums, and
36 assisted living facilities or any building that is connected to
37 other dwellings. A Contractor IV is limited to the scope of
38 practice specified in NFPA 13D.

39 (e) "Contractor V" means a contractor whose business is



456088

40 limited to the execution of contracts requiring the ability to
41 fabricate, install, ~~inspect~~, alter, repair, and service the
42 underground piping for a fire protection system using water as
43 the extinguishing agent beginning at the point of service as
44 defined in this act and ending no more than 1 foot above the
45 finished floor. A Contractor V may inspect underground piping
46 for a water-based fire protection system under the direction of
47 a Contractor I or Contractor II.

48
49 ~~The definitions in~~ This subsection may not be construed to
50 include engineers or architects within the defined terms and
51 does de not limit or prohibit a licensed fire protection
52 engineer or architect with fire protection design experience
53 from designing any type of fire protection system. A distinction
54 is made between system design concepts prepared by the design
55 professional and system layout as defined in this section and
56 typically prepared by the contractor. However, a person
57 certified under this chapter as a Contractor I ~~or~~, Contractor
58 II, ~~or Contractor IV under this chapter~~ may design new fire
59 protection systems of 49 or fewer sprinklers; ~~and~~ may design
60 the alteration of an existing fire sprinkler system if the
61 alteration consists of the relocation, addition, or deletion of
62 ~~not more than~~ 49 or fewer sprinklers, notwithstanding the size
63 of the existing fire sprinkler system; or may design the
64 alteration of an existing fire sprinkler system if the
65 alteration consists of the relocation or deletion of 249 or
66 fewer sprinklers, notwithstanding the size of the existing fire
67 sprinkler system, if there is no change of occupancy of the
68 affected areas, as defined in the Florida Building Code and the



456088

69 Florida Fire Prevention Code, and there is no change in the
70 water demand as defined in NFPA 13, "Standard for the
71 Installation of Sprinkler Systems," and if the occupancy hazard
72 classification as defined in NFPA 13 is reduced or remains the
73 same as a result of the alteration. A person certified as a
74 Contractor I, Contractor II, or Contractor IV may design a new
75 fire protection system or design the alteration of an existing
76 fire protection system, the scope of which complies with NFPA
77 13D, "Standard for the Installation of Sprinkler Systems in One-
78 and Two-Family Dwellings and Manufactured Homes," as adopted by
79 the State Fire Marshal, notwithstanding the number of fire
80 sprinklers. Contractor-developed plans may not be required by
81 any local permitting authority to be sealed by a registered
82 professional engineer.

83 (11) "Fire protection system" means a system individually
84 designed to protect the interior or exterior of a specific
85 building or buildings, structure, or other special hazard from
86 fire. Such systems include, but are not limited to, water
87 sprinkler systems, water spray systems, foam-water sprinkler
88 systems, foam-water spray systems, carbon dioxide systems, foam
89 extinguishing systems, dry chemical systems, and Halon and other
90 chemical systems used for fire protection use. Such systems also
91 include any overhead and underground fire mains, fire hydrants
92 and hydrant mains, standpipes and hoses connected to sprinkler
93 systems, sprinkler tank heaters, air lines, thermal systems used
94 in connection with fire sprinkler systems, ~~and~~ tanks providing
95 water supply or pump fuel, including piping for such tanks, and
96 pumps connected to fire sprinkler systems.

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



456088

98

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

100 And the title is amended as follows:

101 Delete everything before the enacting clause
102 and insert:

103 A bill to be entitled
104 An act relating to fire sprinklers; amending s.
105 633.102, F.S.; revising the definition of the term
106 "Contractor V"; authorizing certain fire protection
107 system contractors to design certain systems; revising
108 the definition of the term "fire protection system";
109 providing an effective date.

By Senator Perry

8-00305B-21

2021286__

A bill to be entitled

An act relating to fire sprinklers; amending s. 633.102, F.S.; revising the definition of the term "Contractor V" to authorize such fire protection system contractors to design and alter certain systems; revising the definition of the term "fire protection system"; providing an effective date.

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

Section 1. Subsections (3) and (11) of section 633.102, Florida Statutes, are amended to read:

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

(3) (a) "Contractor I" means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems.

(b) "Contractor II" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

(c) "Contractor III" means a contractor whose business is

Page 1 of 4

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

8-00305B-21

2021286__

limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate and install, ~~install, inspect, alter, repair, and service~~ the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor. A Contractor V may inspect, alter, repair, and service underground piping for a water-based fire protection system only under the direction of a Contractor I or Contractor II.

~~The definitions in~~ This subsection may not be construed to include engineers or architects within the defined terms and does de not limit or prohibit a licensed fire protection

Page 2 of 4

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

8-00305B-21

2021286__

59 engineer or architect with fire protection design experience
 60 from designing any type of fire protection system. A distinction
 61 is made between system design concepts prepared by the design
 62 professional and system layout as defined in this section and
 63 typically prepared by the contractor. However, a person
 64 certified under this chapter as a Contractor I ~~or~~ Contractor
 65 ~~II, or Contractor IV under this chapter~~ may design new fire
 66 protection systems of 49 or fewer sprinklers; ~~and~~ may design
 67 the alteration of an existing fire sprinkler system if the
 68 alteration consists of the relocation, addition, or deletion of
 69 ~~not more than 49 or fewer~~ sprinklers, notwithstanding the size
 70 of the existing fire sprinkler system; or may design the
 71 alteration of an existing fire sprinkler system if the
 72 alteration consists of the relocation or deletion of 249 or
 73 fewer sprinklers, notwithstanding the size of the existing fire
 74 sprinkler system, if there is no change of occupancy, as defined
 75 in the Florida Building Code, of the affected areas and there is
 76 no change in the water demand as defined in NFPA 13, "Standard
 77 for the Installation of Sprinkler Systems," and if the occupancy
 78 hazard classification as defined in NFPA 13 is reduced or
 79 remains the same as a result of the alteration. A person
 80 certified as a Contractor I, Contractor II, or Contractor IV may
 81 design or alter a fire protection system, the scope of which
 82 complies with NFPA 13D, "Standard for the Installation of
 83 Sprinkler Systems in One- and Two-Family Dwellings and
 84 Manufactured Homes," as adopted by the State Fire Marshal,
 85 notwithstanding the number of fire sprinklers. Contractor-
 86 developed plans may not be required by any local permitting
 87 authority to be sealed by a registered professional engineer.

Page 3 of 4

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

8-00305B-21

2021286__

88 (11) "Fire protection system" means a system individually
 89 designed to protect the interior or exterior of a specific
 90 building or buildings, structure, or other special hazard from
 91 fire. Such systems include, but are not limited to, water
 92 sprinkler systems, water spray systems, foam-water sprinkler
 93 systems, foam-water spray systems, carbon dioxide systems, foam
 94 extinguishing systems, dry chemical systems, and Halon and other
 95 chemical systems used for fire protection use. Such systems also
 96 include any overhead and underground fire mains, fire hydrants
 97 and hydrant mains, standpipes and hoses connected to sprinkler
 98 systems, sprinkler tank heaters, air lines, thermal systems used
 99 in connection with fire sprinkler systems, ~~and~~ tanks providing
 100 water supply or pump fuel piping, and pumps connected to fire
 101 sprinkler systems.

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

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 12, 2021

I respectfully request that **Senate Bill #286**, relating to Fire Sprinklers, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style and is positioned above a horizontal line.

Senator Keith Perry
Florida Senate, District 8

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/2021

Meeting Date

SB 286

Bill Number (if applicable)

Topic Fire Sprinklers

Amendment Barcode (if applicable)

Name Timothy J. Meenan

Job Title Lobbyist

Address 300 S. Duval Street, Ste. 410

Phone 850.425.4000

Street

Tallahassee

FL

32301

Email tim@meenanlawfirm.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Fire Sprinkler Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/2021

Meeting Date

SB 286

Bill Number (if applicable)

Topic Fire Sprinklers

Amendment Barcode (if applicable)

Name Karl Rasmussen

Job Title Lobbyist

Address 300 S. Duval Street, Ste. 410

Phone 850.425.4000

Street

Tallahassee

FL

32301

Email tim@meenanlawfirm.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Fire Sprinkler Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/21

Meeting Date

286

Bill Number (if applicable)

Topic Fire Sprinklers

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Director of Government and Community Affairs

Address 235 W. Brandon Blvd. Ste. 640

Phone 8509335994

Street

Brandon

FL

33511

Email edward@rsaconsultingllc.com

City

State

Zip

Speaking: For Against Information

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

Representing American Fire Sprinklers Association - FL Chapter

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)



Department of Financial Services (DFS) 2021 Legislative Bill Analysis

BILL INFORMATION

| | |
|-----------------|-----------------|
| Bill Number: | SB 286 |
| Bill Title: | Fire Sprinklers |
| Bill Sponsor: | Perry |
| Effective Date: | July 01, 2021 |

ANALYSIS INFORMATION

| | |
|--------------------|--|
| Agency Contact: | Meredith Stanfield, Legislative Affairs Director, (850) 413-2890 |
| Division Director: | Julius Halas |
| Program Analyst: | John Gatlin |
| Analysis Date: | February 8, 2021 |

POLICY ANALYSIS

I. SUMMARY ANALYSIS

This bill would define the scope of work allowable by a Contractor V and the scope of work allowable by a Contractor I and II as related to design of new and existing sprinkler systems, as well as revises the definition of the term fire protection system. The bill provides an effective date of July 1, 2021.

II. PRESENT SITUATION

Currently section 633.102, F.S., provides definitions for Contractors I, II, III, IV and V. The existing definition states that a Contractor V may “install, inspect, alter, repair and service”. Contractors I, II and IV are authorized to design and alter a sprinkler system when 49 or fewer sprinkler heads are impacted.

III. EFFECT OF PROPOSED CHANGES

The bill would modify the definitions of a Contractor V’s scope of work to include installation and outlines the requirement for a Contractor V to inspect, alter, repair and service underground piping only when under the direction of a Contractor I or II. The bill would expand the scope of a Contractor I and II to allow for alteration design of an existing sprinkler system involving relocation or deletion of 249 or fewer sprinklers.

IV. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

Y N

| | |
|--|---|
| If yes, explain: | |
| Is the change consistent with the agency’s core mission? | Y <input type="checkbox"/> N <input type="checkbox"/> |
| Rule(s) impacted (provide references to F.A.C.): | |

V. DOES THE BILL REQUIRE REPORTS OR STUDIES?

Y N

| | |
|--------------------------------|--|
| If yes, provide a description: | |
| Date Due: | |
| Bill Section Number(s): | |

VI. DOES THE BILL REQUIRE APPOINTMENTS OR MODIFY EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC.?

Y N

| | |
|-------------------------|--|
| Board: | |
| Board Purpose: | |
| Who Appoints: | |
| Changes: | |
| Bill Section Number(s): | |

FISCAL ANALYSIS

I. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y N

| | |
|---------------|--|
| Revenues: | |
| Expenditures: | |

II. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y N

| | |
|--|--|
| Revenues: | |
| Expenditures: | |
| Does the legislation contain a State Government appropriation? | |
| If yes, was this appropriated last year? | |

III. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y N

| | |
|-----------|--|
| Revenues: | |
|-----------|--|

| | |
|---------------|--|
| Expenditures: | |
| Other: | |

IV. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

| | |
|-------------------------|--|
| If yes, explain impact. | |
| Bill Section Number: | |

TECHNOLOGY IMPACT

I. DOES THE BILL IMPACT THE DEPARTMENT’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

| | |
|--|--|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | |
|--|--|

FEDERAL IMPACT

I. DOES THE BILL HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

| | |
|--|--|
| If yes, describe the anticipated impact including any fiscal impact. | |
|--|--|

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL’S OFFICE REVIEW

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 286

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Fire Sprinklers

DATE: March 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|---------------|
| 1. | <u>Kraemer</u> | <u>Imhof</u> | <u>RI</u> | <u>Fav/CS</u> |
| 2. | _____ | _____ | <u>BI</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 286, relating to fire sprinklers, revises the scope of fire protection system work for persons certified as a contractors by the Division of State Fire Marshal (division) within the Department of Financial Services.

Under the bill, a Contractor I or a Contractor II as defined in ch. 633, F.S., relating to Fire Prevention and Control, is authorized to design new fire protection systems of 49 or fewer sprinklers, and to design the alteration of an existing system regardless of the size of the system, if the alteration relocates or deletes 249 or fewer sprinklers. Further, occupancy and water demand, as defined in applicable codes, must be unchanged, and the occupancy hazard classification must be reduced or unchanged. The bill eliminates the authorization for a Contractor IV to similarly design or alter such fire protection systems.

The bill clarifies that a Contractor I, Contractor II, or Contractor IV is authorized to design a new fire protection system, or design the alteration of an existing fire sprinkler system, when the system meets a specified standard for installation in a one-family, two-family, or manufactured home.

The bill revises the work authorized to be undertaken by a person certified as a Contractor V. Under the bill, a Contractor V may inspect underground piping for a water-based fire protection system only under the direction of a Contractor I or Contractor II. A Contractor V may continue

to fabricate, install, alter, repair, and service the underground piping for a water-based fire protection system.

The bill clarifies that fire protection systems include tanks providing water supply or pump fuel, and piping for such tanks.

The bill has no impact on state or local government.

The bill is effective July 1, 2021.

II. Present Situation:

Florida Fire Prevention Code

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.¹ The State Fire Marshal adopts a new edition of the FFPC every three years.² When adopting a new edition of the FFPC, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.³ The 7th edition of the FFPC took effect on December 31, 2020.⁴

Current law requires local governments to enforce the FFPC and the Florida Building Code including permitting, inspecting, and approving the installation of a fire protection system.⁵ Owners of fire protection systems are responsible for the maintenance of their fire protection systems, and must contract with a certified fire protection system contractor to regularly inspect such systems.⁶

Fire Sprinkler Systems

A licensed fire protection engineer or architect, with fire protection design experience, may design any type of fire protection system.⁷ A fire protection system is “a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire.”⁸

¹ See Fla. Admin. Code Ch. 69A-60 (2021).

² Section 633.202, F.S. The State Fire Marshal maintains a list of local amendments to the FFPC, available at <https://www.myfloridacfo.com/Division/SFM/bfp/LocalAmendments.htm> (last visited Feb. 23, 2021).

³ *Id.* The NFPA shares information through more than 300 consensus codes and standards, research, training, education, outreach and advocacy, and by partnering with others. See the NFPA website, available at [NFPA](https://www.nfpa.org) (last visited Feb. 23, 2021).

⁴ See Florida Fire Prevention Code, available at [Florida Fire Prevention Code Page \(myfloridacfo.com\)](https://www.myfloridacfo.com/Florida-Fire-Prevention-Code) (last visited Feb. 23, 2021).

⁵ See generally the Florida Building Code, part IV of ch. 553, F.S., and ch. 633, F.S., relating to Fire Prevention and Control; 10.1.2 and 10.1.3 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).

⁶ See s. 633.312, F.S.; 10.2.7 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).

⁷ Section 633.102(3), F.S. A licensed fire protection engineer or architect with fire protection design experience may design any type of fire protection system. *Id.* The title “fire protection engineer” may be used only by persons holding an active license as an engineer in Florida, unless exempt from licensing. See s. 471.031, F.S.

⁸ Section 633.102(11), F.S.

The State Fire Marshal is also responsible for licensing and regulating fire system protection contractors in the state.⁹ A “fire protection system” is a system designed to protect buildings, structures, and special hazards from fires. In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, a person must be certified as a fire protection system contractor.

Fire protection systems are designed by licensed engineers and architects. Such systems include, but are not limited to:

- Water sprinkler and spray systems;
- Foam-water sprinkler and spray systems;
- Carbon dioxide, foam extinguishing, and dry chemical systems;
- Halon and other chemical systems used for fire protection;
- Overhead and underground fire mains;
- Fire hydrants and hydrant mains;
- Standpipes and hoses connected to sprinkler systems;
- Sprinkler tank heaters, air lines, and thermal systems; and
- Tanks and pumps connected to fire sprinkler systems.¹⁰

Fire Protection System Contractors

Fire protection system contractors may be certified under ch. 633, F.S., in five categories with distinct areas of authorized work that may be undertaken by contractors certified in a particular category. In order to sit for the examination for certification as a contractor, a person must be 18 years of age, be of good moral character, and have the following experience.

- A Contractor I must have four years of proven experience while employed by a Contractor I, or a combination of equivalent education and experience in both water-based and chemical fire suppression systems.
- A Contractor II must have four years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in water-based fire suppression systems.
- A Contractor III must have four years of verifiable employment experience with a fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in chemical fire suppression systems.
- A Contractor IV must be licensed as a certified plumbing contractor under ch. 489, F.S., and successfully complete a training program acceptable to the State Fire Marshal of not less than 40 contact hours regarding the applicable installation standard used by the Contractor IV as described in NFPA 13D.
- A Contractor V must have been licensed as a certified underground utility and excavation contractor or certified plumbing contractor pursuant to ch. 489, F.S., have verification by a certified utility contractor or certified plumbing contractor pursuant to ch. 489, F.S., that the applicant has four years’ proven experience while employed by a certified underground utility and excavation contractor or certified plumbing contractor, or have a combination of

⁹ See [Regulatory Licensing \(myfloridacfo.com\)](http://myfloridacfo.com) (last visited Feb. 23, 2021).

¹⁰ See s. 633.102(11), F.S.

education and experience equivalent to four years' proven experience while employed by a certified underground utility and excavation contractor or certified plumbing contractor.¹¹

The design of fire protection systems of 49 or fewer sprinklers, and the alteration of an existing fire sprinkler system, provided no more than 49 sprinklers are relocated, added, or deleted,¹² may be undertaken by persons certified as a:

- Contractor I (ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding preengineered systems);¹³
- Contractor II (ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler and spray systems, foam-water sprinkler and spray systems, standpipes, and sprinkler risers, all piping integral to the system, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and connected tanks and pumps, excluding preengineered systems);¹⁴ or
- Contractor IV (ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems, and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings).¹⁵

Under current law, a person certified as a Contractor V is a contractor whose business is limited to the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a water-based fire protection system.

One category of fire protection system contractors, Contractor III, does not engage in work involving fire sprinklers; that category addresses work on carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.¹⁶

III. Effect of Proposed Changes:

The bill revises the scope of fire protection system work for persons certified as a contractor by the division.

The bill revises the work authorized to be undertaken by a person certified as a Contractor V. Under the bill, a Contractor V may only inspect, alter, repair, and service underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II. The bill maintains current law allowing a Contractor V to fabricate, install, alter, repair, and service the underground piping for a water-based fire protection system from the point of service to one foot above the finished floor of a building.¹⁷

¹¹ Section 633.318(3), F.S. See also Fla. Admin. Code R. 69A-46.010 (2021).

¹² Section 633.102(3), F.S.

¹³ Section 633.102(3)(a), F.S.

¹⁴ Section 633.102(3)(b), F.S.

¹⁵ Section 633.102(3)(d), F.S.

¹⁶ See s. 633.102(3)(c), F.S.

¹⁷ See s. 633.102(3)(e), F.S.

The bill authorizes a Contractor I or a Contractor II to design a new fire protection system or design the alteration of an existing system, if the alteration:

- Entails the relocation or deletion of 249 or fewer sprinklers, notwithstanding the size of the existing system;
- Requires no change in occupancy, as defined in the Florida Building Code and the FFPC,¹⁸ and no change in water demand as defined in National Fire Protection Association Publication (NFPA) No. 13;¹⁹ and
- The occupancy hazard classification, as defined in NFPA No. 13,²⁰ is reduced or remains the same after the alteration.

The bill eliminates the authorization in current law for a Contractor IV to design fire protection systems of not more than 49 sprinklers, and to design the alteration of an existing fire sprinkler system when the alteration relocates, adds, or deletes not more than 49 sprinklers.

The bill clarifies that a Contractor I, Contractor II, or Contractor IV is authorized to design a new fire protection system, or design the alteration of an existing fire protection system, in compliance with the required codes.

The bill amends the definition of “fire protection system” to include tanks providing water supply or pump fuel, including piping for such tanks. This would allow fire sprinkler contractors to install fuel supply pumping for fire pumps.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁸ See ch. 3, Use and Occupancy Classification, Florida Building Code, available at [2020 Florida 3Code, Building, 7th Edition - CHAPTER 3 \(iccsafe.org\)](https://www.fbc.org/2020-Florida-3Code-Building-7th-Edition-CHAPTER-3) (last visited Feb. 23, 2021), and Florida Fire Prevention Code, ch. 20, Occupancy Fire Safety, available at [Florida Fire Prevention Code Page \(myfloridacfo.com\)](https://www.floridacfo.com/florida-fire-prevention-code) (last visited Feb. 23, 2021).

¹⁹ NFPA 13 is titled “Standard for the Installation of Sprinkler Systems.”

²⁰ See NFPA, *Step 1 How Much Water is Needed?*, available at https://www.nfpa.org/assets/gallery/firewise/operationWater/step1_3.htm (last visited Feb. 23, 2021), indicating an occupancy hazard classification is calculated as part of determining the minimum water needed to fight a structural fire. No hazard classification is assigned when a building has a properly installed automatic sprinkler system. *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes persons certified as a Contractor I or Contractor II to design the alteration of an existing system regardless of the size of the system, if the alteration relocates or delete 249 or fewer sprinklers. The authorization to do this type of work is expanded for persons certified as a Contractor I or Contractor II, which may impact others who have previously undertaken such design work, such as engineers and architects.

Under the bill, persons certified as a Contractor V may contract for work involving the inspection, alteration, repair, and servicing of underground piping for a fire protection system only if they are under the direction of persons certified as a Contractor I or Contractor II. The requirement imposed by the bill may result in decreased opportunities for work for a Contractor V.

C. Government Sector Impact:

According to the Department of Financial Services, there is no impact to state or local government.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.102 of the Florida Statutes.

²¹ See 2021 Agency Legislative Bill Analysis (Department of Financial Services) for SB 286, Feb. 8, 2021 (on file with Senate Committee on Regulated Industries) at page 2.

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 Regulated Industries on March 1, 2021:

The committee substitute:

- Provides that a Contractor I or a Contractor II may design a new fire protection system and design an alteration to an existing system provided:
 - 249 or fewer sprinklers will be relocated or deleted;
 - Occupancy requirements in the Florida Building Code or the Florida Fire Protection Code remain unchanged; and
 - The occupancy hazard code classification is reduced or remains the same;
- Clarifies that a Contractor I or Contractor II is authorized to design a new fire protection system, or design the alteration of an existing fire sprinkler system, when the system meets a specified standard for installation in a one-family, two-family, or manufactured home;
- Eliminates the authorization in current law for a Contractor IV to design fire protection systems, and to design the alteration of an existing system, with 49 or fewer sprinklers;
- Requires a Contractor V to be under the direction of a Contractor I or a Contractor II for inspection of underground piping for a water-based fire protection system; and
- Clarifies that fire protection systems include tanks providing water supply or pump fuel, and piping for such tanks, to allow fire sprinkler contractors to install fuel supply pumping for fire pumps.

- B. **Amendments:**

None.

By Senator Rodriguez

39-00677-21

2021346__

1 A bill to be entitled
 2 An act relating to the Florida Real Estate Appraisal
 3 Board; amending s. 475.613, F.S.; revising the
 4 composition of the board; providing an effective date.
 5
 6 Be It Enacted by the Legislature of the State of Florida:
 7
 8 Section 1. Subsection (1) of section 475.613, Florida
 9 Statutes, is amended to read:
 10 475.613 Florida Real Estate Appraisal Board.—
 11 (1) There is created the Florida Real Estate Appraisal
 12 Board, which shall consist of seven ~~nine~~ members appointed by
 13 the Governor, subject to confirmation by the Senate. Four
 14 members of the board must be real estate appraisers who have
 15 been engaged in the general practice of appraising real property
 16 in this state for at least 5 years immediately preceding
 17 appointment. In appointing real estate appraisers to the board,
 18 while not excluding other appraisers, the Governor shall give
 19 preference to real estate appraisers who are not primarily
 20 engaged in real estate brokerage or mortgage lending activities.
 21 One member ~~Two members~~ of the board must represent the appraisal
 22 management industry. One member of the board must represent
 23 organizations that use appraisals for the purpose of eminent
 24 domain proceedings, financial transactions, or mortgage
 25 insurance. One member ~~Two members~~ of the board must be a
 26 representative ~~shall be representatives~~ of the general public
 27 and ~~may shall~~ not be connected in any way with the practice of
 28 real estate appraisal. The appraiser members shall be as
 29 representative of the entire industry as possible, and

Page 1 of 2

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

39-00677-21

2021346__

30 membership in a nationally recognized or state-recognized
 31 appraisal organization may ~~shall~~ not be a prerequisite to
 32 membership on the board. To the extent possible, no more than
 33 two members of the board shall be primarily affiliated with any
 34 one particular national or state appraisal association. Two of
 35 the members must be licensed or certified residential real
 36 estate appraisers and two of the members must be certified
 37 general real estate appraisers at the time of their appointment.
 38 (a) Members of the board shall be appointed for 4-year
 39 terms. Any vacancy occurring in the membership of the board
 40 shall be filled by appointment by the Governor for the unexpired
 41 term. Upon expiration of her or his term, a member of the board
 42 shall continue to hold office until the appointment and
 43 qualification of the member's successor. A member may not be
 44 appointed for more than two consecutive terms. The Governor may
 45 remove any member for cause.
 46 (b) The headquarters for the board shall be in Orlando.
 47 (c) The board shall meet at least once each calendar
 48 quarter to conduct its business.
 49 (d) The members of the board shall elect a chairperson at
 50 the first meeting each year.
 51 (e) Each member of the board is entitled to per diem and
 52 travel expenses as set by legislative appropriation for each day
 53 that the member engages in the business of the board.
 54 Section 2. This act shall take effect November 1, 2021.

Page 2 of 2

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



ANALYSIS

2021 AGENCY LEGISLATIVE BILL

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

| | |
|------------------------|--|
| BILL NUMBER: | <u>SB 346</u> |
| BILL TITLE: | <u>Florida Real Estate Appraisal Board</u> |
| BILL SPONSOR: | <u>Sen. Rodriguez</u> |
| EFFECTIVE DATE: | <u>11/01/2021</u> |

COMMITTEES OF REFERENCE

| |
|-------------------------------------|
| 1) Regulated Industries |
| 2) Commerce and Tourism |
| 3) Rules |
| 4) Click or tap here to enter text. |
| 5) Click or tap here to enter text. |

CURRENT COMMITTEE

| |
|-----|
| N/A |
|-----|

SIMILAR BILLS

| | |
|---------------------|-----|
| BILL NUMBER: | N/A |
| SPONSOR: | N/A |

PREVIOUS LEGISLATION

| | |
|---------------------|-----|
| BILL NUMBER: | N/A |
| SPONSOR: | N/A |
| YEAR: | N/A |
| LAST ACTION: | N/A |

IDENTICAL BILLS

| | |
|---------------------|-----|
| BILL NUMBER: | N/A |
| SPONSOR: | N/A |

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

| | |
|-------------------------------|--|
| DATE OF ANALYSIS: | January 26, 2021 |
| LEAD AGENCY ANALYST: | Katy McGinnis, Director |
| ADDITIONAL ANALYST(S): | Jake Whealdon, Acting OGC Rules Tracy Dixon, Service Operations Robin Jordan, Technology |
| LEGAL ANALYST: | Tom Thomas, OGC |

| | |
|------------------------|-------------------------------|
| FISCAL ANALYST: | Raleigh Close, Administration |
|------------------------|-------------------------------|

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill reduces the number of members of the Florida Real Estate Appraisal, from nine (9) to seven (7). Members from the “appraisal management industry” category will be reduced from two (2) to one (1) position; and the “general public member” category will be reduced from two (2) to one (1) position.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Real Estate Appraisal Board currently has nine (9) members. Currently, four (4) members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least five (5) years immediately preceding appointment. Two (2) members of the board must represent the appraisal management industry. One (1) member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions or mortgage insurance. Two (2) members of the board shall be representatives of the general public and shall not be connected in any way with the practice of real estate appraisal. Two (2) of the members must be licensed or certified residential real estate appraisers and two (2) of the members must be certified general real estate appraisers at the time of their appointment.

2. EFFECT OF THE BILL:

The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board from nine (9) to seven (7). Member positions from the “appraisal management industry” category will be reduced from two (2) to one (1); and the “general public member” category will be reduced from two (2) to one (1) position.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

| | |
|--|---|
| If yes, explain: | N/A |
| Is the change consistent with the agency's core mission? | Y <input type="checkbox"/> N <input type="checkbox"/> |
| Rule(s) impacted (provide references to F.A.C., etc.): | N/A |

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

| | |
|-------------------------------------|-----|
| Proponents and summary of position: | N/A |
| Opponents and summary of position: | N/A |

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

| | |
|--------------------------------|-----|
| If yes, provide a description: | N/A |
| Date Due: | N/A |
| Bill Section Number(s): | N/A |

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

| | |
|-------------------------|---|
| Board: | Florida Real Estate Appraisal Board |
| Board Purpose: | Per s. 475.613(2), F.S., the “board shall have, through its rules, full power to regulate the issuance of license, certifications, registrations and permits; to discipline appraisers in any manner permitted under this section; to establish qualifications for licenses, certifications, registrations, and permits consistent with this section; to regulate approved courses; to establish standards for real estate appraisals; and to establish standards for and regulate supervisory appraisers.” |
| Who Appoints: | Governor |
| Changes: | The effect of the bill is to reduce the number of members of the Florida Real Estate Appraisal Board, from nine (9) to seven (7). Member positions from the “appraisal management industry” category will be reduced from two (2) to one (1); and the “general public member” category will be reduced from two (2) to one (1) position. |
| Bill Section Number(s): | Section 1 |

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y N

| | |
|---|-----|
| Revenues: | N/A |
| Expenditures: | N/A |
| Does the legislation increase local taxes or fees? If yes, explain. | N/A |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? | N/A |

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y N

| | |
|---------------|---|
| Revenues: | None |
| Expenditures: | Minimal reduction related to board travel. Travel cost savings is estimated to be \$5,200 per year. |

| | |
|--|-----|
| Does the legislation contain a State Government appropriation? | No |
| If yes, was this appropriated last year? | N/A |

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

| | |
|---------------|-----|
| Revenues: | N/A |
| Expenditures: | N/A |
| Other: | N/A |

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

| | |
|-------------------------|-----|
| If yes, explain impact. | N/A |
| Bill Section Number: | N/A |

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

| | |
|--|-----|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | N/A |
|--|-----|

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

| | |
|--|-----|
| If yes, describe the anticipated impact including any fiscal impact. | N/A |
|--|-----|

ADDITIONAL COMMENTS

Fiscal Comment: Travel savings is based on the average travel costs per board member per meeting. Board members average \$432 per meeting. The board meets six times per year. The estimated travel cost savings is \$432 times six meetings times two board members ($\$432 \times 6 \times 2 = \$5,184$ (rounded to \$5,200)). In light of COVID-19, the meetings have been conducted virtually, eliminating the need for travel.

OGC Rules: No additional comments.

Division of Service Operations: No impact.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

| | |
|---------------------------|-------------------------|
| Issues/concerns/comments: | No additional comments. |
|---------------------------|-------------------------|



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 14, 2021

I respectfully request that **Senate Bill #346**, relating to Florida Real Estate Appraisal Board, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2021

SB 346

Meeting Date

Bill Number (if applicable)

Topic Florida Real Estate Appraisal Board

Amendment Barcode (if applicable)

Name Will McRea

Job Title Associate - Sun City Strategies

Address 7625 W 14th Ct

Phone (786) 651-7653

Street

Hialeah

FL

33014

City

State

Zip

Email will@suncitystrategies.com

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against

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

Representing Region X of the Appraisal Institute

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] 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.

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/2021

Meeting Date

SB 346

Bill Number (if applicable)

Topic Senate Regulated Industries (2021 Session)

Amendment Barcode (if applicable)

Name Trey Goldman

Job Title General Counsel

Address 200 S Monroe St

Phone 8502241400

Street

Tallahassee

FL

32301

Email treyg@floridarealtors.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Realtors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 346

INTRODUCER: Senator Rodriguez

SUBJECT: Florida Real Estate Appraisal Board

DATE: March 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | _____ | _____ | <u>CM</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 346 reduces the number of board members sitting on the Florida Real Estate Appraisal Board (board) from nine to seven members. The bill removes from the board one of the two current members representing the appraisal management industry and one of the two current members who represents the general public and is not connected in any way with the practice of real estate appraisal.

The effective date of the bill is November 1, 2021.

II. Present Situation:

The Florida Real Estate Appraisal Board (board) within the Department of Business and Professional Regulation (DBPR) regulates real estate appraisers under part II of ch. 475, F.S. The board, through its rules, is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and
- Establish standards for and regulate supervisory appraisers.

The board consists of nine members.¹ The members of the board are all appointed by the Governor, subject to confirmation by the Senate. The Governor may remove any member for cause.² The membership of the board must consist of:

¹ Section 475.613(1), F.S.

² Section 475.613(1)(a), F.S.

- Four members who are real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- Two members who represent the appraisal management industry;
- One member who represents organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- Two members who represent the general public and are not connected in any way with the practice of real estate appraisal.³

Members of the board are appointed for 4-year terms, and may not be appointed for more than two consecutive terms.⁴ The headquarters of the board is in Orlando, Florida.⁵ The board must meet at least once each calendar quarter to conduct its business.⁶ Members must elect a chairperson at the first meeting each year.⁷

Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.⁸

Currently there are 6,891 active certified real estate appraisers.⁹ In comparison, the seven-member Real Estate Commission, which regulates real estate agents, associates, and schools, has 305,298 active licensees.¹⁰

In 2010, the membership of the board was increased from seven members to nine members with the addition of two members representing the appraisal management industry.¹¹

There is currently one vacancy on the board.¹² There are two members with current appointments expiring October 31, 2021 and six continue to hold office through the expiration of their term, including both public members and both appraisal management industry representatives.¹³

III. Effect of Proposed Changes:

The bill amends s. 475.613, F.S., to reduce the number of board members sitting on the board from nine members to seven members. The bill removes from the board one of the two current members representing the appraisal management industry and one of the two current members

³ *Id.*

⁴ Section 475.613(1)(a), F.S.

⁵ Section 475.613(1)(b), F.S.

⁶ Section 475.613(1)(c), F.S.

⁷ Section 475.613(1)(d), F.S.

⁸ Section 475.613(1)(e), F.S.

⁹ See Department of Business and Professional Regulation, *Annual Report, Divisions of Professions, Division Certified Public Accounting, Division of Real Estate, and Division of Regulation, Fiscal Year 2019-2020*, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf, at page 20 (last visited Feb. 18, 2021).

¹⁰ *Id.*

¹¹ Chapter 2010-84, s. 2, Laws of Fla.

¹² It is an appointment of a certified real estate appraiser. [Real Estate Appraisal – Board Information – MyFloridaLicense.com](#) (last visited February 21, 2021).

¹³ *Id.*

who represents the general public and is not connected in any way with the practice of real estate appraisal.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR estimates that the bill will reduce travel expenses for the board by \$5,200 per year.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁴ See Department of Business and Professional Regulation, *SB 346 Bill Analysis*, p. 3 (Jan. 26, 2021) (on file with the Senate Committee on Regulated Industries).

VIII. Statutes Affected:

This bill substantially amends section 475.613 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Rodriguez

39-01675-21

20211212__

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

A bill to be entitled

An act relating to construction contracting exemptions; amending s. 489.103, F.S.; exempting a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida from certain construction contracting regulations when constructing specified structures; providing an effective date.

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

Section 1. Subsection (24) is added to section 489.103, Florida Statutes, to read:

489.103 Exemptions.—This part does not apply to:

(24) A member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida when constructing chickees as defined in s. 553.73(10)(i).

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

From: Jeanine Bennett <JeanineB@miccosukeetribe.com>
Sent: Tuesday, February 23, 2021 11:07 AM
To: Kraemer, Mary <KRAEMER.MARY@flsenate.gov>
Subject: FW: Miccosukee Chickee Bill

Mary,

It was a pleasure speaking with you today regarding this important matter to the Miccosukee people. Below is the correspondence and discussion between my self and Mr. Brackett in the Florida House regarding the chickee bill. Please let me know if I can provide any additional insight.

Kind Regards,

Jeanine



Jeanine Bennett, Esq.

Miccosukee Tribe of Indians of Florida

General Counsel, In-House

PO Box 440021
Miami, FL 33144
jeanineb@miccosukeetribe.com
O: 305.223.8380 **Ext:** 5211 **F:** 305.894.5212

From: Jeanine Bennett <JeanineB@miccosukeetribe.com>
Sent: Wednesday, February 10, 2021 4:13 PM
To: Brackett, Daniel <Daniel.Brackett@myfloridahouse.gov>
Subject: RE: Miccosukee Chickee Bill

There are standards that are taught. There is nothing written down. As I said, it is traditional activity taught traditionally.

Jeanine

Jeanine Bennett, Esq.
In-House General Counsel
Miccosukee Tribe of Indians of Florida
Phone: 305-223-8380 xt. 5211
Fax: 305-894-5212

Sent from my Verizon, Samsung Galaxy smartphone, please forgive any errors or misspellings in email.

NOTICE: This e-mail message and all attachments may contain legally privileged and confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that you may not read, copy, distribute or otherwise use this message or its attachments. If you have received this message in error, please notify the sender by email and delete all copies of the message immediately.

----- Original message -----
From: "Brackett, Daniel" <Daniel.Brackett@myfloridahouse.gov>
Date: 2/10/21 4:01 PM (GMT-05:00)
To: Jeanine Bennett <JeanineB@miccosukeetribe.com>
Subject: RE: Miccosukee Chickee Bill

Thank you. Are there specific requirements for building chickees, such as specific design standards or height requirements, that are in the Tribe's constitution or other governing document? I think you may have answered this when you mentioned that Tribal members are taught from a young age by more senior and experienced Tribal elders.

Sincerely,

Daniel Brackett
Staff Attorney
Regulatory Reform Subcommittee
Florida House of Representatives
303 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300
(850) 717-5509

From: Jeanine Bennett <JeanineB@miccosukeetribe.com>
Sent: Wednesday, February 10, 2021 3:44 PM
To: Brackett, Daniel <Daniel.Brackett@myfloridahouse.gov>
Subject: RE: Miccosukee Chickee Bill

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

For each clan, the tribal elders decide whether a person is ready and anyone who the Business Council feels requires more instruction, they do not put them on the list.

Jeanine Bennett, Esq.
In-House General Counsel
Miccosukee Tribe of Indians of Florida
Phone: 305-223-8380 xt. 5211
Fax: 305-894-5212

Sent from my Verizon, Samsung Galaxy smartphone, please forgive any errors or misspellings in email.

NOTICE: This e-mail message and all attachments may contain legally privileged and confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that you may not read, copy, distribute or otherwise use this message or its attachments. If you have received this message in error, please notify the sender by email and delete all copies of the message immediately.

----- Original message -----

From: "Brackett, Daniel" <Daniel.Brackett@myfloridahouse.gov>
Date: 2/10/21 3:41 PM (GMT-05:00)
To: Jeanine Bennett <JeanineB@miccosukeetribe.com>
Subject: RE: Miccosukee Chickee Bill

Thank you! Does the Business Council determine who qualifies for the list or is that determined by someone else?

Sincerely,

Daniel Brackett
Staff Attorney

Regulatory Reform Subcommittee
Florida House of Representatives
303 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300
(850) 717-5509

From: Jeanine Bennett <JeanineB@miccosukeetribe.com>
Sent: Wednesday, February 10, 2021 3:31 PM
To: Brackett, Daniel <Daniel.Brackett@myfloridahouse.gov>
Subject: Miccosukee Chickee Bill

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

Hello Mr. Brackett,

Thank you for your assistance and consideration of the Miccosukee Tribe of Indians of Florida's request regarding this key traditional activity.

Chickee structures are traditional type buildings that are an integral part of everyday Miccosukee life which date back well beyond the 1800s. Tribal members begin learning this life skill at an early age. They are taught this traditional building skill by more senior and experienced Tribal elders so they ensure their traditional way of life for future generations. Many of these structures have withstood the winds of hurricanes and time. They are used for sleeping, cooking and community gatherings so those who engage in this activity are assured to be well skilled.

The Miccosukee Business Council, which consists of 5 duly elected members, cause to be maintained a list of those members who have achieved the skill necessary to build a solid and safe structure. When members of the public call, or when the tribal administration itself seeks to have a chickee built, they use this list to provide names of those within the tribe who can perform this service.

Should you have a request for additional information, please do not hesitate to reach out at your convenience.

Kind Regards,

Jeanine

Jeanine Bennett, Esq.
In-House General Counsel
Miccosukee Tribe of Indians of Florida
Phone: 305-223-8380 xt. 5211
Fax: 305-894-5212

Sent from my Verizon, Samsung Galaxy smartphone, please forgive any errors or misspellings in email.

NOTICE: This e-mail message and all attachments may contain legally privileged and confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that you may not read, copy, distribute or otherwise use this message or its attachments. If you have received this message in error, please notify the sender by email and delete all copies of the message immediately.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1212

INTRODUCER: Senator Rodriguez

SUBJECT: Construction Contracting Exemptions

DATE: March 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Kraemer</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | _____ | _____ | <u>CA</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 1212 exempts members of the Miccosukee Tribe of Indians of Florida (Miccosukee Tribe) and members of the Seminole Tribe of Florida (Seminole Tribe) from the contractor licensing requirements in ch. 489, F.S., when constructing a chickee. A chickee is an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

The bill has no impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Regulation of Construction Activities; Exemptions

The Legislature regulates the construction industry “in the interest of the public health, safety, and welfare,”¹ and has enacted ch. 489, F.S., to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting.²

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including but not limited to:

- Contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation;
- Employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge;

¹ See s. 489.101, F.S.

² See parts I, II, and III, respectively, of ch. 489, F.S.

- Certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances;
- Certain public utilities, on construction, maintenance, and development work by employees;
- Property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000;
- Work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.;
- Work falling under the so-called handyman exemption, meaning it is of a “casual, minor, or inconsequential nature,” and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions;
- Registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.;
- Work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements;
- Certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and
- Employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements.³

Construction Contracting

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.⁴ The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.⁵

The Electrical Contractors’ Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.⁶

³ See s. 489.103, F.S., for additional exemptions.

⁴ See s. 489.107, F.S.

⁵ Section 489.105(3), F.S.

⁶ Section 489.507, F.S.

Master septic tank contractors and septic tank contractors are regulated by the Department of Health under part III of ch. 489, F.S.⁷

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁸ The CILB and ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁹

A "specialty contractor" is a contractor whose scope of practice is limited to:

- A particular construction category adopted by board rule; and
- A subset of the trade categories for contractors listed in s. 489.105(3)(a) through (p), F.S., such as roofing, air-conditioning, plumbing, etc.¹⁰

For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tubs, and decorative or interactive water displays.¹¹ Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.¹²

Certification and Registration of Contractors

Under current law, a "certified contractor" has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.¹³

The term "registered contractor" means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.¹⁴

Fee for Certification and Registration

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. For an applicant for registration as a contractor, the initial application fee may not exceed \$100, and the initial registration fee and the

⁷ See ss. 489.551-489.558, F.S.

⁸ See ss. 489.113 and 489.516, F.S., respectively.

⁹ Section 455.227(2), F.S.

¹⁰ Section 489.105(3)(q), F.S.

¹¹ See Fla. Admin. Code R. 61G4-15.032 and 61G4-15.040 (2021).

¹² See Fla. Admin. Code R. 61G4-15.032 (2021).

¹³ Sections 489.105(8) and 489.113(1), F.S.

¹⁴ Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed \$200.¹⁵ The initial application fee and the renewal fee is \$50 for an application to certify or register a business.¹⁶

Fees must be adequate to ensure the continued operation of the CILB, and must be based on DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.¹⁷

All certificate holders and registrants must pay a fee of \$4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.¹⁸

Subcontractors

In most circumstances, a contractor must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work unless the contractor holds a state certificate or registration in the appropriate trade category.¹⁹

A subcontractor who does not have a state certificate or registration may work under the supervision of a licensed or certified contractor, if:

- The work of the subcontractor falls within the scope of the contractor's license; and
- The subcontractor is not engaged in construction work that would require specified contractor licensing (i.e., licensure as an electrical contractor,²⁰ a septic tank contractor,²¹ a sheet metal contractor, roofing contractor, Class A, B, or C air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool servicing contractor, plumbing contractor, underground utility and excavation contractor, or solar contractor.²²

Licensure Exemption in s. 489.117(4)(d), F.S.

Section 489.117(4)(d), F.S., commonly referred to as the "Jim Walter" exemption, was enacted in 1993²³ and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses²⁴ without obtaining a local license. The person must be under the supervision of a certified or registered general, building, or residential contractor, and the work may not be work that requires licensure in the areas of roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or

¹⁵ Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 489.109(3), F.S.

¹⁹ Section 489.113(3), F.S. Various exceptions for general, building, residential, and solar contractors are set forth in s. 489.113(3)(a) through (g), F.S.

²⁰ See Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting.

²¹ See Part III of ch. 489, F.S., relating to Septic Tank Contracting.

²² Section 489.113(2), F.S.

²³ See ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.

²⁴ The term "townhouses" was added to the exemption in 2003. See ch. 2003-257, s. 5, Laws of Fla.

underground utility and excavation.²⁵ The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

Florida's Fifth District Court of Appeals has addressed the applicability of this exemption to a local building contractor licensing requirement in a St. Johns County ordinance.²⁶ In this case, the court found that under s. 489.117(4)(d), F.S., the county's ordinance requiring all non-certified contractors to obtain a local license conflicted with state law.²⁷

Another example of this exemption's applicability is contained in a 2001 Attorney General Opinion. In this opinion, Florida's Attorney General, Robert A. Butterworth, explained that a county may not enact an ordinance that requires local certification of drywall installers. Mr. Butterworth reasoned that, under the exemption in s. 489.117(4)(d), F.S., "the county may not require certification of persons performing drywall installation on single-family residences when such persons are working under the supervision of a certified or registered general, building, or residential contractor."²⁸ Drywall installation fits the local licensing exemption because one does not have to obtain registration or certification under s. 489.105(3)(d)-(o), F.S., to perform this aspect of construction.

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.²⁹ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.³⁰ The building code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.³¹ The Florida Building Commission (commission), housed within the DBPR, adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.³²

The Seminole Tribe of Florida

The Seminole Tribe became a federally recognized Native American tribe in 1957.³³ There are six Seminole Tribe reservations in the state, located in Big Cypress, Brighton, Ft. Pierce, Hollywood, Immokalee, and Tampa. As explained on the tribal website:

²⁵ Section 489.117(4)(d), F.S.

²⁶ See *Florida Home Builders Ass'n v. St. Johns County*, 914 So.2d 1035 (Fla. 5th DCA 2005).

²⁷ *Id.* at 1037

²⁸ See Op. Att'y. Gen. Fla. 2001-25 (2001), available at

<http://www.myfloridalegal.com/ago.nsf/opinions/4c31d4cae5f162bf85256a1e00532dac> (last visited Feb. 23, 2021).

²⁹ See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act." See s. 552.70, F.S. The Florida Building Code, 7th Edition, available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Feb. 23, 2021).

³⁰ See s. 553.72(1), F.S.

³¹ See s. 553.72(3), F.S.

³² S. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

³³ See Timeline, available at <https://www.semtribe.com/stof/history/timeline> (last visited Feb. 23, 2021).

“Chickee” is the word Seminoles use for “house.” The first Seminoles to live in North Florida are known to have constructed log cabin-type homes, some two stories tall, with sleeping quarters upstairs. The chickee style of architecture - palmetto thatch over a cypress log frame - was born during the early 1800s when Seminole Indians, pursued by U.S. troops, needed fast, disposable shelter while on the run. Though indigenous peoples in other parts of North and South America have developed similar dwellings, it is generally agreed that the Seminole Indian technique and product are far superior.

So popular, efficient and functional is the chickee that such Seminole architecture can be seen all over South Florida. The chickee structure should last about ten years and needs to be re-thatched every five years. Several Seminole Tribal members make a living building custom chickees for both commercial and private interests.

In order to apply for membership in the Seminole Tribe, a person must meet these requirements:³⁴

- Have a minimum of one-quarter Florida Seminole blood; i.e., one grandparent must have been a full-blooded Florida Seminole;
- Be able to prove in writing a direct relationship with a Florida Seminole who was listed on the 1957 Tribal Roll (the Base Roll of the Seminole Tribe); and
- Be sponsored for enrollment by a current Seminole Tribe member.

The Miccosukee Tribe of Indians of Florida

The Miccosukee Tribe was originally part of the Creek Nation.³⁵ Its members migrated to Florida before it became a state.³⁶ The Miccosukee Tribe became a federally recognized Native American tribe in 1962.³⁷

Members of the Miccosukee Tribe, in which the mother’s clan is paramount, must have at least one-half Miccosukee ancestry through their mother, who may not be enrolled in any other tribe.³⁸

Young Miccosukee Tribe members are taught to build chickees by experienced elders, and a list of expert builders is maintained by the Miccosukee Business Council, which consists of five elected members of the Miccosukee Tribe.³⁹ The council monitors the qualifications of those listed; when the tribal administration wants a chickee to be constructed, or when members of the public contact the Miccosukee Tribe about building a chickee, references are made to those on the list.⁴⁰

³⁴ Seminole Tribe of Florida, *Frequently Asked Questions*, <https://www.semtribe.com/stof/helpful-linksmain/helpful-links> (last visited on Feb. 23, 2021).

³⁵ See <https://tribe.miccosukee.com/> (last visited Feb. 23, 2021).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Email from J. Bennett, In-House General Counsel for Miccosukee Tribe of Indians of Florida, to staff (Feb. 23, 2021) (on file with the Senate Committee on Regulated Industries).

⁴⁰ *Id.*

Definition and Exemption in Building Code for Certain Chickees

Under the building code, the term “chickee” means “an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.”⁴¹ Chickees constructed by the Seminole Tribe or the Miccosukee Tribe are exempt from the requirements of the building code.⁴² While the commission has determined that such chickees may have nonwood items underneath them, such as aluminum or plastic chairs and tables, countertops, or food and beverages, adding elements such as sinks, electrical outlets, or other nonwood items to a chickee means the chickee is not compliant with the building code and is no longer an exempt structure.⁴³

Construction of chickees, which are not now used for housing, is now possible in a matter of hours, not days, because of new technology and equipment.⁴⁴ Nails, chainsaws and four wheelers are now used to haul heavy logs, replacing the old method of using manpower or awaiting flooding from a thunderstorm in a location where logs had been cut down, so the logs could be moved more easily.⁴⁵

Construction Contracting Issues related to Chickees

There is no exemption from the contractor licensing requirements in current law for construction of chickees by members of the Seminole Tribe or the Miccosukee Tribe. In 2013, the CILB issued its Final Order concluding members of the Miccosukee Tribe and the Seminole Tribe must be properly licensed as contractors for building chickees outside the boundaries of a reservation.⁴⁶

Various local governments require chickee builders to be licensed contractors or employees of a licensed contractors, and require permits and that the structures comply with zoning and environmental regulations, local ordinances and regulations, and Department of Health drainage requirements.⁴⁷ Some local governments require tribal members seeking to build a chickee to be

⁴¹ Section 553.73(10)(i), F.S.

⁴² *Id.*

⁴³ See Declaratory Statement in the Matter of Plaza Beach Motel, Inc., Case No. 2018-012 (Fla. Building Comm’n) (filed Apr. 20, 2018), at pp. 3-4, available at https://www.doah.state.fl.us/flaid/dpr/2018/dpr_0_04242018_020723.pdf (last visited Feb. 23, 2021) and Declaratory Statement in the Matter of Broward County Board of Rules and Appeals, Case No. 2013-031 (Fla. Building Comm’n) (filed Dec. 17, 2013), at pp. 2-3, available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_12302013_040040.pdf (last visited Feb. 23, 2021).

⁴⁴ See Ernie Tiger, *Chickees Provided Early Housing*, available at <https://www.semtribe.com/stof/culture/chickee> (last visited Feb. 23, 2021).

⁴⁵ *Id.*

⁴⁶ See Final Order in re: Petition for Declaratory Statement of City of Port St. Lucie Building Dep’t, Case No. 2013-08017, (Fla. DBPR DS 2013-091) (filed Dec. 26, 2013), available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_01072014_023857.pdf (last visited Feb. 23, 2021).

⁴⁷ See Bulletin #2017-001, issued by Sarasota County Building Official (Feb. 7, 2017), available at <https://www.scgov.net/Home/ShowDocument?id=33926> last visited Feb. 23, 2021); Chickee Structures Notice, issued by Charlotte County (Apr. 17, 2020), available at <https://www.charlottecountyfl.gov/departments/community-development/notices/chickee-structures.stml> (last visited Feb. 23, 2021); Article by Sara Matthis, *City Addresses Rash of Unpermitted Tiki Huts*, Keys Weekly, available at <https://keysweekly.com/42/city-addresses-rash-of-unpermitted-tiki-huts/> (last visited Feb. 23, 2021); Miami-Dade County, File Contractor Complaints, Chickee Construction Only Allowed by Licensed Contractors, available at <https://www.miamidade.gov/building/contractor-complaints.asp> (last visited

a licensed contractor or a direct employee of a licensed Division I contractor applying for the building permit.⁴⁸

III. Effect of Proposed Changes:

The bill exempts members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida from the contractor licensing requirements in ch. 489, F.S., when constructing a chickee that meets the definition in s. 553.73(1)(i), F.S., which states:

[T]he term “chickee” means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

The bill is effective 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

Feb. 23, 2021); and Miami-Dade County, Permit Exemptions, available at <https://www.miamidade.gov/permits/exemptions.asp> (last visited Feb. 23, 2021).

⁴⁸ See e.g., Bulletin #2017-001, issued by Sarasota County Building Official (Feb. 7, 2017) available at <https://www.scgov.net/Home/ShowDocument?id=33926> (last visited Feb. 23, 2021).

B. Private Sector Impact:

Members of the Miccosukee Tribe or the Seminole Tribe will be exempt from compliance with contractor licensing requirements set forth in Florida law, when constructing chickees that meet the definition in the building code.

C. Government Sector Impact:

Fees collected by local governments for registration of contractors in their jurisdictions may be impacted by the exemption created under the bill for members of the Miccosukee Tribe or the Seminole Tribe, when constructing chickees that meet the definition in the building code.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 489.103 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.

By Senator Baxley

12-00283C-21

2021572__

1 A bill to be entitled
 2 An act relating to engineers; amending s. 471.003,
 3 F.S.; prohibiting a person who is not licensed as an
 4 engineer from using a specified name or title;
 5 prohibiting, after a specified date, a person who is
 6 not a licensed professional structural engineer from
 7 using specified names and titles or practicing
 8 professional structural engineering; exempting certain
 9 persons from licensing requirements; amending s.
 10 471.005, F.S.; defining terms; revising definitions;
 11 amending s. 471.013, F.S.; authorizing the Board of
 12 Professional Engineers to refuse to certify an
 13 applicant for a professional structural engineer
 14 license for certain reasons; amending s. 471.015,
 15 F.S.; providing licensure and application requirements
 16 for a professional structural engineer license;
 17 exempting certain applicants who apply for licensure
 18 before a specified date from having to pass a certain
 19 national examination, under certain conditions;
 20 requiring the board to certify certain applicants for
 21 licensure by endorsement; amending ss. 471.019 and
 22 471.025, F.S.; conforming provisions to changes made
 23 by the act; amending s. 471.031, F.S.; prohibiting
 24 certain persons from practicing professional
 25 structural engineering after a specified date;
 26 prohibiting specified persons from using specified
 27 names and titles; amending s. 471.033, F.S.;
 28 specifying acts that constitute grounds for
 29 disciplinary action, including civil penalties,

Page 1 of 14

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

12-00283C-21

2021572__

30 against a professional structural engineer; amending
 31 ss. 471.037 and 471.0385, F.S.; conforming provisions
 32 to changes made by the act; providing an effective
 33 date.
 34

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

36
 37 Section 1. Subsections (1) and (2) of section 471.003,
 38 Florida Statutes, are amended to read:

39 471.003 Qualifications for practice; exemptions.—

40 (1) (a) No person other than a duly licensed engineer shall
 41 practice engineering or use the name or title of "licensed
 42 engineer," "professional engineer," or "registered engineer" or
 43 any other title, designation, words, letters, abbreviations, or
 44 device tending to indicate that such person holds an active
 45 license as an engineer in this state.

46 (b) Effective March 1, 2023, no person other than a duly
 47 licensed professional structural engineer shall engage in the
 48 practice of professional structural engineering or use the name
 49 or title of "licensed structural engineer," "professional
 50 structural engineer," or "registered structural engineer" or any
 51 other title, designation, words, letters, abbreviations, or
 52 device tending to indicate that such person holds an active
 53 license as a professional structural engineer in this state.

54 (2) The following persons are not required to be licensed
 55 under the provisions of this chapter as a licensed engineer or a
 56 licensed professional structural engineer:

57 (a) Any person practicing engineering for the improvement
 58 of, or otherwise affecting, property legally owned by her or

Page 2 of 14

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

12-00283C-21

2021572__

59 him, unless such practice involves a public utility or the
60 public health, safety, or welfare or the safety or health of
61 employees. This paragraph shall not be construed as authorizing
62 the practice of engineering through an agent or employee who is
63 not duly licensed under the provisions of this chapter.

64 (b)1. A person acting as a public officer employed by any
65 state, county, municipal, or other governmental unit of this
66 state when working on any project the total estimated cost of
67 which is \$10,000 or less.

68 2. Persons who are employees of any state, county,
69 municipal, or other governmental unit of this state and who are
70 the subordinates of a person in responsible charge licensed
71 under this chapter, to the extent that the supervision meets
72 standards adopted by rule of the board.

73 (c) Regular full-time employees of a corporation not
74 engaged in the practice of engineering as such, whose practice
75 of engineering for such corporation is limited to the design or
76 fabrication of manufactured products and servicing of such
77 products.

78 (d) Regular full-time employees of a public utility or
79 other entity subject to regulation by the Florida Public Service
80 Commission, Federal Energy Regulatory Commission, or Federal
81 Communications Commission.

82 (e) Employees of a firm, corporation, or partnership who
83 are the subordinates of a person in responsible charge, licensed
84 under this chapter.

85 (f) Any person as contractor in the execution of work
86 designed by a professional engineer or a professional structural
87 engineer or in the supervision of the construction of work as a

Page 3 of 14

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

12-00283C-21

2021572__

88 foreman or superintendent.

89 (g) A licensed surveyor and mapper who takes, or contracts
90 for, professional engineering services incidental to her or his
91 practice of surveying and mapping and who delegates such
92 engineering services to a licensed professional engineer
93 qualified within her or his firm or contracts for such
94 professional engineering services to be performed by others who
95 are licensed professional engineers under the provisions of this
96 chapter.

97 (h) Any electrical, plumbing, air-conditioning, or
98 mechanical contractor whose practice includes the design and
99 fabrication of electrical, plumbing, air-conditioning, or
100 mechanical systems, respectively, which she or he installs by
101 virtue of a license issued under chapter 489, under former part
102 I of chapter 553, Florida Statutes 2001, or under any special
103 act or ordinance when working on any construction project which:

104 1. Requires an electrical or plumbing or air-conditioning
105 and refrigeration system with a value of \$125,000 or less; and

106 2.a. Requires an aggregate service capacity of 600 amperes
107 (240 volts) or less on a residential electrical system or 800
108 amperes (240 volts) or less on a commercial or industrial
109 electrical system;

110 b. Requires a plumbing system with fewer than 250 fixture
111 units; or

112 c. Requires a heating, ventilation, and air-conditioning
113 system not to exceed a 15-ton-per-system capacity, or if the
114 project is designed to accommodate 100 or fewer persons.

115 (i) Any general contractor, certified or registered
116 pursuant to the provisions of chapter 489, when negotiating or

Page 4 of 14

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

12-00283C-21 2021572__
 117 performing services under a design-build contract as long as the
 118 engineering services offered or rendered in connection with the
 119 contract are offered and rendered by an engineer or a
 120 professional structural engineer licensed in accordance with
 121 this chapter.

(j) Any defense, space, or aerospace company, whether a
 122 sole proprietorship, firm, limited liability company,
 123 partnership, joint venture, joint stock association,
 124 corporation, or other business entity, subsidiary, or affiliate,
 125 or any employee, contract worker, subcontractor, or independent
 126 contractor of the defense, space, or aerospace company who
 127 provides engineering for aircraft, space launch vehicles, launch
 128 services, satellites, satellite services, or other defense,
 129 space, or aerospace-related product or services, or components
 130 thereof.
 131

Section 2. Present subsections (10) through (12) of section
 132 471.005, Florida Statutes, are redesignated as subsections (12)
 133 through (14), respectively, new subsections (10) and (11) are
 134 added to that section, and present subsection (10) of that
 135 section is amended, to read:
 136

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

137 (10) "Professional structural engineer" means a person who
 138 is licensed to engage in the practice of professional structural
 139 engineering under this chapter.
 140

141 (11) "Professional structural engineering" means a service
 142 or creative work that includes the structural analysis and
 143 design of structural components or systems for threshold
 144 buildings as defined in s. 553.71. The term includes
 145 engineering, as defined in subsection (7), which requires

12-00283C-21 2021572__
 146 significant structural engineering education, training,
 147 experience, and examination, as determined by the board.

148 ~~(12)-(10)~~ "Retired professional engineer," ~~or~~ "professional
 149 engineer, retired," "retired professional structural engineer,"
 150 or "professional structural engineer, retired" means a person
 151 who has been duly licensed as a professional engineer by the
 152 board and who chooses to relinquish or not to renew his or her
 153 license and applies to and is approved by the board to be
 154 granted the title "Professional Engineer, Retired" or
 155 "Professional Structural Engineer, Retired."

Section 3. Paragraph (a) of subsection (2) of section
 156 471.013, Florida Statutes, is amended to read:

471.013 Examinations; prerequisites.—

(2) (a) The board may refuse to certify an applicant for
 160 failure to satisfy the requirement of good moral character only
 161 if:

1. There is a substantial connection between the lack of
 162 good moral character of the applicant and the professional
 163 responsibilities of a licensed engineer or licensed professional
 164 structural engineer; and

2. The finding by the board of lack of good moral character
 166 is supported by clear and convincing evidence.

Section 4. Present subsections (3) through (7) of section
 169 471.015, Florida Statutes, are redesignated as subsections (4)
 170 through (8), respectively, a new subsection (3) is added to that
 171 section, and present subsection (3) of that section is amended,
 172 to read:

471.015 Licensure.—

(3) (a) The management corporation shall issue a

12-00283C-21 2021572__

175 professional structural engineer license to any applicant whom
 176 the board certifies as qualified to practice professional
 177 structural engineering and who meets all of the following
 178 requirements:

179 1. Is licensed under this chapter as an engineer or is
 180 qualified for licensure as an engineer.

181 2. Submits an application in the format prescribed by the
 182 board.

183 3. Provides satisfactory evidence of good moral character,
 184 as defined by the board.

185 4. Provides a record of 4 years of active structural
 186 engineering experience, as defined by the board, under the
 187 supervision of a licensed professional engineer.

188 5. Has successfully passed the 16-hour National Council of
 189 Examiners for Engineering and Surveying Structural Engineering
 190 examination.

191 (b) Before March 1, 2023, an applicant who satisfies the
 192 requirements of subparagraphs (a)1.-3. may satisfy subparagraphs
 193 (a)4. and 5. by:

194 1. Submitting a signed affidavit in the format prescribed
 195 by the board which states that the applicant is currently a
 196 licensed engineer in this state and has been engaged in the
 197 practice of professional structural engineering with a record of
 198 at least 4 years of active structural engineering design
 199 experience;

200 2. Possessing a current professional engineering license
 201 and filing the necessary documentation as required by the board,
 202 or possessing a current threshold inspector license; and

203 3. Agreeing to meet with the board or a representative of

12-00283C-21 2021572__

204 the board, upon the board's request, for the purpose of
 205 evaluating the applicant's qualifications for licensure.

206 (c) An applicant who is qualified for licensure as an
 207 engineer under s. 471.013 may simultaneously apply for licensure
 208 as a professional structural engineer if all requirements of s.
 209 471.013 and this subsection are met.

210 ~~(4)(3)~~ The board shall certify as qualified for a license
 211 ~~by endorsement an applicant who:~~

212 (a) In engineering, by endorsement, an applicant who
 213 qualifies to take the fundamentals examination and the
 214 principles and practice examination as set forth in s. 471.013,
 215 has passed a United States national, regional, state, or
 216 territorial licensing examination that is substantially
 217 equivalent to the fundamentals examination and principles and
 218 practice examination required by s. 471.013, and has satisfied
 219 the experience requirements set forth in paragraph (2)(a) and s.
 220 471.013; ~~or~~

221 (b) In engineering or professional structural engineering,
 222 by endorsement, an applicant who holds a valid license to
 223 practice engineering, or, for professional structural
 224 engineering, an applicant who holds a valid license to practice
 225 professional structural engineering, issued by another state or
 226 territory of the United States, if the criteria for issuance of
 227 the license were substantially the same as the licensure
 228 criteria that existed in this state at the time the license was
 229 issued; or

230 (c) In professional structural engineering, by endorsement,
 231 an applicant who holds a valid license to practice professional
 232 structural engineering issued by another state or territory of

12-00283C-21

2021572__

233 the United States and who has successfully passed one of the
 234 following 16-hour examination combinations:

235 1. The 8-hour National Council of Examiners for Engineering
 236 and Surveying Structural Engineering I examination and the 8-
 237 hour National Council of Examiners for Engineering and Surveying
 238 Structural Engineering II examination.

239 2. The 8-hour National Council of Examiners for Engineering
 240 and Surveying Structural Engineering II examination and either
 241 the 8-hour National Council of Examiners for Engineering and
 242 Surveying Civil: Structural examination or the 8-hour National
 243 Council of Examiners for Engineering and Surveying Architectural
 244 Engineering examination.

245 3. The 16-hour Western States Structural Engineering
 246 examination.

247 4. The 8-hour National Council of Examiners for Engineering
 248 and Surveying Structural Engineering II examination and either
 249 the 8-hour California Structural Engineering Seismic III
 250 examination or the 8-hour Washington Structural Engineering III
 251 examination.

252 Section 5. Section 471.019, Florida Statutes, is amended to
 253 read:

254 471.019 Reactivation.—The board shall establish by rule a
 255 reinstatement process for void licenses. The rule shall
 256 prescribe appropriate continuing education requirements for
 257 reactivating a license. The continuing education requirements
 258 for reactivating a license for a licensed engineer or a licensed
 259 professional structural engineer may not exceed the continuing
 260 education requirements prescribed pursuant to s. 471.017 for
 261 each year the license was inactive.

Page 9 of 14

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

12-00283C-21

2021572__

262 Section 6. Subsection (2) of section 471.025, Florida
 263 Statutes, is amended to read:

264 471.025 Seals.—

265 (2) It is unlawful for any person to seal or digitally sign
 266 any document with a seal or digital signature after his or her
 267 license has expired or been revoked or suspended, unless such
 268 license ~~is has been~~ reinstated or reissued. When an engineer's
 269 or a professional structural engineer's license is has been
 270 revoked or suspended by the board, the licensee shall, within a
 271 period of 30 days after the revocation or suspension has become
 272 effective, surrender his or her seal to the executive director
 273 of the board and confirm to the executive director the
 274 cancellation of the licensee's digital signature in accordance
 275 with ss. 668.001-668.006. In the event the engineer's license
 276 has been suspended for a period of time, his or her seal shall
 277 be returned to him or her upon expiration of the suspension
 278 period.

279 Section 7. Present paragraphs (b) through (g) of subsection
 280 (1) of section 471.031, Florida Statutes, are redesignated as
 281 paragraphs (c) through (h), respectively, a new paragraph (b) is
 282 added to that subsection, and present paragraph (b) of that
 283 subsection is amended, to read:

284 471.031 Prohibitions; penalties.—

285 (1) A person may not:

286 (b) Beginning March 1, 2023, practice professional
 287 structural engineering unless the person is licensed as a
 288 professional structural engineer or is exempt from licensure
 289 under this chapter.

290 (c)-(b)1. Except as provided in subparagraph 2. or

Page 10 of 14

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

12-00283C-21

2021572__

291 subparagraph 3., use the name or title "professional engineer"
 292 or any other title, designation, words, letters, abbreviations,
 293 or device tending to indicate that such person holds an active
 294 license as an engineer when the person is not licensed under
 295 this chapter, including, but not limited to, the following
 296 titles: "agricultural engineer," "air-conditioning engineer,"
 297 "architectural engineer," "building engineer," "chemical
 298 engineer," "civil engineer," "control systems engineer,"
 299 "electrical engineer," "environmental engineer," "fire
 300 protection engineer," "industrial engineer," "manufacturing
 301 engineer," "mechanical engineer," "metallurgical engineer,"
 302 "mining engineer," "minerals engineer," "marine engineer,"
 303 "nuclear engineer," "petroleum engineer," "plumbing engineer,"
 304 "structural engineer," "transportation engineer," "software
 305 engineer," "computer hardware engineer," or "systems engineer."

306 2. Any person who is exempt from licensure under s.
 307 471.003(2)(j) may use the title or personnel classification of
 308 "engineer" in the scope of his or her work under that exemption
 309 if the title does not include or connote the term "licensed
 310 engineer," "professional engineer," "registered engineer,"
 311 "licensed professional engineer," "~~licensed engineer~~,"
 312 "registered professional engineer," "licensed structural
 313 engineer," "professional structural engineer," or "registered
 314 structural engineer or "~~licensed professional engineer~~."

315 3. Any person who is exempt from licensure under s.
 316 471.003(2)(c) or (e) may use the title or personnel
 317 classification of "engineer" in the scope of his or her work
 318 under that exemption if the title does not include or connote
 319 the term "licensed engineer," "professional engineer,"

Page 11 of 14

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

12-00283C-21

2021572__

320 "registered engineer," "licensed professional engineer,"
 321 "~~licensed engineer~~," "registered professional engineer,"
 322 "licensed structural engineer," "professional structural
 323 engineer," "registered structural engineer," or "structural
 324 engineer," or "~~licensed professional engineer~~" and if that
 325 person is a graduate from an approved engineering curriculum of
 326 4 years or more in a school, college, or university which has
 327 been approved by the board.

328 Section 8. Paragraphs (b) through (e) and (g) of subsection
 329 (1) and subsection (4) of section 471.033, Florida Statutes, are
 330 amended to read:

331 471.033 Disciplinary proceedings.—

332 (1) The following acts constitute grounds for which the
 333 disciplinary actions in subsection (3) may be taken:

334 (b) Attempting to procure a license to practice engineering
 335 or professional structural engineering by bribery or fraudulent
 336 misrepresentations.

337 (c) Having a license to practice engineering or
 338 professional structural engineering revoked, suspended, or
 339 otherwise acted against, including the denial of licensure, by
 340 the licensing authority of another state, territory, or country,
 341 for any act that would constitute a violation of this chapter or
 342 chapter 455.

343 (d) Being convicted or found guilty of, or entering a plea
 344 of nolo contendere to, regardless of adjudication, a crime in
 345 any jurisdiction which directly relates to the practice of
 346 engineering, professional structural engineering, or the ability
 347 to practice engineering or professional structural engineering.

348 (e) Making or filing a report or record that the licensee

Page 12 of 14

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

12-00283C-21

2021572__

349 knows to be false, willfully failing to file a report or record
 350 required by state or federal law, willfully impeding or
 351 obstructing such filing, or inducing another person to impede or
 352 obstruct such filing. Such reports or records include only those
 353 ~~which that~~ are signed in the capacity of a licensed engineer or
 354 licensed professional structural engineer.

355 (g) Engaging in fraud or deceit, negligence, incompetence,
 356 or misconduct, in the practice of engineering or professional
 357 structural engineering.

358 (4) The management corporation shall reissue the license of
 359 a disciplined engineer, professional structural engineer, or
 360 business upon certification by the board that the disciplined
 361 person has complied with all of the terms and conditions set
 362 forth in the final order.

363 Section 9. Subsection (1) of section 471.037, Florida
 364 Statutes, is amended to read:

365 471.037 Effect of chapter locally.—

366 (1) Nothing contained in this chapter shall be construed to
 367 repeal, amend, limit, or otherwise affect any local building
 368 code or zoning law or ordinance, now or hereafter enacted, which
 369 is more restrictive with respect to the services of licensed
 370 engineers or licensed professional structural engineers than the
 371 provisions of this chapter.

372 Section 10. Subsection (3) of section 471.0385, Florida
 373 Statutes, is amended to read:

374 471.0385 Court action; effect.—If any provision of s.
 375 471.038 is held to be unconstitutional or is held to violate the
 376 state or federal antitrust laws, the following shall occur:

377 (3) The Executive Office of the Governor, notwithstanding

12-00283C-21

2021572__

378 chapter 216, is authorized to reestablish positions, budget
 379 authority, and salary rate necessary to carry out the
 380 department's responsibilities related to the regulation of
 381 professional engineers and professional structural engineers.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR DENNIS BAXLEY
12th District

January 28, 2021

The Honorable Chair Travis Hutson
416 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Hutson,

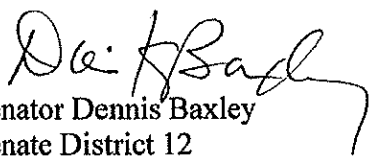
I would like to request that SB 572 Engineers and SB 574 Fees/Professional Structural Engineers Licensing be heard in the next Regulated Industries Committee meeting.

SB 572 amends current law to create classification for licensed structural engineers. To enhance public safety this bill requires Florida structural engineers to demonstrate their design capability through a nationally-accepted exam. It also establishes criteria for the qualifications of professional structural engineers.

SB 574 establishes fees for Professional Structural Engineers licensing.

I appreciate your favorable consideration.

Onward & Upward


Senator Dennis Baxley
Senate District 12

DKB/dd

REPLY TO:
 208 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-6012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/2021

Meeting Date

572

Bill Number (if applicable)

Topic Structural Engineers

Amendment Barcode (if applicable)

Name Jeff Kottkamp

Job Title _____

Address 3311 Dartmoor Drive

Phone _____

Street

Tallahassee

Florida

32312

Email JeffKottkamp@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Structural Engineers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/21
Meeting Date

SB 572
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name PO THOMAS GREGAN

Job Title STRUCTURAL ENGINEER

Address 1598 COUNTRY WALK DR.

Phone 904.635.2699

Street

FLEMING ISLAND, FL 32003

Email TOM.GREGAN@SEEA

City

State

Zip

EMAIL.COM

Speaking: For Against Information

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

Representing FLORIDA STRUCTURAL ENGINEERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 Mich 21

Meeting Date

572

Bill Number (if applicable)

Topic Structural Engineers

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Rd
Street

Phone 850.510.9922

Tall

City

FL

State

Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Structural Engineers Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/2021

Meeting Date

572

Bill Number (if applicable)

Topic Structural Engineers

Amendment Barcode (if applicable)

Name Tom Grogan

Job Title

Address

Street

Jacksonville

City

Florida

State

Zip

Phone

Email tomgroganse@gmail.com

Speaking: For Against Information

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

Representing Florida Structural Engineers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/1/2021
Meeting Date

572 + 574
Bill Number (if applicable)

Topic STRUCTURAL ENGINEER LICENSURE

Amendment Barcode (if applicable)

Name CHRISTOPHER CHILDERS

Job Title ENGINEER

Address 3144 FEARS GLEN DR

Phone 850 443 6667

Street

TALLAHASSEE FL 32309

City

State

Zip

Email c-childers@bniengineers.com

Speaking: For Against Information

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

Representing FLORIDA STRUCTURAL ENGINEERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 572

INTRODUCER: Senator Baxley

SUBJECT: Engineers

DATE: March 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Kraemer</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | _____ | _____ | <u>CM</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 572 authorizes the Florida Board of Professional Engineers (board) to establish minimum standards of practice for the profession of structural engineering, which includes the structural analysis and design of components for threshold buildings (those higher than 50 feet/three stories or with an occupancy of greater than 500 persons) as well as the practice of engineering under current law.

The bill prohibits, effective March 1, 2023, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., related to engineering.

Under the bill, the following titles may not be used by persons who are not licensed or exempt from licensing under current law relating to engineering: licensed professional engineer, licensed structural engineer, professional structural engineer, or registered professional engineer. The bill authorizes the board to certify persons as qualified to practice structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active structural engineering experience under the supervision of a licensed engineer, have passed certain professional examinations, and meet other administrative requirements. The bill also requires the board to certify qualified foreign or out-of-state applicants for licensure by endorsement in certain circumstances.

SB 574, relating to Fees/Professional Structural Engineer Licensing, is linked to this bill, and provides for the establishment of licensing fees by the Board of Professional Engineering to be paid by persons seeking licensure as a professional structural engineer.

See Section V, Fiscal Impact Statement.

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

II. Present Situation:

Regulation of Professional Engineers

The practice of engineering is regulated by the board. Section 471.005(7), F.S., defines the term “engineering” to include:

the term “professional engineering” and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services. A person who practices any branch of engineering; who, by verbal claim, sign, advertisement, letterhead, or card, or in any other way, represents himself or herself to be an engineer or, through the use of some other title, implies that he or she is an engineer or that he or she is licensed under this chapter; or who holds himself or herself out as able to perform, or does perform, any engineering service or work or any other service designated by the practitioner which is recognized as engineering shall be construed to practice or offer to practice engineering within the meaning and intent of this chapter [ch. 471, Engineering].

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

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

¹ See s. 471.038, F.S., the Florida Engineers Management Corporation Act, for the duties and authority of the FEMC.

² See the Annual Report of the FEMC for FY 2019-2020, available at [2019-20-FEMC-Annual-Report.pdf \(fbpe.org\)](https://fbpe.org/wp-content/uploads/2019-20-FEMC-Annual-Report.pdf) (last visited Feb. 23, 2021), and the contract between DBPR and FEMC for the period between July 1, 2017 and June 30, 2021 at <https://fbpe.org/wp-content/uploads/2018/07/FEMC-DBPR-Contract-2017.pdf> (last visited Feb. 23, 2021).

responsibility rules for the profession of engineering addressing a variety of issues, including the design of structures and fire protection systems.³

There were 62,475 licensed professional engineers in Fiscal Year 2019-2020.⁴ The FEMC processed 451 complaints regarding engineering practice during that period, with 372 of those complaints found to be legally sufficient to proceed, and filed 27 administrative complaints in cases where probable cause was found relating to a violation of the practice act.⁵

Professional Engineer License Qualifications and Exemptions

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

- An approved engineering science curriculum of four years or more in a board-approved school, college, or university; or
- An approved engineering technology curriculum of four years or more in a board-approved school, college, or university.⁶

Under s. 471.015(2), F.S., the board must certify for licensure any applicant who has submitted proof of being at least 18 years old and has the required engineering experience. For graduates of an approved engineering science curriculum, the applicant must have a record of at least four years of active engineering experience sufficient to indicate competence to be in responsible charge of engineering. Graduates of an approved engineering technology curriculum must have a record of at least six years of such qualified experience.⁷

Section 471.003(2), F.S., identifies those persons who are exempted from the licensing requirements of ch. 471, F.S.

Special Inspectors of Threshold Buildings

Section 471.015(7), F.S., authorizes the board to establish by rule the qualifications for certification of licensees as inspectors of threshold buildings. A “threshold building” is “any building which is greater than three stories or 50 feet in height, or which has an assembly

³ The responsibility rules are in Fla. Admin. Code Chapters 61G15-30, 61G15-31, 61G15-32, and 61G15-33 (2021).

⁴ There were 595 inactive professional engineering licenses in that fiscal year. See Department of Business and Professional Regulations, *Annual Report, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, Fiscal Year 2019-2020*, at p. 20, available at [DivisionAnnualReport_FY1920.pdf \(myfloridalicense.com\)](#) (last visited Feb. 23, 2021).

⁵ See the Annual Report of the FEMC for FY 2019-2020, available at [2019-20-FEMC-Annual-Report.pdf \(fbpe.org\)](#), at p. 2 (last visited Feb. 23, 2021). The FEMC also filed 27 Final Orders with DBPR; entered into eight negotiations, and tried six administrative hearings; dismissed two cases after re-consideration; issued 11 reprimands, six suspensions, seven probations, eight project reviews, and three license restrictions; and imposed \$43,916.10 in administrative costs and \$25,500.00 in fines. The board also issued 24 Final Orders against licensees.

⁶ Section 471.013(1), F.S.

⁷ See ss. 471.015(2)(a)1. and 2., F.S.

occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.”⁸

The board is also authorized to establish minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector.⁹ Current law does not authorize the board to establish minimum training or education requirements for maintaining a certification or qualification as a special inspector.

The agency charged with enforcing the building code (enforcing agency)¹⁰ must require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record.¹¹

Use of Engineer Seals

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

A licensee may not affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty.¹²

A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer, and assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents.¹³

Use of Descriptive Titles

Section 471.031, F.S., sets forth the permissible and prohibited titles for persons licensed under ch. 471, F.S., and for persons who are otherwise exempted from such licensure. With certain exceptions for persons exempted from licensure, the use of the name “professional engineer” or any other title, designation, abbreviation, or indication that a person holds an active license as an engineer when the person is not licensed under ch. 489, F.S., is prohibited, along with use of the following titles:

- Agricultural engineer;
- Air-conditioning engineer;

⁸ See s. 553.71(12), F.S.

⁹ See s. 471.015(7), F.S.

¹⁰ See s. 553.71(5), F.S., defining the term “local enforcement agency.”

¹¹ Section 553.79(5)(a), F.S.

¹² Section 471.025(3), F.S.

¹³ Section 471.025(4), F.S. The original engineer is released from any professional responsibility or civil liability for work that is assumed.

- Architectural engineer;
- Building engineer;
- Chemical engineer;
- Civil engineer;
- Control systems engineer;
- Electrical engineer;
- Environmental engineer;
- Fire protection engineer;
- Industrial engineer;
- Manufacturing engineer;
- Mechanical engineer;
- Metallurgical engineer;
- Mining engineer;
- Minerals engineer;
- Marine engineer;
- Nuclear engineer;
- Petroleum engineer;
- Plumbing engineer;
- Structural engineer;
- Transportation engineer;
- Software engineer;
- Computer hardware engineer; and
- Systems engineer.¹⁴

Imposition of Discipline by the Board

The conduct that constitute grounds for the imposition of discipline by the board are set forth in s. 471.033, F.S. Such discipline includes denial of an application for licensure, suspension or revocation of a license, imposition of fines, reprimands, probation, or restitution, and restriction of the authorized scope of practice of a licensee.

Voluntary Structural Engineer Associations

The Florida Structural Engineers Association (FSEA) provides input on building codes and enforcement and sponsors technical seminars to address common concerns of the profession.¹⁵ Members of FSEA become members of the National Council of Structural Engineers Associations (NCSEA).¹⁶ The NCSEA was formed to improve the standard level of practice of the structural engineering profession and provide an identifiable resource for seeking communication with the profession, and it advocates for the practice of structural engineering on behalf of its 44 member organizations.¹⁷

¹⁴ See s. 471.031(b), F.S.

¹⁵ See <http://www.flsea.com/> and <http://www.flsea.com/messages-from-the-president> (last visited Feb. 23, 2021).

¹⁶ *Id.*

¹⁷ See <http://www.ncsea.com/about/> (last visited Feb. 23, 2021).

According to the NCSEA, two states restrict who may use the title “structural engineer,”¹⁸ seven states have a partial practice act for structural engineers,¹⁹ and two states have a full practice act for structural engineers.²⁰

The National Council of Examiners for Engineering and Surveying is a nonprofit organization composed of 69 engineering and surveying licensing boards from all 50 states, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.²¹ It provides services including engineering examinations, surveying examinations, exam preparation materials, records programs, and credentials evaluations among other services to licensing jurisdictions.²²

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 471.003, F.S., to prohibit, effective March 1, 2023, the practice of professional structural engineering by any person who is not a licensed professional structural engineer or otherwise exempted from licensure under ch. 471, F.S., related to engineering.

The bill prohibits the use of the name or title of “licensed engineer,” “licensed professional engineer,” “licensed structural engineer,” “professional structural engineer,” or “registered structural engineer” or any other title that indicates an unlicensed person is a licensed professional structural engineer in this state. The bill amends s. 471.003(2), F.S., to clarify that certain persons are not required to be licensed as a licensed professional structural engineer, and this exemption includes contractors performing work designed by a professional structural engineer.

Section 2 of the bill amends s. 471.005, F.S., to define the term “licensed professional structural engineer” to mean a person who is licensed to engage in the practice of professional structural engineering in Florida under ch. 471, F.S.

The bill defines the term “professional structural engineering” to mean a service or creative work that includes the structural analysis and design of structural components or systems for threshold buildings.²³ The term includes engineering that requires significant structural engineering education, training, experience, and examination, as determined by the board.

The bill allows a retired professional structural engineer to be granted use of the title “professional engineer, retired” or “professional structural engineer, retired” by the board, if the retiree has:

- Been licensed as a professional engineer by the board;
- Relinquished or not renewed a license; and

¹⁸ Idaho and Nebraska. See [NCSEA Structural Licensure Committee](#) [sic] (last visited Feb.. 23, 2021).

¹⁹ Georgia, Alaska, California, Nevada, Utah, Oregon, and Washington. *Id.*

²⁰ Idaho and Nebraska. *Id.*

²¹ See [The National Council of Examiners for Engineering and Surveying \(ncees.org\)](#) (last visited February 23, 2021).

²² *Id.*

²³ Section 553.71(12), F.S., provides a “threshold building” is “any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.”

- Applied to and been approved by the board to use such title.

Section 3 of the bill amends s. 471.013(2)(a), F.S., relating to licensure, to include a reference to licensed professional structural engineers.

Section 4 of the bill amends s. 471.015, F.S., to authorize the board to certify persons as qualified to practice professional structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active professional structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements.

Under the bill, an applicant for licensure as a professional structural engineer must:

- Be licensed as an engineer, or qualify for licensure, under ch. 471, F.S.;
- Submit an application in the format prescribed by the board;
- Provide satisfactory evidence of good moral character, as defined by the board.
- Provide a record of four years of active professional structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer; and
- Have successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination.

Before March 1, 2023, a qualified applicant, in lieu of satisfying the experience and examination requirements set forth above, may instead:

- Submit a signed affidavit in the format prescribed by the board that the applicant is currently a licensed engineer in Florida and has been engaged in the practice of professional structural engineering with a record of at least four years of active professional structural engineering design experience;
- Possess a current professional engineering license and file the necessary documentation as required by the board, or possess a current threshold inspector license; and
- Agree to meet with the board or its representative at the board's request, for the purpose of evaluating the applicant's qualifications for licensure as a professional structural engineer.

An applicant qualified for licensure as an engineer may simultaneously apply for licensure as a professional structural engineer, if all the above requirements and all education, examination, experience, and good moral character requirements set forth in s. 471.013, F.S., are met.

The bill sets forth the following requirements for board certification of an applicant as qualified for licensure as a professional structural engineer by endorsement:

- An applicant who holds a license to practice either engineering or professional structural engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in Florida at the time the license was issued; or
- An applicant who holds a valid license to practice structural engineering issued by another state or territory of the United States and who has successfully passed one of the following 16-hour examination combinations:

- The 8-hour National Council of Examiners for Engineering and Surveying²⁴ Structural Engineering I examination and the 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination.
- The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination and either the 8-hour National Council of Examiners for Engineering and Surveying Civil: Structural examination or the 8-hour National Council of Examiners for Engineering and Surveying Architectural Engineering examination.
- The 16-hour Western States Structural Engineering examination.
- The 8-hour National Council of Examiners for Engineering and Surveying Structural Engineering II examination, and either the 8-hour California Structural Engineering Seismic III examination, or the 8-hour Washington Structural Engineering III examination.

Section 5 of the bill amends s. 471.019, F.S., relating to reinstatement of void licenses, to include a reference to licensed professional structural engineers.

Section 6 of the bill amends s. 471.025(2), F.S., regarding the use of seals on documents, to include a reference to the use of seals when a professional structural engineer's license is revoked or suspended.

Section 7 of the bill amends s. 471.031, F.S., to provide that beginning March 1, 2023, no person may practice professional structural engineering unless the person is licensed as a professional structural engineer or exempt from licensure under ch. 471, F.S. The bill also provides that the following titles may not be used by persons who are not licensed, or otherwise exempt from licensing, under ch. 471, F.S., relating to engineering: licensed engineer, licensed professional engineer, licensed structural engineer, professional structural engineer, registered structural engineer, or structural engineer.

Section 8 of the bill amends s. 471.033, F.S., related to disciplinary proceedings, to revise the acts that constitute grounds for discipline, to include acts related to the practice of professional structural engineering.

Section 9 of the bill amends s. 471.037(1), F.S., related to the construction of provisions in ch. 471, F.S., to provide that local building codes, zoning laws, or ordinances may be more restrictive concerning the services of licensed professional structural engineers.

Section 10 of the bill amends s. 471.0385, F.S., related to certain authorizations granted to the Governor. The bill grants authority to the Governor to reestablish positions, budget authority, and salary rate necessary to carry out the DBPR's responsibilities relating to "professional

²⁴ The National Council of Examiners for Engineering and Surveying (NCEES) is a nonprofit organization dedicated to advancing professional licensure for engineers and surveyors. In the United States, engineers and surveyors are licensed at the state and territory level. NCEES was created in 1920 and provides services for licensure and facilitation of mobility among licensing jurisdictions, including the development and scoring of examinations for licensure. See National Council of Examiners for Engineering and Surveying, *Advancing Licensure for Engineers and Surveyors*, available at <https://ncees.org/about/> (last visited Feb. 23, 2021).

structural engineers,” in the event the Florida Engineers Management Corporation Act²⁵ is held to be unconstitutional or to violate state or federal antitrust laws.

Section 11 of the bill provides an effective date of 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Beginning March 1, 2023, persons who are licensed engineers in Florida and those who perform work that comes within the definition in the bill for “professional structural engineering” will be required to obtain additional licensing to perform such work.

C. Government Sector Impact:

The creation of an additional licensing and regulatory structure for professional structural engineers may result in a fiscal impact to the DBPR or the FEMC. To date, no analysis by the DBPR or the FEMC of the impact of the bill on their respective operations, revenue, and expenditures has been provided.

²⁵ See s. 471.038, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 574, relating to Fees/Professional Structural Engineer Licensing, is linked to this bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.003, 471.005, 471.013, 471.015, 471.019, 471.025, 471.031, 471.033, 471.037, and 471.0385.

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.



481480

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/02/2021 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Regulated Industries (Baxley) recommended the following:

Senate Amendment (with directory amendment)

Delete line 53

and insert:

SB 572 or similar legislation takes effect, if such legislation

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete line 31

and insert:



481480

11 | 471.015, Florida Statutes, as amended by SB 572, 2021 Regular

By Senator Baxley

12-00806-21

2021574__

A bill to be entitled

An act relating to fees; amending s. 471.011, F.S.; authorizing the Board of Professional Engineers to establish fees relating to professional structural engineer licensing; amending s. 471.015, F.S.; requiring applicants to pay a specified fee in order to be eligible to receive a professional structural engineer license; providing a contingent effective date.

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

Section 1. Subsections (1) and (6) of section 471.011, Florida Statutes, are amended to read:

471.011 Fees.—

(1) The board by rule may establish fees to be paid for applications, examination, reexamination, licensing and renewal, inactive status application and reactivation of inactive licenses, and recordmaking and recordkeeping. The board may also establish by rule a delinquency fee. The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this chapter and the provisions of law with respect to the regulation of engineers and professional structural engineers.

(6) The fee for a temporary registration or certificate to practice engineering or professional structural engineering shall not exceed \$25 for an individual or \$50 for a business firm.

Page 1 of 2

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

12-00806-21

2021574__

Section 2. Paragraph (a) of subsection (3) of section 471.015, Florida Statutes, as amended by SB ___, 2021 Regular Session, is amended to read:

471.015 Licensure.—

(3) (a) The management corporation shall issue a professional structural engineer license to any applicant whom the board certifies as qualified to practice professional structural engineering and who meets all of the following requirements:

1. Is licensed under this chapter as an engineer or is qualified for licensure as an engineer.

2. Submits an application in the format prescribed by the board.

3. Provides satisfactory evidence of good moral character, as defined by the board.

4. Provides a record of 4 years of active structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer.

5. Has successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination.

6. Pays a fee established by the board under s. 471.011.

Section 3. This act shall take effect on the same date that SB ___ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR DENNIS BAXLEY
12th District

January 28, 2021

The Honorable Chair Travis Hutson
416 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Hutson,

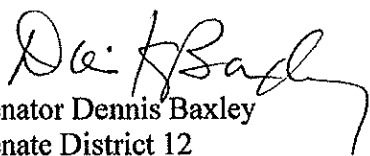
I would like to request that SB 572 Engineers and SB 574 Fees/Professional Structural Engineers Licensing be heard in the next Regulated Industries Committee meeting.

SB 572 amends current law to create classification for licensed structural engineers. To enhance public safety this bill requires Florida structural engineers to demonstrate their design capability through a nationally-accepted exam. It also establishes criteria for the qualifications of professional structural engineers.

SB 574 establishes fees for Professional Structural Engineers licensing.

I appreciate your favorable consideration.

Onward & Upward


Senator Dennis Baxley
Senate District 12

DKB/dd

REPLY TO:
 208 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-6012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/2021
Meeting Date

572 + 574
Bill Number (if applicable)

Topic STRUCTURAL ENGINEER LICENSURE

Amendment Barcode (if applicable)

Name CHRISTOPHER CHILDERS

Job Title ENGINEER

Address 3144 FERNS GLEN DR

Phone 850 443 6667

TALLAHASSEE FL 32309
City State Zip

Email c-childers@bniengineers.com

Speaking: For Against Information

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

Representing FLORIDA STRUCTURAL ENGINEERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 574

INTRODUCER: Regulated Industries Committee and Senator Baxley

SUBJECT: Fees/Professional Structural Engineer Licensing

DATE: March 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Kraemer | Imhof | RI | Fav/CS |
| 2. | | | CM | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 574 provides that the Board of Professional Engineers (board) may establish a fee for licensing of professional structural engineers.

SB 572, relating to Engineers, is a linked bill that requires the board to determine whether applicants seeking to practice professional structural engineering are licensed or qualify for licensure as an engineer, have at least four years of active professional structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements. The linked bill also addresses other issues related to professional structural engineers.

See Section V, Fiscal Impact Statement.

The bill is effective on the same date that SB 572 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law.

II. Present Situation:

Linked Bill SB 572

This bill is linked to SB 572, relating to Engineers, which amends s. 471.015(3), F.S. Under the linked bill, the board is authorized to certify persons as qualified to practice professional

structural engineering if they are licensed or qualify for licensure as an engineer, have at least four years of active professional structural engineering experience under the supervision of a licensed professional engineer, have passed certain professional examinations, and meet other administrative requirements.

In addition, the linked bill provides an applicant for licensure as a professional structural engineer must:

- Be licensed as an engineer, or qualify for licensure, under ch. 471, F.S.;
- Submit an application in the format prescribed by the board;
- Provide satisfactory evidence of good moral character, as defined by the board.
- Provide a record of four years of active professional structural engineering experience, as defined by the board, under the supervision of a licensed professional engineer; and
- Have successfully passed the 16-hour National Council of Examiners for Engineering and Surveying Structural Engineering examination. Section 471.011, F.S., authorizes the board by rule to establish fees to be paid for applications, examination, reexamination, licensing, renewal, reactivation, inactive status applications, and recordmaking and recordkeeping. It also provides that qualification of a business organization must not require payment of a fee.

Fees

Section 471.011, F.S., authorizes the board to establish fees, by rule, to be paid for applications, examination, reexamination, licensing, renewal, reactivation, inactive status applications, and recordmaking and recordkeeping. It also provides that qualification of a business organization must not require payment of a fee.

Current law provides fees for licensure may not exceed these amounts:

- Initial license - \$125;
- Biennial renewal - \$125;
- Temporary registration or certificate - \$25 for an individual or \$50 for a business firm;
- Licensure by endorsement - \$150; or
- Application for inactive status or for reactivation of an inactive license - \$150.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 471.011, F.S., relating to fees for license applications, temporary licenses, license renewals, inactive licenses, examinations, and records, to provide that such fees are also applicable to the regulation of professional structural engineering.

Section 2 of the bill amends subsection s. 471.015(3), F.S., as amended in linked bill SB 572, relating to Engineers, to require payment by applicants seeking licensure to practice professional structural engineering, of a fee to be established by the board.

Section 3 provides the bill takes effect on the same date that SB 572 or similar legislation takes effect, if such legislation is adopted in the same legislative session or any extension and becomes a law.

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:

Article VII, Section 19 of the Florida Constitution requires a “state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject.” A “fee” is defined by the Florida Constitution to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”¹

Article VII, Section 19 of the Florida Constitution also requires that a tax or fee raised by the Legislature must be approved by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires the board to establish a fee for licensure as a professional structural engineer, as authorized in s. 471.001, F.S.

B. Private Sector Impact:

Beginning March 1, 2023, persons who are licensed engineers in Florida and those who perform work that comes within the definition in the bill for “professional structural engineering” will be required to obtain additional licensing to perform such work and pay the fee for such licensing established by the board.

¹ FLA. CONST. art. VII, s. 19(d)(1).

C. Government Sector Impact:

Unlike most Department of Business and Professional Regulation (DBPR) professions, the administrative, investigative, and prosecutorial services for the board are not provided by DBPR. The DBPR contracts with the Florida Engineers Management Corporation (FEMC), a nonprofit corporation, to provide such services.²

The creation of an additional licensing and regulatory structure for professional structural engineers may result in a fiscal impact to the DBPR or the FEMC. To date, no analysis by the DBPR or the FEMC of the impact of the bill on their respective operations, revenue, and expenditures has been provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.011 and 471.015.

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

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

CS by Regulated Industries on March 1, 2021:

The CS includes the number of the linked bill, SB 572, in the bill.

B. Amendments:

None.

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

² The FEMC is a public-private nonprofit association that has contracted with the DBPR to handle administrative, investigative, and prosecutorial services for the Board of Professional Engineers *See* s. 471.038, F.S., the Florida Engineers Management Corporation Act, for the duties and authority of the FEMC.

By Senator Gruters

23-00559-21

2021616__

1 A bill to be entitled
 2 An act relating to public accountancy; amending s.
 3 473.308, F.S.; requiring that certain applicants not
 4 be licensed in any state or territory in order to be
 5 licensed by endorsement; amending s. 473.311, F.S.;
 6 providing license renewal requirements for nonresident
 7 licensees; amending s. 473.312, F.S.; requiring that a
 8 majority of the hours required for continuing
 9 education include specific content; amending s.
 10 473.313, F.S.; authorizing certain Florida certified
 11 public accountants to apply to the Department of
 12 Business and Professional Regulation to have their
 13 license placed in a retired status; providing
 14 requirements for such conversion; imposing
 15 requirements and prohibitions on retired licensees;
 16 authorizing retired licensees to use a specified title
 17 under certain circumstances; providing that retired
 18 licensees are not required to maintain continuing
 19 education requirements; authorizing retired licensees
 20 to reactivate their licenses if certain conditions are
 21 met; defining the term "retired licensee"; providing
 22 an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Subsection (7) of section 473.308, Florida
 27 Statutes, is amended to read:

28 473.308 Licensure.—

29 (7) The board shall certify as qualified for a license by

Page 1 of 7

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

23-00559-21

2021616__

30 endorsement an applicant who:

31 (a) Is not licensed and has not been licensed in any
 32 ~~another~~ state or territory and who has met the requirements of
 33 this section for education, work experience, and good moral
 34 character and has passed a national, regional, state, or
 35 territorial licensing examination that is substantially
 36 equivalent to the examination required by s. 473.306; or

37 (b)1. Holds a valid license to practice public accounting
 38 issued by another state or territory of the United States, if
 39 the criteria for issuance of such license were substantially
 40 equivalent to the licensure criteria that existed in this state
 41 at the time the license was issued;

42 2. Holds a valid license to practice public accounting
 43 issued by another state or territory of the United States but
 44 the criteria for issuance of such license did not meet the
 45 requirements of subparagraph 1.; has met the requirements of
 46 this section for education, work experience, and good moral
 47 character; and has passed a national, regional, state, or
 48 territorial licensing examination that is substantially
 49 equivalent to the examination required by s. 473.306; or

50 3. Holds a valid license to practice public accounting
 51 issued by another state or territory of the United States for at
 52 least 10 years before the date of application; has passed a
 53 national, regional, state, or territorial licensing examination
 54 that is substantially equivalent to the examination required by
 55 s. 473.306; and has met the requirements of this section for
 56 good moral character.

57 Section 2. Subsection (1) of section 473.311, Florida
 58 Statutes, is amended to read:

Page 2 of 7

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

23-00559-21

2021616__

59 473.311 Renewal of license.—

60 (1) ~~(a)~~ The department shall renew a license issued under s.
61 473.308 upon receipt of the renewal application and fee and upon
62 certification by the board that the Florida certified public
63 accountant has satisfactorily completed the continuing education
64 requirements of s. 473.312.

65 (b) A nonresident licensee seeking renewal of a license in
66 this state shall be determined to have met the continuing
67 education requirements in s. 473.312, except for the
68 requirements in s. 473.312(1)(c), if the licensee has complied
69 with the continuing education requirements applicable in the
70 state in which his or her office is located. If the state in
71 which the nonresident licensee's office is located has no
72 continuing education requirements for license renewals, the
73 nonresident licensee must comply with the continuing education
74 requirements in s. 473.312.

75 Section 3. Paragraph (c) of subsection (1) of section
76 473.312, Florida Statutes, is amended to read:

77 473.312 Continuing education.—

78 (1)

79 (c) Not less than 5 percent of the total hours required by
80 the board shall be in ethics applicable to the practice of
81 public accounting. This requirement shall be administered by
82 providers approved by the board and a majority of the hours
83 shall include a review of the provisions of chapter 455 and this
84 chapter and the related administrative rules.

85 Section 4. Section 473.313, Florida Statutes, is amended to
86 read:

87 473.313 Inactive status and retired status.—

Page 3 of 7

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

23-00559-21

2021616__

88 (1) A Florida certified public accountant may request that
89 her or his license be placed in an inactive status by making
90 application to the department. The board may prescribe by rule
91 fees for placing a license on inactive status, renewal of
92 inactive status, and reactivation of an inactive license.

93 ~~(a)(2)~~ A license that has become inactive under this
94 subsection ~~(1)~~ or for failure to complete the requirements in s.
95 473.312 may be reactivated under s. 473.311 upon application to
96 the department. The board may prescribe by rule continuing
97 education requirements as a condition of reactivating a license.
98 The maximum continuing education requirements for reactivating a
99 license are 120 hours, including at least 30 hours in
100 accounting-related and auditing-related subjects, not more than
101 30 hours in behavioral subjects, and a minimum of 8 hours in
102 ethics subjects approved by the board, for the reactivation of a
103 license that is inactive or delinquent.

104 ~~(b)(3)~~ A license that is delinquent for failure to report
105 completion of the requirements in s. 473.312 may be reactivated
106 under s. 473.311 upon application to the department.
107 Reactivation requires the payment of an application fee as
108 determined by the board and certification by the Florida
109 certified public accountant that the applicant satisfactorily
110 completed the continuing education requirements set forth under
111 s. 473.311. If the license is delinquent on January 1 because of
112 failure to report completed continuing education requirements,
113 the applicant must submit a complete application to the board by
114 March 15 immediately after the delinquent period.

115 ~~(c)(4)~~ Any Florida certified public accountant holding an
116 inactive license may be permitted to reactivate such license in

Page 4 of 7

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

23-00559-21

2021616__

117 a conditional manner. The conditions of reactivation shall
 118 require the payment of fees and the completion of required
 119 continuing education.

120 ~~(d)(5)~~ Notwithstanding the provisions of s. 455.271, the
 121 board may, at its discretion, reinstate the license of an
 122 individual whose license has become null and void if the
 123 individual has made a good faith effort to comply with this
 124 section but has failed to comply because of illness or unusual
 125 hardship. The individual shall apply to the board for
 126 reinstatement in a manner prescribed by rules of the board and
 127 shall pay an application fee in an amount determined by rule of
 128 the board. The board shall require that the individual meet all
 129 continuing education requirements as provided in subsection (2),
 130 pay appropriate licensing fees, and otherwise be eligible for
 131 renewal of licensure under this chapter.

132 (2) A Florida certified public accountant who is at least
 133 55 years of age and currently holds an active or inactive
 134 license under this chapter may apply to the department for her
 135 or his license to be placed in a retired status. The application
 136 must be prescribed by the board and must state that the
 137 applicant has no association with accounting or any of the
 138 services described in s. 473.302(8)(a), (c), or (d). If a
 139 licensee who has been granted retired status reenters the
 140 workforce in a position that has an association with accounting
 141 or any of the services described in s. 473.302(8)(a), (c), or
 142 (d), the licensee automatically loses her or his retired status,
 143 except as provided in paragraph (a).

144 (a) A retired licensee who serves without compensation on a
 145 board of directors or board of trustees, provides volunteer tax

Page 5 of 7

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

23-00559-21

2021616__

146 preparation services, participates in a government-sponsored
 147 business mentoring program such as the Internal Revenue
 148 Service's Volunteer Income Tax Assistance program or the Small
 149 Business Administration's SCORE program, or participates in an
 150 advisory role for a similar charitable, civic, or other
 151 nonprofit organization shall continue to be eligible for retired
 152 status.

153 (b) The board shall require a retired licensee to affirm in
 154 writing her or his understanding of the limited types of
 155 activities in which she or he may engage while in retired status
 156 and that she or he has a professional duty to ensure that she or
 157 he holds the professional competencies necessary to participate
 158 in such activities.

159 (c) Licensees may convert their license to retired status
 160 only if they hold a license in good standing and are not the
 161 subject of any sanction or disciplinary action.

162 (d) A retired licensee may accept routine reimbursement for
 163 actual costs of travel and meals associated with volunteer
 164 services or de minimis per diem amounts paid to the licensee to
 165 cover such expenses, as allowed by law.

166 (e) A retired licensee may use the title of "retired CPA"
 167 on any business card or letterhead or any other printed or
 168 electronic document. However, such title may not be applied in
 169 such a manner that could confuse the public as to the current
 170 status of the licensee. The licensee is not required to have a
 171 certificate issued with the word "retired" on the certificate.

172 (f) A retired licensee is not required to maintain the
 173 continuing education requirements under s. 473.312.

174 (g) A retired licensee may not offer or render professional

Page 6 of 7

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

23-00559-21

2021616__

175 services that require her or his signature and use of the CPA
176 title, regardless of whether the word "retired" is attached to
177 such title.

178 (h) A retired licensee may reactivate her or his license in
179 a conditional manner determined by board rules. The conditions
180 of reactivation must require the payment of fees and the
181 completion of any required continuing education.

182
183 For the purposes of this subsection, the term "retired licensee"
184 means a licensee whose license has been placed in retired status
185 by the department.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-1-21

Meeting Date

SB 614

Bill Number (if applicable)

Topic Public Accountancy

Amendment Barcode (if applicable)

Name Justin Thomas

Job Title Director of Governmental Affairs

Address 119 South Monroe, Suite 121

Phone 504-528-2209

Street

32301

Email justin@fipa.org

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Florida Institute of CPAs

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 616

INTRODUCER: Senator Gruters

SUBJECT: Public Accountancy

DATE: March 2, 2021 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | _____ | _____ | <u>CM</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 616 permits a nonresident Florida-licensed certified public accountant (CPA) to renew his or her license if the CPA has complied with the continuing education requirements in the state in which his or her office is located. However, a nonresident CPA must satisfy Florida’s ethics-related continuing education requirements. If the state in which the nonresident CPA’s office is located does not have continuing education requirements as a condition for license renewal, the nonresident CPA must comply with the continuing education requirements in Florida.

The bill permits a CPA to place his or her license in a retired status. If a licensee on retired status reenters the workforce in a position that has an association with accounting or any of the CPA services, the licensee automatically loses his or her retired status. A retired CPA may continue to be engaged in specific activities but may not offer professional services that require the use of the CPA title. A retired CPA may reactivate her or his license in a conditional manner determined by the Florida Board of Accountancy, which must require the payment of fees and the completion of any required continuing education.

The bill takes effect July 1, 2021.

II. Present Situation:

Certified Public Accountants

The Florida Board of Accountancy (board) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating and licensing the more than 38,000 active and 2,800 inactive CPAs and more than 5,500 accounting firms in Florida.¹ The Division of Certified

¹ Florida Department of Business and Professional Regulation, *Fiscal Year 2019-2020 Annual Report*, page 20, available at www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Feb. 22, 2021).

Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.²

A certified public accountant is an individual who holds a license to practice public accounting in this state under ch. 473, F.S., or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, F.S.³

The practice of public accounting includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.⁴ To engage in the practice of public accounting,⁵ an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S., and business entities must meet the requirements of s. 473.309, F.S.

CPA Licensing

Section 473.308, F.S., provides licensing requirements for CPAs. To be licensed as a certified public accountant, a person must be of good moral character, pass the licensure exam, and have at least 150 semester hours of education with a focus on accounting and business.⁶ CPA licenses must be renewed on a biennial basis through procedures adopted by the DBPR.⁷

License by Endorsement

Individuals who are licensed as a CPA in another state or territory, as well as individuals who are not licensed in another state or territory but have met certain requirements, may apply to the board for licensure by endorsement.⁸

If the applicant is not licensed and has never been licensed in another state or territory, the applicant must:

- Meet the education, work experience, and good moral character requirements;
- Have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306, F.S.; and
- Have completed continuing professional education courses that are at least equivalent to the continuing professional education requirements for a Florida CPA during the two years immediately preceding the application for licensure by endorsement.⁹

If the applicant is licensed in another state or territory, the applicant must:

- Have satisfied licensing criteria that were substantially equivalent to the licensure criteria in Florida at the time the license was issued; or

² Section 473.303, F.S.

³ See s. 473.302(4), F.S. Section 473.3141, F.S., permits a person who does not have an office in Florida to practice public accountancy in this state without obtaining a license under ch. 473, F.S., notifying or registering with the board, or paying a fee if the person meets the required criteria.

⁴ Section 473.302(8), F.S.

⁵ Section 473.302(8), F.S., defines the terms “practice of,” “practicing public accountancy,” and “public accounting”

⁶ Sections 473.308(2)-(5), F.S.

⁷ Section 473.311(2), F.S.

⁸ Section 473.308(7), F.S.

⁹ Section 473.308(7)(a), F.S., and Fla Admin. Code R. 61H1-29.003(1) (2021).

- Have passed a national, regional, state or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state and meet the education, work experience, and good moral character requirements, if the criteria for issuance of such a license were not substantially equivalent to Florida's criteria; or
- Have held a valid license in another state or territory for at least 10 years before applying for a license in Florida, have passed a national, regional, state or territorial licensing examination with examination criteria that were substantially equivalent to the examination criteria required in this state, and meet the education, work experience, and good moral character requirements; and
- Have completed continuing professional education courses that are at least equivalent to the continuing professional education requirements for a Florida CPA during the two years immediately preceding the application for licensure by endorsement.¹⁰

Continuing Education

CPAs, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the 2 years prior to the application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.¹¹ The board has the authority to prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.¹²

Not less than 10 percent of the total continuing education hours required by the board shall be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.¹³

Not less than five percent of the continuing education shall be in ethics applicable to the practice of public accounting, including a review of the provisions of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules. This requirement must be administered by providers approved by the board.¹⁴

Inactive Licenses

Section 473.313(1), F.S., permits Florida-licensed CPAs to request that their license be placed on inactive status. Licensees can also be placed on inactive status for failing to complete, or failure to report completion of, the continuing education requirements. Section 473.313(2), F.S., authorizes the board to adopt rules establishing fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.¹⁵

¹⁰ Section 473.308(7)(b), F.S., and Fla Admin. Code R. 61H1-29.003(2) (2021).

¹¹ Section 473.312(1)(a), F.S.

¹² *Id.*

¹³ Section 473.312(1)(b), F.S.

¹⁴ Section 473.312(1)(c), F.S., provides that “the maximum continuing education requirements for reactivating a license are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent.”

¹⁵ See Fla. Admin. Code R. 61H1-33.006 (2021).

A CPA may reactivate an inactive license by paying the DPBR a \$250 application fee¹⁶ and receiving certification that the CPA has completed the education requirements.¹⁷ If a license that was placed on inactive status for failure to report completed continuing education requirements is inactive on January 1, the applicant must submit a complete application to the board by March 15 immediately after the delinquent period.¹⁸

Retired Status

Current law does not provide CPAs the option of placing licenses into a retired status as an alternative to inactive status.

The American Institute of Certified Public Accountants (AICPA) estimated that approximately 75 percent of its members would be eligible to retire by 2020. The AICPA's Board of Directors and the National Association of State Boards of Accountancy Board of Directors each approved changes in the Uniform Accountancy Act to provide for the creation of a Retired-CPA status. The proposal would allow inactive CPAs, at least age 55 to: refer to themselves as "Retired-CPA" with appropriate registration with their State Board; offer volunteer tax preparation services if competent; participate in government-sponsored business mentoring programs if competent; and serve on the board of a non-profit organization if competent. All of these activities would be uncompensated and the applicant must have a license in good standing.¹⁹

III. Effect of Proposed Changes:

Licensure by Endorsement

The bill amends s. 473.308(7)(a)1., F.S., relating to applicants for licensure by endorsement who are not licensed in another state, to change the term "another" state to "any" state. The bill does not make the same change throughout s. 473.308, F.S., where the term "another" state is used in several instances. Section 476.308(1)(a)1., F.S., as amended by the bill, appears to include persons who have not been licensed in Florida within the licensure by endorsement requirements in paragraph (a). The amendment to this section appears to not have a substantive effect because such a person, i.e., a person from Florida who has not been licensed in any state or territory, must satisfy the licensing requirements of this state, whether they do so through the regular licensure qualification process or the licensure by endorsement process.

Continuing Education

The bill creates s. 473.311(1)(b), F.S., to permit a nonresident licensee seeking to renew his or her Florida license to comply with the continuing education requirements of the state in which his or her office is located. Under the bill, the nonresident licensee is required to complete the continuing education requirements in s. 743.312(1)(c), F.S., consisting of not less than five percent of the continuing education in ethics applicable to the practice of public accounting,

¹⁶ Fla Admin. Code R. 61H1-31.006 (2021).

¹⁷ Section 473.313(2), F.S.

¹⁸ Section 473.313(3), F.S.

¹⁹ See American Institute of CPAs, [inactive-retired-exposure-draft-nov-2015.pdf \(aicpa.org\)](#) (last visited February 21, 2021).

including a review of the provisions of ch. 455, F.S., and ch. 473, F.S., and the related administrative rules.

The nonresident licensee must comply with all of Florida's continuing education requirements if the state in which the nonresident licensee's office is located does not have continuing education requirements as a condition for license renewal.

The bill also amends s. 473.312(1)(c), F.S., to require that a majority of the continuing education hours in ethics include a review of ch. 455, F.S., relating to the regulations of businesses and professions, ch. 473, F.S., and the related administrative rules.

Retired Status

The bill amends s. 473.313, F.S., to permit a Florida-licensed CPA to submit an application to the DBPR to place his or her license in a retired status if the licensee:

- Is at least 55 years of age;
- Holds a current active or inactive license; and
- Is in good standing and not the subject of any sanction or disciplinary action.

Under the bill, if a licensee in a retired status reenters the workforce in a position that has an association with accounting or any of the services, the licensee automatically loses her or his retired status. A CPA in a retired status may continue to provide services utilizing accounting skills, as well as tax, management advisory, or consulting services, as defined in s. 473.302(8)(b), F.S., but may not provide certain accounting services that involve expressing an opinion on or preparing financial statements, as defined in ss. 473.302(8)(a), (c), and (d), F.S., which include services that involve an opinion on financial statements or the preparation of financial statements.

The bill authorizes a retired licensee to serve without compensation on a board of directors or board of trustees, provide volunteer tax preparation services, participate in a government-sponsored business mentoring program, and participate in an advisory role for a similar charitable, civic, or nonprofit organization.

The board may require a retired licensee to affirm in writing his or her understanding of the limited types of activities in which he or she may engage while in retired status and that he or she has a professional duty to ensure that he or she holds the professional competencies necessary to participate in such activities.

Under the bill, a retired licensee:

- May accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law.
- May use the title of "retired CPA."
- May not offer or render professional services that require his or her signature and use of the CPA title, regardless of whether the word "retired" is attached to such title.
- Is not required to maintain the continuing education requirements.

- May reactivate his or her license in a conditional manner determined by the board, which must require the payment of fees and the completion of any required continuing education.

The bill does not authorize the board to prescribe by rule fees for placing a license on retired status. Current law authorizes the board to prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.²⁰

Effective Date

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 19(a), Article VII of the State Constitution limits the authority of the legislature to enact legislation that imposes a new state tax or fee by requiring such legislation to be approved by a 2/3 vote in each chamber of the legislature. Section 19(e), Article VII of the Florida Constitution provides that a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

The Florida Board of Accountancy is currently authorized under s. 473.313(1), F.S., to impose a fee for placing a license into inactive status and for the reactivation of an

²⁰ See s. 473.313(1), F.S.

inactive license. SB 616 does not impose a fee, or authorize the board to prescribe a fee by rule, for placing a license on retired status.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR has stated that the technological modifications required to administer the bill can be made with existing resources. Other potential expenditures required by the DBPR are indeterminate but expected to be accommodated with existing resources.

The Revenue Estimating Conference has not yet met regarding the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates s. 473.311(1)(b), F.S., permitting a nonresident licensee seeking a renewal of his or her Florida license to comply with the continuing education requirements of the *state* in which his or her office is located. It is unclear if these new provisions are intended to apply to territories as well as states. By comparison, s. 473.308, F.S., governing qualifications for a CPA license, includes licensure requirements for persons licensed in other states *or* territories.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 473.308, 473.311, 473.312, and 473.313.

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.



859804

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 03/02/2021 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Regulated Industries (Diaz) recommended the following:

Senate Amendment

Delete lines 42 - 49
and insert:
electric utility and a governmental wastewater utility for the
exclusive purpose of the electric utility constructing and
operating a wastewater reuse system where operation of the
system will serve to further compliance with environmental laws
or regulations that apply to the electric utility and where the
system fully or partially satisfies a local government's



859804

11 reclaimed water reuse requirements under s. 403.064 or s.
12 403.086. At least 50 percent of the reclaimed water the system
13 produces must be used in conjunction with the water requirements
14 of an electrical generating facility or facilities owned by the
15 electric utility in order to offset all or part of the electric
16 utility's water use authorized by permit.

By Senator Diaz

36-00754-21

2021964__

1 A bill to be entitled
 2 An act relating to environmental compliance costs;
 3 amending s. 366.8255, F.S.; redefining the term
 4 "environmental compliance costs" to include costs or
 5 expenses prudently incurred by an electric utility in
 6 complying with specified reclaimed water reuse
 7 requirements; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Paragraph (d) of subsection (1) of section
 12 366.8255, Florida Statutes, is amended to read:
 13 366.8255 Environmental cost recovery.—
 14 (1) As used in this section, the term:
 15 (d) "Environmental compliance costs" includes all costs or
 16 expenses incurred by an electric utility in complying with
 17 environmental laws or regulations, including, but not limited
 18 to:
 19 1. Inservice capital investments, including the electric
 20 utility's last authorized rate of return on equity thereon.
 21 2. Operation and maintenance expenses.
 22 3. Fuel procurement costs.
 23 4. Purchased power costs.
 24 5. Emission allowance costs.
 25 6. Direct taxes on environmental equipment.
 26 7. Costs or expenses prudently incurred by an electric
 27 utility pursuant to an agreement entered into on or after the
 28 effective date of this act and prior to October 1, 2002, between
 29 the electric utility and the Florida Department of Environmental

Page 1 of 2

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

36-00754-21

2021964__

30 Protection or the United States Environmental Protection Agency
 31 for the exclusive purpose of ensuring compliance with ozone
 32 ambient air quality standards by an electrical generating
 33 facility owned by the electric utility.
 34 8. Costs or expenses prudently incurred for scientific
 35 research and geological assessments of carbon capture and
 36 storage conducted in this state for the purpose of reducing an
 37 electric utility's greenhouse gas emissions when such costs or
 38 expenses are incurred in joint research projects with Florida
 39 state government agencies and Florida state universities.
 40 9. Costs or expenses prudently incurred by an electric
 41 utility after July 1, 2021, pursuant to an agreement between the
 42 electric utility and a wastewater utility for the exclusive
 43 purpose of the electric utility constructing and operating a
 44 wastewater reuse system that fully or partially satisfies a
 45 local government's reclaimed water reuse requirements under s.
 46 403.064 or s. 403.086, where at least 50 percent of the
 47 reclaimed water the reuse system produces is used in conjunction
 48 with the water requirements of an electrical generating facility
 49 or facilities owned by the electric utility.
 50 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

Date: February 11, 2021

| | | |
|------------------|---------------------------|---------------------|
| Agency Affected: | Public Service Commission | Telephone: 413.6960 |
| Program Manager: | Adam Potts | Telephone: 413.6596 |
| Agency Contact: | Adam Potts | Telephone: 413.6596 |
| Respondent: | Kaley Slattery | Telephone: 408.1181 |

RE: SB 964

I. SUMMARY:

SB 964, filed by Senator Diaz, amends Section 366.8255, Florida Statutes (F.S.), by including in the definition of “environmental compliance costs” the costs or expenses prudently incurred by an electric utility in constructing and operating a wastewater reuse system pursuant to an agreement between the electric utility and a wastewater utility. The bill requires that at least 50 percent of the produced reclaimed water is used in conjunction with the water requirements of one or more of the utility’s electrical generating facilities. The bill would take effect on July 1, 2021.

II. PRESENT SITUATION:

Cost recovery clauses are the mechanisms, established by statute, rule, or order, by which electric and gas investor-owned utilities may petition the Florida Public Service Commission (FPSC or Commission) for recovery of specified costs not otherwise recovered in base rates. Typically, the cost recovery clauses allow utilities to recover costs that are not easily controlled by the utility, such as fuel costs which rise and fall with the market or environmental costs based on new environmental regulations. The Environmental Cost Recovery Clause (ECRC) was established by the Florida Legislature and became effective in 1993. Section 366.8255, F.S., provides an investor-owned electric utility the opportunity to recover costs incurred in complying with new environmental requirements imposed on the utility. Pursuant to Subsection (2), an electric utility may submit a petition describing the utility’s proposed environmental compliance activities and related costs. If approved, the Commission shall allow the electric utility to recover its prudently incurred environmental compliance costs. The statute explains that environmental compliance costs include all costs or expenses incurred by an electric utility in complying with environmental laws or regulations and provides a non-exclusive listing of eight types of environmental compliance costs.

In 1993 the Public Service Commission, in response to an ECRC petition filed by Gulf Power Company, established three criteria for approval of recovery through the ECRC:

- The electric utility’s costs were prudently incurred after April 13, 1993.
- The activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the electric utility’s last test year upon which rates are based.
- The electric utility’s costs are not recovered through some other cost recovery mechanism or through base rates.¹

In 1999 the Commission established minimum filing requirements for an ECRC petition.² These are:

- Identification of the specific environmental law(s) or regulation(s) requiring the proposed activity

¹ See Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes by Gulf Power Company. See also Section 120.80(13), F.S., which exempts cost recovery clause dockets from rulemaking requirements.

² See Order No. PSC-99-2513-FOF-EI, issued December 22, 1999, in Docket No. 990007-EI, In re: Environmental cost recovery clause.

or project.

- A description of the proposed environmental compliance activity.
- The associated projected environmental compliance costs.
- An adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses.³

Thus, the ECRC provides an investor-owned electric utility with the opportunity to recover, between rate cases, its incremental costs associated with changes in environmental regulations. Section 366.8255(1)(c), F.S., defines environmental laws or regulations to include all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment. Changes in environmental regulations means new environmental requirements have been triggered since the investor-owned electric utility's last rate case. Pursuant to current statute, there must be an environmental law or regulation, as defined by Section 366.8255(1)(c), F.S., that applies to an investor-owned electric utility in order for environmental compliance costs to qualify for recovery through the ECRC.

The Commission can approve a portion but reject the remaining parts of an electric utility's requested environmental project cost recovery petition. For example, if an environmental agency such as the Florida Department of Environmental Protection requires an investor-owned electric utility to perform an upgrade or replace an existing wastewater reuse facility to meet a new environmental standard then prudently incurred project costs would qualify for recovery through the ECRC. The basis for allowing recovery through the ECRC would be that the electric utility's project and resultant costs are being imposed by an environmental law or regulation and the costs are not included in the utility's current base rates. However, in the event that an investor-owned electric utility determines on its own that it should rebuild its existing wastewater reuse facility for economic reasons, having nothing to do with the application of environmental laws or regulations, then none of the project costs would qualify for recovery through the ECRC. The revenue collected through the ECRC provides cash flow for the specific operating and maintenance activities, and large equipment modifications necessary to comply with specific environmental requirements.

Sections 403.064 and 403.086, F.S, govern matters pertaining to wastewater reuse systems. Section 403.064, F.S., addresses the permitting requirements and limitations on reuse of reclaimed water. The statute notes that water conservation and reuse of reclaimed water are in the public interest. The Legislature encourages the development of incentive-based programs for reuse implementation. Section 403.086, F.S., identifies conditions and limitations applicable to sewage disposal facilities including advanced and secondary waste treatment facilities.

In general, investor-owned electric utilities finance large projects with a blend of equity and debt. Governmental entities do not have an equity component and therefore generally acquire project financing at a lower rate than investor-owned electric utilities.

III. EFFECT OF PROPOSED CHANGES:

SB 964 amends Section 366.8255, F.S., by expanding the definition of environmental compliance costs to include the costs or expenses incurred by an electric utility, after July 1, 2021, in constructing and operating a wastewater reuse system pursuant to an agreement between the electric utility and a wastewater utility. The bill requires that the wastewater reuse system fully or partially satisfy a local government's reclaimed water reuse requirements under Section 403.064, or 403.086, F.S. The bill further requires that at least 50 percent of the produced reclaimed water is used in conjunction with the water requirements of one or more of the utility's electrical generating facilities.

An electric utility with a wastewater reuse system that satisfies the expanded definition of environmental compliance costs can begin to seek recovery of all its prudently incurred costs and expenses through the

³ Id.

ECRC. The electric utility's level of cost recovery through the ECRC could include depreciation of the capital investments in the wastewater reuse system, the associated direct operating and maintenance expenses, and associated indirect expenses such as taxes and return on undepreciated capital investments.

The bill expands the scope and premise of the current statute by allowing an electric utility to seek cost recovery in the ECRC for the construction and operation of a wastewater reuse system, not based upon any specific environmental laws or regulations that applies to electric utilities and requires the construction or operation of such system, but instead based upon a voluntary agreement entered into between two entities, an electric utility and a wastewater utility, to provide reclaimed water produced from the joint-use wastewater reuse system . Under the bill, the electric utility needs only a project and an agreement with a wastewater utility that comports to the conditions described in the bill in order to pursue recovery through the ECRC. Such a project could originate from either the electric utility or a wastewater utility or both, but would not need to be predicated upon an environmental mandate from a government agency that applies to an electric utility. It could also allow the electric utility to recover costs related to an environmental regulation imposed upon a third party. In any scenario, the electric utility, as it relates to the construction and operation of a wastewater reuse system, to bypass the traditional cost recovery mechanisms currently available for recovery, as found in a rate case or limited proceeding. Under the bill, the electric utility could reasonably expect to recover all of its costs as long as construction and operation of the joint-use wastewater reuse system comports with the generally applicable laws and regulations pertaining to and governing the construction and operation of the facility. In other words, the fundamental scope and premise of the current definition of costs allowed to be recovered under the ECRC would expand beyond allowing electric utilities to recover incremental costs associated with those environmental compliance costs itemized in the statute, which are predicated on environmental laws or regulations imposed on electric utilities, to allowing cost recovery for those costs associated with the construction and operation of wastewater reuse facilities, which are predicated on transactions and business decisions voluntarily made or initiated by private and/or public entities (i.e. verses environmental regulations).

This bill will take effect on July 1, 2021.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

The only increased workload from this bill is its requirement that the Commission review each electric utility's ECRC petition. The increased workload is expected to be handled by existing staff.

| | <u>(FY 20-21)</u> <u>Amount / FTE</u> | <u>(FY 21-22)</u> <u>Amount / FTE</u> | <u>(FY 22-23)</u> <u>Amount / FTE</u> |
|------------------------|--|--|--|
| A. Revenues | | | |
| 1. Recurring | \$0/0 FTE | \$0/0 FTE | \$0/0 FTE |
| 2. Non-Recurring | \$0/0 FTE | \$0/0 FTE | \$0/0 FTE |
| B. Expenditures | | | |
| 1. Recurring | \$0/0 FTE | \$0/0 FTE | \$0/0 FTE |
| 2. Non-Recurring | \$0/0 FTE | \$0/0 FTE | \$0/0 FTE |

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

The bill could potentially result in higher electric rates if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

The bill could potentially result in higher electric rates if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

No.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

Unknown, because the legislation gives parties the opportunity to avail themselves of this recovery. However, to the extent this provision is utilized, litigation related to this amendment is expected to be limited to the Commission's annual ECRC hearing when it considers environmental costs or a related docket in which the Commission addresses the utility's proposal separately.

D. Other:

None.

VIII. COMMENTS:

Due to economies of scale, it is possible that a joint-use wastewater reuse system will result in lower total costs to the electric utility and wastewater utility when compared with two independent actions by these parties. While it is possible that the agreement between the parties could apportion cost and liability responsibilities, the bill does not require the agreement to address these matters. Consequently, the bill language could be read to create an incentive or an expectation that local governments shift cost and liability responsibilities from wastewater utilities to electric utilities. Additionally, the bill appears to alter the scope of the statute by expanding the definition of environmental compliance costs to include costs for projects that are not imposed on an investor-owned electric utility by an environmental law or regulation. The current statutory examples include costs that are mandated by government laws and regulations that apply to investor-owned electric utilities. New subparagraph 9 is not associated with any government environmental mandate but rather includes the construction and operation of a wastewater reuse facility or system based on the decisions and agreements made by private entities. (The subparagraph therefore appears to be internally inconsistent with the continued premise of paragraph (d).)

Prepared by: Jim Breman and Charles Murphy

Reclaimed Water and Florida's Water Reuse Program¹

Christopher J. Martinez and Mark W. Clark²

Introduction

Reclaimed water is water from municipal wastewater treatment plants that has been treated to levels that allow safe use for designated purposes. "Water reuse" is the term used to describe the application of reclaimed water for beneficial purposes. Approximately 663 million gallons of reclaimed water is used every day in Florida (Florida Department of Environmental Protection, 2009). Florida is a recognized leader in the use of reclaimed water and its reuse program was the first recipient of the United States Environmental Protection Agency Water Efficiency Leader Award in 2006. Encouraging and promoting reuse in Florida is a state objective for conserving freshwater supplies and preserving rivers, streams, lakes, and aquifers.

Why reuse water?

While Florida receives a large amount of rainfall compared to other states, approximately half of the rainfall occurs over the four months from June to September, and the remaining half falls between the other eight months of the year. Periodic droughts combined with increased demand for fresh, clean surface and groundwater for public consumption have resulted in periodic and prolonged water shortages. Florida's population is expected to increase from 16 million in 1995 to 22 million by the year 2020 and freshwater needs are expected to grow from 8.2 to 9.1 billion gallons per day (Florida Council of 100, 2003). Currently a large percentage (40-60%) of potable water (drinking quality water) is used for non-potable needs such

as landscape irrigation. Conservation measures such as irrigating with reclaimed water is one way to reduce the use of existing potable water supplies.

Reusing water has several environmental benefits:

- Reduced groundwater withdrawals;
- Reduced need for new drinking water supplies such as new surface water withdrawals or desalination plants;
- Reduced need for new drinking water infrastructure such as storage reservoirs, pipelines and water treatment plants; and
- Improved water quality of the natural environment by reducing the amount of nutrients that are discharged directly to surface and groundwaters.

Reusing water helps conserve drinking water supplies by replacing the use of drinking quality water for non-drinking water purposes. Opportunities for reusing reclaimed water are numerous and include irrigation, industrial cooling water, groundwater recharge, and preventing salt water intrusion in coastal groundwater aquifers. In coastal areas, where the majority of the population of Florida lives, groundwater is vulnerable to saltwater intrusion caused by over-pumping of groundwater. Reclaimed water can be used to recharge groundwater to form a barrier between salt and fresh groundwater. The idea behind water reuse is simple: use the right water for the right use.

1. This document is AE448, one of a series of the Agricultural and Biological Engineering Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida. Original publication date July 2009. Reviewed July 2012. Visit the EDIS website at <http://edis.ifas.ufl.edu>.

2. Christopher J. Martinez, assistant professor, Department of Agricultural and Biological Engineering; Mark W. Clark, assistant professor, Department of Soil and Water Science; Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611.

Reusing water helps reduce environmental degradation of lakes, rivers, streams and coastal waters by reducing the amount of nutrients that are directly discharged to natural systems, which has been the traditional wastewater disposal method. These same nutrients can be beneficial when applied to irrigated landscapes and can reduce the need for additional fertilizers (King et al., 2000; Lazarova and Asano, 2005; U.S. EPA, 2004). However, landscape irrigation with reclaimed water must be managed carefully to reduce the potential for eutrophication of water bodies. Eutrophication is the process where enhanced plant growth occurs in response to excess nutrients entering a water body and can potentially deplete dissolved oxygen. More information on using reclaimed water for landscape irrigation can be found in *Using Reclaimed Water for Landscape Irrigation* at <http://edis.ifas.ufl.edu/AE449>

Traditionally viewed as a waste to be disposed of, reclaimed water is now viewed as a valuable resource by conserving water as well as for the supply of nutrients it contains.

How is reclaimed water used in Florida?

In Florida, reclaimed water is used in a variety of ways with the largest amount used for irrigating public access areas (Figure 1). Public access areas include residential areas, golf courses, athletic fields, parks, etc. Following public access areas, the next largest uses are groundwater recharge and industrial uses such as cooling water in power plants. Most of the reclaimed water used for agricultural irrigation is used to grow feed, fiber, or other crops that are not for direct human consumption. Reclaimed water can be used to grow crops for human consumption in Florida, but it must meet the same stringent treatment and disinfection requirements as water for public access area use and it is not allowed to come in direct contact with crops that will not be peeled, skinned, cooked, or thermally processed. The treatment and disinfection requirements for different uses of reclaimed water are discussed further below.

What is reclaimed water and how is it produced?

Reclaimed water is treated wastewater that has received, at a minimum, secondary-level treatment and basic disinfection at a wastewater treatment facility. There are three stages of wastewater treatment: primary, secondary, and advanced (sometimes called tertiary treatment) (Figure 2). During primary treatment, suspended solids are removed by screening and settling. The water is then subjected to

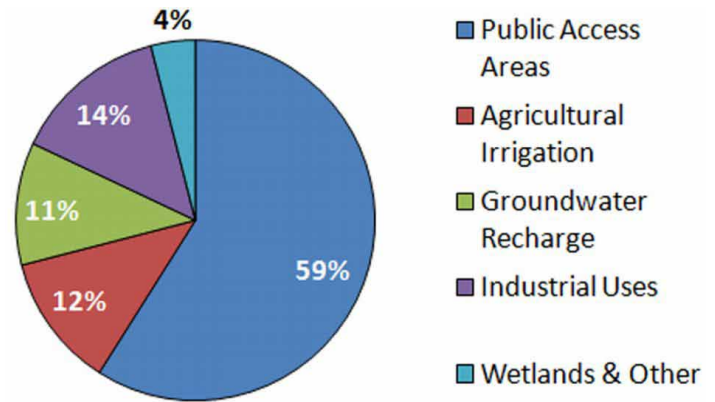


Figure 1. Reuse activities in Florida (adapted from FDEP, 2009)

secondary treatment where biological decomposition reduces complex organic material into simpler forms. The water is then separated from any remaining organic material and then either disinfected (often by chlorination) and directly discharged, reused, or subjected to advanced treatment. Advanced treatment facilities further remove solids, organic material, nutrients, or other chemicals using physical, chemical, or biological processes. After advanced treatment the water is then disinfected before being discharged (typically to rivers, lakes, or coastal waters) or reused. The main difference between reclaimed water that has received secondary vs. tertiary treatment is the level of nutrients that remain in the water. Tertiary treated water typically has 25% of the nitrogen and phosphorus contained in secondary treated reclaimed water (Tchobanoglous et al., 2003; Asano et al., 2007). However, the nutrient content of reclaimed water from a particular treatment plant will depend on the treatment processes used.

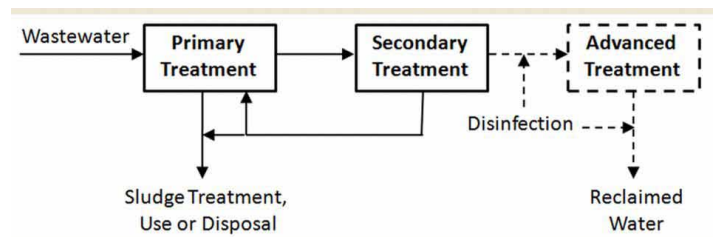


Figure 2. The wastewater treatment process. Some or all of the reclaimed water can be reused. Advanced treatment is an optional step in the treatment process. Disinfection occurs after advanced treatment in facilities that use this step, otherwise disinfection occurs after secondary treatment.

What are the treatment requirements for using reclaimed water?

There are no federal regulations governing the use of reclaimed water, but the U.S. Environmental Protection

Agency has established guidelines to encourage states to develop reuse programs (U.S. EPA, 2004). Depending on how reclaimed water is to be used in Florida, there are specific treatment requirements. These requirements, outlined here, are contained within Chapter 62-610 of the Florida Administrative Code (FAC) and can be found on the Web site of the Florida Department of Environmental Protection (<http://www.dep.state.fl.us/legal/rules/wastewater/62-610.pdf>). Table 1 shows the different types of reuse systems in Florida and a brief description of the treatment and disinfection requirements for each. For a complete description of the treatment and disinfection requirements for each type of application, the reader is referred to Chapter 62-610 via the above Web link.

More information on Florida's reuse program can be found on the Florida Department of Environmental Protection Reuse Program Web site (<http://www.dep.state.fl.us/water/reuse/>). For information on Water Conserv II, a cooperative water reclamation program used for irrigating over 3,200 acres of crops (primarily citrus) in Florida see Parsons (2007)

<http://www.crec.ifas.ufl.edu/academics/faculty/parsons/PDF/MayParsons.pdf>. For information on using reclaimed water for landscape irrigation in Florida see Using Reclaimed Water for Landscape Irrigation at <http://edis.ifas.ufl.edu/AE449>.

References

Asano, T., Burton, F.L., Leverenz, H.L., Tsuchihashi, R., and G. Tchobanoglous. 2007. *Water Reuse: Issues, Technologies, and Applications*. McGraw Hill, New York, NY.

Florida Department of Environmental Protection (FDEP). 2009. 2007 Reuse Inventory. Florida Department of Environmental Protection Reuse Program. <http://www.dep.state.fl.us/water/reuse/docs/inventory/ReuseInventory07.pdf> (last accessed 7/7/09)

Florida Council of 100. 2003. *Improving Florida's Water Supply Management Structure: Ensuring and Sustaining Environmentally Sound Water Supplies and Resources to Meet Current and Future Needs*. Florida Council of 100. <http://www.fc100.org/reports/waterreportfinal.pdf> (last accessed 4/16/2009)

Florida Department of Environmental Protection (FDEP). 2007. *Reuse of Reclaimed Water and Land Application*. Rule 62-610 Florida Administrative Code. <http://www.dep.state.fl.us/legal/rules/wastewater/62-610.pdf> (last accessed 2/18/09)

King, K.W., Balogh, J.C. and R.D. Harmel. 2000. Feeding turf with wastewater. *Golf Course Management* 68: 59-62. <http://archive.lib.msu.edu/tic/gcman/article/2000jan59.pdf> (last accessed 3/9/09)

Lazarova, V. and T. Asano. 2005. Challenges of sustainable irrigation with recycled water. pp 1-30. In: Lazarova, V. and A. Bahri (eds). *Water Reuse for Irrigation: Agriculture, Landscapes, and Turf Grasses*. CRC Press, Boca Raton, FL.

Parsons, L.R. 2007. Reclaiming a Resource. *Florida Grower*, p 40, May 2007. <http://www.crec.ifas.ufl.edu/academics/faculty/parsons/PDF/MayParsons.pdf>

Tchobanoglous, G., Burton, F.L., and H.D. Stensel. 2003. *Wastewater Engineering: Treatment and Reuse*. Fourth Edition. McGraw Hill, New York, NY.

United States Environmental Protection Agency (U.S. EPA). 2004. *Guidelines for Water Reuse*. EPA 645-R-04-108. United States Environmental Protection Agency, Washington, D.C. <http://www.epa.gov/ord/NRMRL/pubs/625r04108/625r04108.pdf> (last accessed 2/18/09)

<http://www.epa.gov/region9/water/recycling/> [May 9, 2012].

Table 1. Reuse system types in Florida

| Reuse System Type | Reuse Activities | Part in Chapter 62-610 | Treatment and Disinfection Requirements ^a |
|---|--|------------------------|---|
| Slow-rate land application systems; restricted public access | Irrigation of pastures, trees, feed, fodder, fiber, or seed crops | II | Secondary treatment and basic disinfection |
| Slow-rate land application systems; public access areas, residential irrigation, and edible crops | Residential, golf course, and other landscape irrigation Toilet flushing Fire protection Dust control Aesthetic features (ponds and fountains) Irrigation of edible crops (direct contact only with crops that will be peeled, skinned, cooked, or thermally processed) | III | Secondary treatment, filtration, and high-level disinfection |
| Rapid-rate land application systems | Rapid Infiltration Basins (RIBs) Absorption Fields | IV | Secondary treatment, basic disinfection, < 12 mg/L NO ₃ -N ^b |
| Groundwater recharge and indirect potable reuse | Salinity barriers Augmentation of surface waters | V | Principal treatment and disinfection or full treatment and disinfection (depending on use) ^c |
| Overland flow systems | | VI | Low-level disinfection |
| Industrial uses of reclaimed water | Cooling water Wash water Process water (not to include food processing for human consumption) | VII | Secondary treatment and basic disinfection (additional treatment may be needed to meet needs of a particular application) |

^a The reader is referred to Chapter 62-610 F.A.C. for specific treatment and disinfection requirements.

^b Nitrate as nitrogen. ^c The reader is referred to Chapter 61-610 F.A.C. for specific treatment and disinfection descriptions.



SENATOR MANNY DIAZ, JR.
36th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy Chair
Appropriations Subcommittee on
Education Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Commerce and Tourism
Rules

February 16, 2021

Honorable Senator Travis Hutson
Chair
Committee on Regulated Industries

Honorable Chair Hutson,

I respectfully request Senate Bill Number 964 Environmental Compliance Costs be placed on the next committee agenda.

Sincerely appreciate your support.

A handwritten signature in blue ink, appearing to read "M. Diaz, Jr.", written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: Booter Imhof, Staff Director
Susan Datres, Committee Administrative Assistant
Hunter Clary, Legislative Assistant

REPLY TO:

- 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/1/21
Meeting Date

964
Bill Number (if applicable)

859804
Amendment Barcode (if applicable)

Topic Environmental Compliance Costs

Name Mark Futrell

Job Title Deputy Executive Director

Address 2540 Shumard Oak Boulevard
Street

Phone 850 413 6692

Tallahassee FL 32399
City State Zip

Email mfutrell@psc.state.fl.us

Speaking: For Against Information

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

Representing Florida Public Service Commission

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.

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

THE FLORIDA SENATE

APPEARANCE RECORD

3-1-21

Meeting Date

964

Bill Number (if applicable)

Topic ENVIRONMENTAL COST COMPLIANCE

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street

Phone 305-979-7110

Street

Miami

FL

33156

Email jmm2@miamidade.gov

City

State

Zip

Speaking: For Against Information

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

Representing Miami-Dade County

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)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 964

INTRODUCER: Regulated Industries and Senators Diaz and Taddeo

SUBJECT: Environmental Compliance Costs

DATE: March 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Anderson</u> | <u>Rogers</u> | <u>EN</u> | Favorable |
| 2. | <u>Sharon</u> | <u>Imhof</u> | <u>RI</u> | Fav/CS |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 964 revises the definition of “environmental compliance costs” in the Florida Energy Efficiency and Conservation Act to include costs or expenses incurred by an electric utility after July 1, 2021, for the construction and operation of a wastewater reuse system. Operation of the wastewater reuse system must serve to further compliance with environmental laws or regulations that apply to the electric utility. The system must fully or partially satisfy a local government’s statutory reclaimed water reuse requirements, including those for ocean outfalls. The bill requires at least 50 percent of reclaimed water produced to be used in conjunction with the water requirements of facilities owned by the electric utility. This is required in order to offset all or part of the electric utility’s water use, as authorized by permit. This revision will allow utilities to petition the Florida Public Service Commission (PSC) for recovery of such costs through a cost-recovery factor, which is separate from the utility’s base rates.

The bill takes effect on July 1, 2021.

II. Present Situation:

Environmental Cost Recovery

The Florida Energy Efficiency and Conservation Act establishes a mechanism for utilities to petition the PSC for recovery of specified environmental compliance costs through a charge

separate from the utility's base rates.¹ This is referred to as the environmental cost-recovery clause (ECRC).²

Environmental compliance costs are defined as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.³ Environmental compliance costs include, but are not limited to:

- Inservice capital investments, including the electric utility's last authorized rate of return on equity;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment;
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into between the electric utility and the Department of Environmental Protection (DEP) or the United States Environmental Protection Agency (EPA) for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility; and
- Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and universities.⁴

Typically, the ECRC allows utilities to recover costs that are not easily controlled by the utility, such as fuel costs which fluctuate with the market or environmental costs based on new regulations.⁵ Revenue collected through the ECRC provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.⁶

An electric utility may submit a petition to the PSC describing the utility's proposed environmental compliance activities and projected environmental compliance costs.⁷ If approved by the PSC, the utility will be allowed to recover prudently incurred environmental compliance costs, and any amendments to the costs or change in the application or enforcement of the costs, through an environmental compliance cost-recovery factor that is separate and apart from the

¹ See s. 366.8255(2), F.S.

² See *Citizens v. Brown*, 269 So. 3d 498 (Fla. 2019).

³ Section 366.8255(1)(d), F.S. Environmental laws or regulations are defined as "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment." Section 366.8255(1)(c), F.S.

⁴ Section 366.8255(1)(d), F.S.

⁵ Public Service Commission, *Bill Analysis for SB 964* (Feb. 11, 2021) (on file with the Senate Committee on Regulated Industries).

⁶ *Id.*

⁷ Section 366.8255(2), F.S.

utility's base rates.⁸ An adjustment for the level of costs currently being recovered through base rates or other rate adjustment clauses must be included in the petition.⁹

The environmental compliance cost-recovery factor must be set periodically (at least annually) based on projections of the utility's environmental compliance costs during the forthcoming recovery period.¹⁰ The environmental compliance cost-recovery factor must periodically reconcile the actual environmental compliance costs with the projections on which past factors have been set.¹¹ Environmental compliance costs recovered through the environmental cost-recovery factor must be allocated to the customer classes using statutory criteria.¹²

Reuse of Reclaimed Water

Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives by the Legislature.¹³ Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.¹⁴ Whereas, reclaimed water is defined as water from a "domestic wastewater"¹⁵ treatment facility that has received at least "secondary treatment"¹⁶ and basic disinfection¹⁷ for reuse.¹⁸

Wastewater reuse is governed by ss. 403.064 and 403.086, F.S. Permitting requirements and limitations are detailed in s. 403.064, F.S. Permits issued by the Department of Environmental Protection for domestic wastewater treatment facilities must be consistent with applicable requirements for consumptive use permits.¹⁹

Reclaimed water is reused for various purposes, such as irrigation, industrial uses, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.²⁰ Industrial uses include plant wash down, processing water, and cooling water purposes.²¹ Several power plants throughout the state use reclaimed water for cooling purposes.²²

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 366.8255(3), F.S.

¹¹ *Id.*

¹² Section 366.8255(4), F.S.

¹³ See ss. 403.064(1) and 373.250(1), F.S.

¹⁴ Fla. Admin. Code R. 62-610.200(52)(2020).

¹⁵ "Domestic wastewater" is defined as "wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants." Section 367.021(5), F.S.

¹⁶ Fla. Admin. Code R. 62-610.200(54) defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."

¹⁷ Fla. Admin. Code R. 62-600.440(5) provides the requirements for basic disinfection.

¹⁸ Section 373.019(17), F.S.; Fla. Admin. Code R. 62-610.200(48).

¹⁹ Section 403.064(8). Part II of ch. 373, F.S., governs consumptive use permits.

²⁰ Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), (on file with the Senate Committee on Regulated Industries).

²¹ Department of Environmental Protection, *Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water> (last visited Feb. 24, 2021).

²² See Department of Environmental Protection, *Industrial Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water> (last visited Feb. 24, 2021).

Local governments are authorized and encouraged under Florida law to implement programs for the reuse of reclaimed water and are authorized to allocate the costs of such programs in a reasonable manner.²³

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters. There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties that discharge or previously discharged approximately 300 million gallons per day of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.²⁴ However, state law prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025.²⁵ In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008, are required to install a reuse system no later than December 31, 2025.²⁶ Existing discharges through ocean outfalls were required to meet “advanced waste treatment”²⁷ requirements by December 31, 2018.²⁸

III. Effect of Proposed Changes:

The bill revises the definition of “environmental compliance costs” within the Environmental Cost Recovery provision of the Florida Energy Efficiency and Conservation Act. The definition is expanded to include all costs or expenses incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system. Operation of the wastewater reuse system must serve to further compliance with environmental laws or regulations that apply to the electric utility. To qualify, the system must fully or partially satisfy a local government’s statutory reclaimed water reuse requirements, including ocean outfall requirements. At least 50 percent of the reclaimed water produced by the system must be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility. This is required in order to offset all or part of the electric utility’s water use, as authorized by permit. This revision will allow utilities to petition the PSC for recovery of such costs through an environmental cost-recovery factor, which is separate from the utility’s base rates.

The bill takes effect on July 1, 2021.

²³ Section 403.064(9)-(10), F.S.

²⁴ University of Florida, Department of Environmental Engineering Services, *Ocean Outfall Study Final Report* at p. ES-1 (Apr. 18, 2006), available at https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf (last visited Feb. 23, 2021).

²⁵ Section 403.086(10), F.S.; ch. 2008-232, Laws of Fla.

²⁶ Section 403.086(10)(c), F.S.

²⁷ Section 403.086(4), F.S.

²⁸ Section 403.086(10)(b), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in higher electric rates for consumers if an electric utility's petition for an environmental cost-recovery clause is approved by the PSC.²⁹

C. Government Sector Impact:

The bill may result in higher electric rates for local governments if an electric utility's petition for an environmental cost-recovery clause is approved by the PSC.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁹ PSC Bill Analysis, *supra* note 5.

³⁰ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 366.8255 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 Regulated Industries on March 1, 2021:

The committee substitute:

- Specifies that the wastewater utility, which the electric utility is contracting with for construction and operation of a wastewater reuse system, must be a governmental utility.
- Requires the operation of the wastewater reuse system to be in compliance with environmental laws or regulations applicable to the electric utility.
- Requires at least 50 percent of the reclaimed water produced by the reuse system to offset all or part of the electric utility's water use, as authorized by its permit.

- B. **Amendments:**

None.

By Senator Garcia

37-00991B-21

2021996__

A bill to be entitled

An act relating to community associations; amending s. 194.011, F.S.; specifying requirements for the contents, delivery, and posting of certain association notices; providing that certain associations have the right to seek judicial review, appeal decisions, and represent unit or parcel owners in certain proceedings; requiring certain associations to defend unit or parcel owners in certain proceedings; providing that property appraisers are not required to name individual unit or parcel owners as defendants in such proceedings; providing applicability; amending s. 194.181, F.S.; providing and revising the parties considered as the defendants in a tax suit; specifying requirements for the contents, delivery, and posting of certain association notices; providing unit or parcel owners' options for defending a tax suit; imposing certain actions on unit or parcel owners who fail to respond to a specified notice; specifying the conditions for releasing a unit or parcel owner from a lis pendens related to certain actions; amending s. 718.111, F.S.; providing that a condominium association may take certain actions relating to a challenge to ad valorem taxes in its own name or on behalf of unit owners; providing applicability; providing an effective date.

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

Page 1 of 7

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

37-00991B-21

2021996__

Section 1. Paragraph (e) of subsection (3) of section 194.011, Florida Statutes, is amended to read:
 194.011 Assessment notice; objections to assessments.—
 (3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer's written authorization or power of attorney, unless the person filing the petition is listed in s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a petition with a value adjustment board without the taxpayer's signature or written authorization by certifying under penalty of perjury that he or she has authorization to file the petition on behalf of the taxpayer. If a taxpayer notifies the value adjustment board that a petition has been filed for the taxpayer's property without his or her consent, the value adjustment board may require the person filing the petition to provide written authorization from the taxpayer authorizing the person to proceed with the appeal before a hearing is held. If the value adjustment board finds that a person listed in s. 194.034(1)(a) willfully and knowingly filed a petition that was not authorized by the taxpayer, the value adjustment board shall require such person to provide the taxpayer's written authorization for representation to the value adjustment board clerk before any petition filed by that person is heard, for 1 year after imposition of such requirement by the value adjustment board. A power of attorney or written authorization

Page 2 of 7

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

37-00991B-21

2021996__

59 is valid for 1 assessment year, and a new power of attorney or
60 written authorization by the taxpayer is required for each
61 subsequent assessment year. A petition shall also describe the
62 property by parcel number and shall be filed as follows:

63 (e)1. A condominium association, ~~as defined in s. 718.103,~~
64 a cooperative association as defined in s. 719.103, or any
65 homeowners' association as defined in s. 723.075, with approval
66 of its board of administration or directors, may file with the
67 value adjustment board a single joint petition on behalf of any
68 association members who own units or parcels of property which
69 the property appraiser determines are substantially similar with
70 respect to location, proximity to amenities, number of rooms,
71 living area, and condition. The condominium association,
72 cooperative association, or homeowners' association as defined
73 in s. 723.075 shall provide the unit or parcel owners with
74 notice of its intent to petition the value adjustment board. The
75 notice must include a statement that by not opting out of the
76 petition, the unit or parcel owner agrees that the association
77 shall also represent the unit or parcel owner in any related
78 proceedings, without the unit or parcel owners being named or
79 joined as parties. Such notice must be hand delivered or sent by
80 certified mail, return receipt requested, except that such
81 notice may be electronically transmitted to a unit or parcel
82 owner who has expressly consented in writing to receiving such
83 notices by electronic transmission. If the association is a
84 condominium association or cooperative association, the notice
85 must also be posted conspicuously on the condominium or
86 cooperative property in the same manner as notices of board
87 meetings under ss. 718.112(2) and 719.106(1). Such notice must

Page 3 of 7

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

37-00991B-21

2021996__

88 ~~and shall~~ provide at least ~~14~~ 20 days for a unit or parcel owner
89 to elect, in writing, that his or her unit or parcel not be
90 included in the petition.

91 2. A condominium association as defined in s. 718.103 or a
92 cooperative association as defined in s. 719.103 which has filed
93 a single joint petition under this subsection has the right to
94 seek judicial review or appeal a decision on the single joint
95 petition and continue to represent the unit or parcel owners
96 throughout any related proceedings. If the property appraiser
97 seeks judicial review or appeals a decision on the single joint
98 petition, the association shall defend the unit or parcel owners
99 throughout any such related proceedings. The property appraiser
100 is not required to name the individual unit or parcel owners as
101 defendants in such proceedings. This subparagraph is intended to
102 clarify existing law and applies to cases pending on July 1,
103 2021.

104 Section 2. Subsection (2) of section 194.181, Florida
105 Statutes, is amended to read:

106 194.181 Parties to a tax suit.—

107 (2) (a) In any case brought by a ~~the~~ taxpayer or a
108 condominium or cooperative association, as defined in ss.
109 718.103 and 719.103, respectively, on behalf of some or all unit
110 or parcel owners, contesting the assessment of any property, the
111 county property appraiser ~~is a~~ ~~shall be~~ party defendant.

112 (b) Other than as provided in paragraph (c), in any case
113 brought by the property appraiser under ~~pursuant to~~ s.
114 194.036(1) (a) or (b), the taxpayer ~~is a~~ ~~shall be~~ party
115 defendant.

116 (c)1. In any case brought by the property appraiser under

Page 4 of 7

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

37-00991B-21 2021996__

117 s. 194.036(1) (a) or (b) relating to a value adjustment board
 118 decision on a single joint petition filed by a condominium or
 119 cooperative association under s. 194.011(3), the association is
 120 the only required party defendant. The individual unit or parcel
 121 owners are not required to be named as parties.

122 2. The condominium or cooperative association must provide
 123 unit or parcel owners with notice of the property appraiser's
 124 complaint and advise the unit or parcel owners that they may
 125 elect to:

126 a. Retain their own counsel to defend the appeal for their
 127 units or parcels;

128 b. Choose not to defend the appeal; or

129 c. Be represented by the association.

130 3. The notice required in subparagraph 2. must be hand
 131 delivered or sent by certified mail, return receipt requested,
 132 except that such notice may be electronically transmitted to a
 133 unit or parcel owner who has expressly consented in writing to
 134 receiving such notices through electronic transmission.
 135 Additionally, the notice must be posted conspicuously on the
 136 condominium or cooperative property, if applicable, in the same
 137 manner as notices of board meetings under ss. 718.112(2) and
 138 719.106(1). The association must provide at least 14 days for a
 139 unit or parcel owner to respond to the notice. Any unit or
 140 parcel owner who does not respond to the association's notice
 141 will be represented by the association.

142 4. If requested by a unit or parcel owner, the tax
 143 collector shall accept payment of the estimated amount in
 144 controversy, as determined by the tax collector, as to that unit
 145 or parcel, whereupon the unit or parcel shall be released from

37-00991B-21 2021996__

146 any lis pendens and the unit or parcel owner may elect to remain
 147 in or be dismissed from the action.

148 (d) In any case brought by the property appraiser under
 149 pursuant to s. 194.036(1) (c), the value adjustment board is a
 150 ~~shall be~~ party defendant.

151 Section 3. Subsection (3) of section 718.111, Florida
 152 Statutes, is amended to read:

153 718.111 The association.—

154 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,
 155 SUE, AND BE SUED; CONFLICT OF INTEREST.—

156 (a) The association may contract, sue, or be sued with
 157 respect to the exercise or nonexercise of its powers. For these
 158 purposes, the powers of the association include, but are not
 159 limited to, the maintenance, management, and operation of the
 160 condominium property.

161 (b) After control of the association is obtained by unit
 162 owners other than the developer, the association may:

163 1. Institute, maintain, settle, or appeal actions or
 164 hearings in its name on behalf of all unit owners concerning
 165 matters of common interest to most or all unit owners,
 166 including, but not limited to, the common elements; the roof and
 167 structural components of a building or other improvements;
 168 mechanical, electrical, and plumbing elements serving an
 169 improvement or a building; and representations of the developer
 170 pertaining to any existing or proposed commonly used facilities;

171 2. ~~Protest and protesting~~ ad valorem taxes on commonly used
 172 facilities and on units; ~~and may~~

173 3. Defend actions pertaining to ad valorem taxation of
 174 commonly used facilities or units or in eminent domain actions;

37-00991B-21

2021996__

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

~~and ex~~

4. Bring inverse condemnation actions.

(c) If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action.

(d) The association, in its own name or on behalf of some or all unit owners, may institute, file, protest, or maintain any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units, commonly used facilities, or common elements. In any subsequent proceeding, lawsuit, appeal, or other challenge brought by the property appraiser related to units that were the subject of a single joint petition filed under s. 194.011(3), the association has the right to represent the interest of the unit owners as provided in s. 194.011(3)(e)2., and the unit owners are not necessary or indispensable parties to such actions. This paragraph is intended to clarify existing law and applies to cases pending on July 1, 2021.

(e) This section does not limit ~~Nothing herein limits~~ any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(f) An association may not hire an attorney who represents the management company of the association.

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



The Florida Senate

Committee Agenda Request

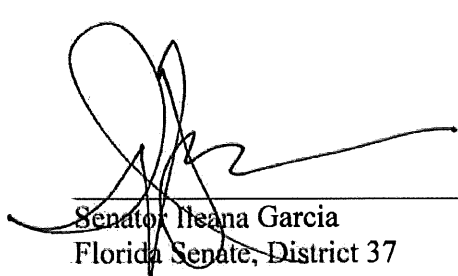
To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 19, 2021

I respectfully request that **Senate Bill #996**, relating to Community Associations, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Neana Garcia
Florida Senate, District 37

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/1/21

Meeting Date

996

Bill Number (if applicable)

Topic SB 996

Amendment Barcode (if applicable)

Name Nelson Diaz

Job Title

Address 123 S. Adams St

Phone 3/490-3414

Street TLH FL 32301

Email Diaz@TheSouthernGroup.com

Speaking: For Against Information

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

Representing Fairness in Taxation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 996

INTRODUCER: Senator Garcia

SUBJECT: Community Associations

DATE: March 2, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Oxamendi | Imhof | RI | Favorable |
| 2. | _____ | _____ | FT | _____ |
| 3. | _____ | _____ | AP | _____ |

I. Summary:

SB 996 revises current law to provide that, when a condominium or cooperative association has filed a single joint petition on behalf of the unit owners to challenge a tax assessment issued by the county property appraiser, an association may continue to represent and defend the unit owners through any related subsequent proceeding in any tribunal or appeal. The association must provide unit owners with notice of its intent to respond to a complaint, and advise the unit owners that they may opt out of being represented by the association in the appeal.

Current law permits the condominium and cooperative associations to petition, on behalf of the unit owners, the value adjustment board. Current law permits associations to challenge the initial property valuation for a tax assessment by petitioning the value adjustment board (VAB), and also permits associations to appeal the decision of the value adjustment board in circuit court. However, an association may not defend an appeal in circuit court filed by the property appraiser when the association prevails in its petition to the VAB.

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

II. Present Situation:

Condominium Associations

The Condominium Act “give[s] statutory recognition to the condominium form of ownership of real property and establish[es] procedures for the creation, sale and operation of condominiums.”¹ A condominium is a form of ownership of real property created pursuant to

¹ *Citizen Property Insurance Corp. v. River Manor Condominium Assoc., Inc.*, 125 So.3d 846, 850 (Fla. 4th DCA 2013) (citation omitted).

ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.²

A condominium association, which is a Florida corporation for profit or a Florida corporation not for profit,³ “manages and operates the condominium community, maintains the common elements, and provides services in furtherance of its duties to the members. Each purchaser, by accepting title to his or her unit, automatically becomes an association member, and is bound by the association rules and regulations.”⁴

“The board of directors, initially appointed by the developer and subsequently elected by the unit owners, is responsible for managing the affairs of the association. The board may appoint committees to assist with the various duties of the association.”⁵ “It is the board’s duty and responsibility to determine the association’s needs, limited by the association’s fiscal resources. An association may be self-managed or hire professional management.”⁶

Cooperative Associations

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁷ Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.⁸ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁹ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.¹⁰ A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.¹¹

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a

² Section 718.103(11), F.S. “Common elements” are the portions of the condominium property not included in the units. Section 718.103(8), F.S. “The structure of the building including the roof, walls, conduit and hallways, and recreation facilities are examples of items that are usually part of the common elements. Common elements are legally attached to each unit and are transferred with the unit when it is sold.” *Condominium Living in Florida* (Revised Jan. 2018), Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumLiving.pdf> (last visited on March 18, 2019). This document is further cited in this analysis as “*Condominium Living in Florida*.”

³ Section 718.111(1)(a), F.S.

⁴ *Condominium Living in Florida*, *supra*. note 2. Owners of units are shareholders or association members. Section 718.111(1)(a), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 718.103(11), F.S.

⁸ *See s.* 718.103, F.S.

⁹ *Id.*

¹⁰ Section 718.104(2), F.S.

¹¹ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

Florida not-for-profit corporation.¹² Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a “board of administration.”¹³ The board of administrators comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.¹⁴ In litigation, an association's board of directors is in charge of directing attorney actions.¹⁵

Homeowners’ Associations in Mobile Home Parks

Chapter 723, F.S., relates to mobile home park lot tenancies. In these communities, the homeowner does not own the real estate upon which the mobile home is located; the homeowner leases the real property (mobile home lot) from the mobile home park owner. Homeowners in these communities may form a homeowners association.¹⁶

The mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, to the mobile home owner if such costs are not otherwise being collected in the remainder of the lot rental amount and the passing on of the costs was disclosed prior to tenancy.¹⁷

Tax Assessments

Condominium and cooperative unit owners are assessed yearly ad valorem¹⁸ taxes by the county property appraiser.¹⁹ For condominium and cooperative parcels, ad valorem taxes are assessed on the parcels and not upon the condominium or cooperative property as a whole, and the common elements or area are divided and levied proportionally among individual parcel owners.²⁰

Current law permits condominium, cooperative, and homeowners’ associations defined in s. 723.075, F.S., (homeowners’ associations) to file a single joint petition to the value adjustment board (“VAB”) contesting the tax assessment of all units within the community.²¹ The condominium, cooperative, or homeowners’ associations must provide the *unit owner* notice of its petition to the VAB and “provide at least 20 days for a *unit owner* to elect, in writing that his

¹² Section 718.303(3), F.S.

¹³ Section 718.103(4), F.S.

¹⁴ Section 718.103(2), F.S.

¹⁵ Section 718.103(30), F.S.

¹⁶ See ss. 723.075 through 723.0791, F.S.

¹⁷ Section 723.031(5)(c), F.S.

¹⁸ Section 192.001(1), F.S., defines the term “ad valorem tax” to mean a tax based upon the assessed value of property.

¹⁹ Section 194.011, F.S.

²⁰ Sections 718.120(1) and 719.114, F.S., F.S.

²¹ Section 194.011(3)(e), F.S.

or her unit not be included in the petition.”²² Although the homeowners’ associations are entitled to petition the VAB, current law references only “unit owners” in the context of the notice and opt-out requirements for the petition to the VAB. There are no “unit owners” in a homeowners’ association.

A decision by the VAB may only be appealed to the circuit court.²³ Current law allows a condominium, cooperative, or homeowners’ association to appeal, as a plaintiff, the VAB’s decision.²⁴

While current law is clear that an association is authorized to act on behalf of all unit owners when filing a petition to the VAB and when initiating an appeal of the VAB’s decision in circuit court, it is unclear whether the association may defend, on behalf of unit owners, an appeal of the VAB’s decision by the property appraiser.

In *Central Carillon Beach Condominium v. Garcia*, the Florida Third District Court of Appeals (Third DCA) reviewed this issue in a case of first impression.²⁵ Petitioners were two condominium associations who had represented their unit owners in a tax assessment challenge before a VAB. Respondent was the property appraiser for Miami-Dade County (appraiser).²⁶

When the associations initially challenged their tax assessment, the VAB substantially lowered their assessed property values.²⁷ As a result, the appraiser challenged the decision in an appeal to the Eleventh Judicial Circuit (Miami-Dade), and named the individual unit owners, instead of each association, as defendants.²⁸ In response, the associations submitted a motion to dismiss the appeal and a motion for certification of the unit owners as a defense class. Both motions were denied by the circuit court, and the associations appealed the denial of the motion to the Third DCA.²⁹

In response, the appraiser argued that defense class certification should be denied, and the appeal should name individual unit owners because the statutes governing tax assessment challenge procedures require that individual unit owners be named on appeal.³⁰

Section 194.181(2), F.S., provides that in any case brought by the taxpayer or association contesting the assessment of any property, the county property appraiser shall be the party defendant. If the property appraiser appeals a decision of the VAB under s. 194.036(1)(a) or (b), F.S.,³¹ the taxpayer is the party defendant. The term “taxpayer” means the person or other legal

²² *Id.*

²³ Section 194.171(1), F.S.

²⁴ See ss. 194.181(1) and (2), F.S.

²⁵ *Central Carillon Beach Condominium Association, Inc., et al., v. Garcia, et al., et al.*, 245 So. 3d 869 (Fla. 3d DCA 2018).

²⁶ *Id.* at 869.

²⁷ *Id.* at 870.

²⁸ *Id.* at 871.

²⁹ *Id.* at 869.

³⁰ *Id.* at 871.

³¹ This section providing grounds for an appeal of a VAB decision by the property appraiser.

entity in whose name property is assessed, including an agent of a timeshare period titleholder.³² In *Central Carillon*, the individual unit owners were assessed the taxes, not the associations.³³

The associations argued that this law conflicts with condominium association law which generally allows associations to represent unit owners through their rights of collective representation.³⁴

Section 718.111(3), F.S., permits a condominium association to appeal actions or hearings in its name on behalf of all unit owners “concerning matters of common interest to most or all unit owners,” including “protesting ad valorem taxes on commonly used facilities and on units.”³⁵ The association may also defend actions in eminent domain.³⁶

The Third DCA found that the associations’ argument was unsupported, stating that the s. 718.111(3), F.S., only addresses ad valorem taxes in one phrase: “protesting ad valorem taxes on commonly used facilities and on units.” The associations protested the ad valorem taxes on behalf of all units, but the lawsuits brought by the appraiser against the unit owners are not “protests.” Rather, they are judicial review proceedings in which the unit owners are defendants. The specific cases in which an association may defend on behalf of all unit owners are “actions in eminent domain.”³⁷

The associations argued that because they could bring a class action, if they appealed a decision of the VAB, they “may be joined in an action as a representative of that class with reference to litigation...” However, the court rejected the argument, because under s. 718.111(3), F.S., in an appraiser’s appeal of a VAB’s decision, “the taxpayer shall be the party defendant.”³⁸

III. Effect of Proposed Changes:

Value Adjustment Board Petitions

The bill amends s. 194.011(3)(e), to provide that, if a condominium, cooperative, or homeowners’ association has filed a single joint petition with the VAB to challenge a tax assessment, the association’s notice to the unit or parcel owners must include a statement that by not opting out of the petition, the unit or parcel owner agrees that the association will represent the unit or parcel owner in any related proceedings, without the unit or parcel owners being named or joined as parties.

The notice of the association’s single joint petition must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit

³² Section 192.001(13), F.S.

³³ *Central Carillon*, *supra* note 25, at 871.

³⁴ *Id.* at 871, 872.

³⁵ Chapter 719, F.S., relating to cooperative associations, does not provide a comparable provision. However, as a corporation, a cooperative association has the right to sue and be sued, complain, and defend in its corporate name. *See* s. 607.0302(1), F.S., relating to the general powers of corporations; and s. 119.104(10), F.S., providing that cooperative associations have the powers and duties under part I of ch. 607, F.S., and ch. 617, F.S., as applicable

³⁶ Section 718.111(3), F.S.

³⁷ *Central Carillon*, *supra* note 22, at 872.

³⁸ *Id.* at 872.

or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission.

Additionally, if the association is a condominium association or cooperative association, the notice must also be posted conspicuously on the condominium or cooperative property in the same manner as notices of board meetings under ss. 718.112(2) and 719.106(1), F.S.

The bill also reduces from 20 days to 14 days the time an association must give unit or parcel owners to opt out of the association's petition.

The bill provides that a condominium and cooperative associations have the right to seek judicial review or appeal of a decision of the single joint petition and may continue to represent the unit or parcel owners throughout any related proceedings, including defending an appeal by the property appraiser. Under the bill, a property appraiser is not required to name individual unit or parcel owners as defendants in its appeal of the VAB decision.

The bill also amends s. 194.011(3)(e), F.S., to include parcel owners. Current law only references unit owners.

The bill provides that this provision is intended to clarify existing law and applies to cases pending on July 1, 2021.

Judicial Appeals

The bill amends s. 194.181(2), F.S., to provide that, in any case brought by the property appraiser concerning a VAB decision on a single joint petition filed by a condominium or cooperative association, the association is the only required party defendant. The individual unit or parcel owners are not required to be named as parties.

The bill also amends s. 194.181(2), F.S., to require condominium and cooperative associations to provide unit or parcel owners a notice of the property appraiser's complaint. The notice must advise the parcel or unit owners that they may elect to:

- Retain their own counsel to defend the appeal for their units or parcels;
- Choose not to defend the appeal; or
- Be represented by the association.

The notice of the property appraiser's complaint must be hand delivered or sent by certified mail, return receipt requested, except that such notice may be electronically transmitted to a unit or parcel owner who has expressly consented in writing to receiving such notices by electronic transmission.

The notice must be mailed, delivered, or electronically transmitted to unit owners and posted conspicuously on the condominium or cooperative property in the same manner for notice of board meetings. An association must give unit or parcel owners 14 days to opt out of the association's representation. Under the bill, any unit owner who does not respond to the association's notice will be represented in the response or answer filed by the association.

The bill requires the tax collector to accept payment of the estimated amount in controversy, as determined by the tax collector, as to a specific unit or parcel. Upon the payment, the unit or parcel would be released from any *lis pendens*³⁹ and the unit or parcel owner may elect to remain in or be dismissed from the action.

Condominium Association Powers

The bill amends s. 718.111(3), F.S., to authorize condominium associations to defend actions pertaining to ad valorem taxation of commonly used facilities or units.

The bill creates s. 718.111(3)(d), F.S., to authorize a condominium association to, in its own name or on behalf of some or all unit owners, institute, file, protest, or maintain any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units, commonly used facilities, or common elements, including any subsequent proceeding, lawsuit, appeal, or other challenge brought by the property appraiser related to units that were the subject of a joint petition. It also provides that the association has the right to represent the interest of the unit owners and the unit owners are not necessary or indispensable parties to the action.

The bill also amends s. 718.111(3)(d), F.S., to provide that this paragraph is intended to clarify existing law and applies to cases pending on July 1, 2021.

The bill does not provide a comparable provision for cooperative or homeowners' associations.

Effective Date

The bill provides an effective date of 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.

³⁹ “*Lis pendens*” means a pending lawsuit or a recorded notice in the chain of title that the property is the subject of a matter on litigation. *See* BLACK’S LAW DICTIONARY (11th ed. 2019).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 194.011, 194.181, and 718.111.

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.

By Senator Brodeur

9-00651A-21

20211062__

1 A bill to be entitled
 2 An act relating to cooperative advertising agreements;
 3 amending s. 561.42, F.S.; authorizing a manufacturer
 4 or importer of malt beverages and a vendor to enter
 5 into a written agreement for brand naming rights and
 6 associated cooperative advertising if certain
 7 requirements are met; providing requirements for such
 8 agreement; prohibiting certain manufacturers or
 9 importers of malt beverages from soliciting or
 10 receiving certain payments; specifying that such
 11 agreements do not affect distributors; providing an
 12 effective date.

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

16 Section 1. Subsection (15) is added to section 561.42,
 17 Florida Statutes, to read:

18 561.42 Tied house evil; financial aid and assistance to
 19 vendor by manufacturer, distributor, importer, primary American
 20 source of supply, brand owner or registrant, or any broker,
 21 sales agent, or sales person thereof, prohibited; procedure for
 22 enforcement; exception.—

23 (15) (a) Notwithstanding any other provision of this
 24 section, a manufacturer or importer of malt beverages and a
 25 vendor may enter into a written agreement for brand naming
 26 rights and associated cooperative advertising in an arm's length
 27 transaction for no more than fair market value if all of the
 28 following conditions are met:

29 1. The vendor operates places of business at which

Page 1 of 3

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

9-00651A-21

20211062__

30 consumption on the premises is permitted, the premises are
 31 located within a theme park complex that is owned, managed,
 32 controlled, and operated by the vendor; that comprises at least
 33 25 enclosed acres of land with permanent exhibitions and a
 34 variety of recreational activities; that has a controlled
 35 entrance to, and exit from, the enclosed area; and that has at
 36 least 1 million visitors annually who pay admission fees to the
 37 theme park complex.

38 2. The agreement does not involve, in whole or in part, the
 39 sale or distribution of malt beverages between the vendor and
 40 the manufacturer or the importer and each distributor.

41 3. The vendor, as a result of the agreement, does not
 42 provide preferential treatment to the alcoholic beverage brand
 43 or brands of the manufacturer or importer with whom the vendor
 44 has entered into the agreement.

45 4. The agreement does not limit, directly or indirectly,
 46 the sale of alcoholic beverages of another manufacturer,
 47 importer, or distributor.

48 5. Within 10 days after execution of the agreement, the
 49 vendor files with the division a description of the agreement
 50 which includes the location, dates, and the name of the
 51 manufacturer or importer that entered into the agreement.

52 (b) A manufacturer or importer of malt beverages which is a
 53 party to a brand naming rights agreement may not, directly or
 54 indirectly, solicit or receive from any of its distributors any
 55 portion of the payment due from the manufacturer or importer of
 56 malt beverages to the vendor pursuant to such agreement. Such
 57 agreement exists solely between the manufacturer or importer and
 58 the vendor and does not, directly or indirectly, in any way

Page 2 of 3

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

9-00651A-21

20211062__

59 obligate or place responsibility, financial or otherwise, upon a
60 distributor.

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



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 10, 2021

I respectfully request that **Senate Bill 1062**, relating to Cooperative Advertising Agreements, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1062

INTRODUCER: Senator Brodeur

SUBJECT: Cooperative Advertising Agreements

DATE: February 26, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | <u>Pre-meeting</u> |
| 2. | _____ | _____ | <u>CM</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 1062 amends the “tied house evil” law in s. 561.42, F.S., which prohibits an alcoholic beverage manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of an alcoholic beverage vendor, and also prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to a vendor.

The bill exempts from the “tied house evil” prohibitions a written agreement between a manufacturer or importer of malt beverages and an alcoholic beverage vendor for brand naming rights and associated cooperative advertising. The agreement must be negotiated at arm’s length for no more than fair market value.

The agreement for brand naming rights and associated cooperative advertising must be with a vendor who operates a theme park complex licensed to sell alcoholic beverages for consumption on the premises. The theme park complex must be owned, managed, controlled, and operated by the licensed vendor, and comprise at least 25 contiguous acres with permanent exhibitions, a variety of recreational activities, have a controlled entrance to, and exit from, the theme park complex, and have a minimum of one million visitors annually who pay admission fees.

The agreement may not involve the sale or distribution of malt beverages, may not result in preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer who is a party to the agreement, and may not limit the sale of alcoholic beverages from another manufacturer, importer, or distributor. Within 10 days after execution of the agreement, the vendor must file with the Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The manufacturer or importer of malt beverages that is a party to a brand naming rights agreement is prohibited from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment it owes to the vendor pursuant to the naming rights agreement. The bill also prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

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

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The division administers and enforces the Beverage Law.³

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”⁵
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”⁶
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.⁷
- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”⁸

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the

¹ Section 561.01(6), F.S., provides that the “the Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 563.01, F.S.

⁵ Section 561.14(1), F.S.

⁶ Section 561.14(2), F.S.

⁷ Section 561.01(5), F.S.

⁸ Section 561.14(3), F.S.

distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁹ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.¹⁰

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.¹² Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.¹³

Tied House Evil Prohibitions

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit "tied house arrangements." Such legislation is referred to as "tied house" or "tied house evil" statutes.¹⁴

Section 561.42, F.S., Florida's "tied house evil" statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans, property, or rebates.¹⁵ The prohibitions also apply to an importer, primary American source of supply,¹⁶ brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.¹⁷

Section 561.42, F.S., also prohibits licensed manufacturers and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;¹⁸
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;¹⁹

⁹ Section 561.14, F.S.

¹⁰ Section 561.22(1), F.S.

¹¹ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

¹² Section 561.22, F.S.

¹³ Sections 563.022(14) and 561.14(1), F.S.

¹⁴ 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).

¹⁵ Section 561.42(1), F.S.

¹⁶ See s. 564.045, F.S.

¹⁷ Section 564.42(1). Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

¹⁸ Section 561.42(4), F.S.

¹⁹ Section 561.42(10), F.S.

- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of the licensed premises;²⁰ and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.²¹

III. Effect of Proposed Changes:

The bill creates s. 561.42(15), F.S., to exempt from the “tied house evil” prohibitions a written agreement between a manufacturer or importer of malt beverages and an alcoholic beverage vendor for brand naming rights and associated cooperative advertising.

The agreement for brand naming rights and associated cooperative advertising must be:

- Negotiated at arm’s length for no more than fair market value. The bill does not define the term “at arm’s length.”²²
- With a vendor who operates a theme park complex licensed to sell alcoholic beverages for consumption on the premises.

The theme park complex must be owned, managed, controlled, and operated by the licensed vendor, and comprise at least 25 contiguous acres with permanent exhibitions, a variety of recreational activities, have a controlled entrance to, and exit from, the theme park complex, and have a minimum of one million visitors annually who pay admission fees.

Additionally, the agreement may not:

- Involve the sale or distribution of malt beverages;
- Result in preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer who is a party to the agreement; or
- Limit the sale of alcoholic beverages from another manufacturer or importer, or distributor.

Within 10 days after execution of the agreement, the vendor must file with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement. The bill does not require that the actual agreement be filed with the division in order for the division to verify compliance with the conditions under s. 561.42, F.S., as amended by this bill.

²⁰ Section 561.42(12), F.S.

²¹ Section 561.42(14)(a), F.S.

²² “Arm’s length” is not defined by the bill. Black’s Law Dictionary defines the term “arm's-length transaction” as a “transaction between two unrelated and unaffiliated parties”, and as a “transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises”. BLACKS LAW DICTIONARY (14th ed. 2014).

The terms “arms length” and “arms-length” are used ten times in the Florida Statutes; where used, those terms are not defined. *See* s. 155.40(4)(b), F.S., defining “fair market value” in connection with the sale or lease of county, district, or municipal hospitals; s. 193.114(1)(n), F.S., relating to property tax assessment rolls; s. 212.14(4), F.S., relating to the security required for sales tax dealer registrations; s. 215.4401, F.S., relating to the real estate investment portfolio of the State Board of Administration; s. 287.055(2)(l), F.S., defining “negotiate” under the “Consultants’ Competitive Negotiation Act”; s. 400.462(11), F.S., defining “fair market value” in connection with home health agency regulation; s. 456.053(3)(g), F.S., defining “fair market value” in connection with financial arrangements between health care providers; and s. 718.117, F.S., defining “fair market value” in connection with condominium terminations.

Under the bill, the manufacturer or importer of malt beverages who is a party to a brand naming rights agreement is prohibited from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment it owes to the vendor pursuant to the naming rights agreement. The bill also prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

The bill provides an effective date of 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A manufacturer or importer of malt beverages and a theme park that enter into a cooperative advertising agreement and engage in cooperative advertising may mutually benefit financially from such an agreement.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The division noted that “[t]he bill exempts agreements for brand naming rights between manufacturers or importers of malt beverages and vendors whose businesses are located within large theme parks from the prohibitions of the Tied House Evil Law. The term ‘brand naming rights’ is not defined by the bill, and the bill does not specify the scope of activities or financial transactions that are included or excluded from the allowable brand naming rights agreements. Accordingly, the exemption may operate broadly and may include unforeseen financial arrangements that would be otherwise impermissible pursuant to Florida law for any other manufacturer or vendor of alcoholic beverages.”

The department also expressed concern regarding how to determine whether the agreement resulted from an arm’s length transaction and how the fair market value would be determined for enforcement purposes.²³.

VIII. Statutes Affected:

This bill substantially amends section 561.42 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.

²³ Department of Business & Professional Regulation, *2021 Agency Legislative Bill Analysis for HB 73*, at pp. 6-7 (Jan. 20, 2021). HB 73 by Representative Tomkow is the companion to SB 1062.

CourtSmart Tag Report

Room: KB 412 Case No.: -
Caption: Senate Regulated Industries Committee

Type:
Judge:

Started: 3/1/2021 4:01:13 PM
Ends: 3/1/2021 4:30:52 PM Length: 00:29:40

4:01:12 PM Meeting called to order, roll call
4:01:19 PM Quorum is present
4:01:34 PM Pledge of Allegiance
4:01:55 PM Introductory comments by Chair Hutson
4:02:44 PM Chair Hutson announces that Tab 9, SB 1062 will be TP'd today
4:02:47 PM Tab 1, SB 286 by Sen Perry, Fire Sprinklers
4:02:57 PM Senator Perry to explain the bill
4:02:58 PM Delete-All Amendment Barcode 456088 by Senator Perry
4:03:05 PM Senator Perry to explain the amendment
4:04:00 PM Amendment 456088 Adopted
4:04:18 PM Tim Meenan waives in support
4:04:30 PM Senator Perry waives close on bill
4:04:35 PM Roll Call on CS/SB 286
4:04:49 PM CS/SB 286 Reported Favorably
4:04:59 PM
4:05:00 PM Tab 4, SB 572 by Senator Baxley, Engineers
4:05:06 PM Senator Baxley to explain the bill
4:06:09 PM Senator Baxley waives close
4:06:18 PM Roll call on SB 572
4:06:36 PM SB 572 is reported Favorably
4:06:46 PM Tab 5, SB 574 by Senator Baxley, Fees/Professional Structural Engineer Licensing
4:06:49 PM Senator Baxley to explain the bill
4:07:15 PM Amendment Barcode 481480 by Senator Baxley
4:07:25 PM Amendment Barcode 481480 is reported Favorably
4:08:05 PM Senator Baxley waives close
4:08:12 PM Roll call on CS/SB 574
4:08:17 PM CS/SB 574 reported Favorably
4:08:37 PM Tab 7, SB 964 by Senator Diaz, Environmental Compliance Costs
4:08:42 PM Senator Diaz to explain the bill
4:10:16 PM Amendment Barcode 859804
4:10:29 PM Amendment 859804 is adopted
4:10:55 PM Questions by Senator Hooper to Senator Diaz
4:13:31 PM Mark Futrell, Deputy Executive Director, Florida Public Service Commission, here for questions
4:15:35 PM Jess McCarty, Asst. County Attorney Miami-Dade county waives in support
4:15:48 PM Senator Diaz waives close
4:15:54 PM Roll call on CS/SB 964
4:16:01 PM CS/SB 964 is reported Favorably
4:16:17 PM Tab 8, SB 996 by Senator Garcia, Community Associations
4:16:27 PM Senator Garcia to explain the bill
4:18:05 PM
4:18:18 PM Nelson Diaz, Fairness in Taxation waives in support
4:18:30 PM Senator Garcia waives close
4:18:40 PM Roll call on SB 996
4:18:45 PM SB 996 is reported Favorably
4:19:00 PM Tab 6, SB 616 by Senator Gruters
4:19:04 PM Senator Gruters to explain the bill
4:19:46 PM Justin Thames, Director of Governmental Affairs. Florida Institute of CPAs
4:20:32 PM Senator Gruters to close on the bill
4:20:40 PM Roll call on SB 616
4:20:56 PM SB 616 is reported Favorably
4:21:26 PM Chair Hutson calls for a temporary recess 3 to 5 minutes
4:23:43 PM Recording Paused

4:25:28 PM Recording Resumed
4:25:31 PM Tab 2, SB 346 by Senator Rodriguez, Florida Real Estate Appraisal Board
4:26:31 PM Senator Rodriguez to present
4:27:59 PM Trey Goldman, Florida Realtors Association waives in support
4:28:06 PM Will McRea, Region X of the Appraisal Institute waives in support
4:28:14 PM Senator Rodriguez waives close
4:28:16 PM Roll call on SB 346
4:28:34 PM SB 346 is reported Favorably
4:28:38 PM Tab 3, SB 1212 by Senator Rodriguez, Construction Contracting Exemptions
4:28:40 PM Senator Rodriguez to explain the bill
4:28:44 PM
4:29:58 PM Senator Rodriguez waives close
4:30:00 PM Roll call on SB 1212
4:30:04 PM SB 1212 is reported Favorably
4:30:20 PM Senator Hooper moves to adjourn, without objection