

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 Governmental Oversight and Accountability

BILL: CS/CS/SB 286

INTRODUCER: Governmental Oversight and Accountability Committee, Regulated Industries Committee, and Senator Richter and others

SUBJECT: Concrete Masonry Education

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
3.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 286 creates the “Concrete Masonry Education Act.” The bill creates the Florida Concrete Masonry Council, Inc., as a non-profit corporation operating under a written contract as a direct-support organization of the Florida Department of Economic Opportunity. Administrative powers and duties of the council include the power to plan, implement, and conduct educational programs related to the field of concrete masonry, particularly for individuals seeking employment. The bill provides for the appointment of a 13 member governing board.

The bill allows the council to accept grants, donations, contributions, gifts, and to collect self-imposed voluntary assessments on concrete masonry units¹ produced and sold by concrete masonry manufacturers in the state. Manufacturers that choose to pay the assessment must commit to paying the assessment for at least one year. Thereafter, the manufacturer may remit the assessment or recommit for the next year.

¹ A Concrete Masonry Unit is a building unit or block larger in size than 12 inches by 4 inches by 4 inches (305 mm by 102 mm by 102 mm) made of cement and suitable aggregates. *See* s. 2103.1 Florida Building Code (2010).

II. Present Situation:

Concrete Masonry Education

Educational programs to train individuals in the field of concrete masonry are currently offered by school districts, colleges and apprenticeship programs throughout Florida.² The Florida Department of Education develops Career and Technical Education programs in ‘Concrete Masonry’ as well as ‘Brick and Block Masonry.’ These programs are provided through a network of service providers, which include District Technical Centers, Adult Education Providers and Florida colleges.³

The Florida Department of Education’s (DOE) Career and Technical Education programs are reviewed on a three-year cycle with business and industry as required by s. 1004.92(2)(b)4., F.S. The ‘Brick and Block Masonry’ program was last reviewed in 2011 for the 2012-2013 school year, and will be reviewed again in 2014 for the 2015-2016 school year. According to DOE, the 2012 review of the ‘Concrete Masonry’ program recommended deletion of the program due to low enrollment.⁴ The program will be removed from inventory in the 2014-2015 school year.⁵ These reviews are conducted by programmatic review committees with at least fifty percent of the membership from the industry.⁶

The Masonry Association of Florida, Inc. along with the Florida Concrete & Products Association, formed the Florida Masonry Apprentice and Education Foundation, Inc. (foundation) in 2002 to add to and expand masonry apprentice programs.⁷ The foundation is a nonprofit organization providing apprenticeship education of the masonry trade.⁸

The Florida Department of Economic Opportunity’s mission is to promote economic opportunities for all Floridians; formulating and implementing a successful workforce, community, and economic development policies and strategies.⁹

Demand for Skilled Labor

According to the foundation, it is estimated that 300-500 new masons per year are needed to support demand and address attrition.¹⁰ There are only 300 apprentices enrolled in the current apprenticeship programs currently available.¹¹

² 2014 Legislative Bill Analysis for SB 286, Department of Education (Oct. 23, 2013).

³ Florida Department of Education, Career and Adult Education, available at <http://www.fldoe.org/workforce/> (Last visited Jan. 21, 2013).

⁴ Conversation with Florida Department of Education representative by Community Affairs Committee Staff (Dec. 11, 2013).

⁵ *Id.*

⁶ The committees may include directors for the Florida Concrete Masonry Education Council, as described in the bill.

⁷ Florida Masonry Apprentice and Education Foundation, Inc., *About Us*, available at <http://www.masonryeducation.org/about.html> (Last visited Feb. 16, 2014).

⁸ *Id.*

⁹ MyFlorida.com, Department of Economic Opportunity, available at <http://www.myflorida.com/agency/50/> (Last visited Feb. 10, 2014).

¹⁰ *Id.*

¹¹ *Id.*

According to a recent survey by the trade group Associated General Contractors, twenty-seven percent of Florida construction firms claim to have trouble finding cement masons.¹² The Florida construction industry lost half of its employment during the recession, and with an increase in building projects the demand for skilled labor is not being met.¹³ A growing shortage of labor and rising cost of building materials could affect the completion of some projects.¹⁴

Examples of Industry Assessment Structures

The Florida Beef Council, created by the Beef Market Development Act,¹⁵ is a not-for-profit corporation operating as a direct-support organization of the Department of Agriculture and Consumer Services.¹⁶ According to the Florida Cattlemen's Association website, this council is a wholly-owned corporation of the Florida Cattlemen's Association and functions as the promotional and educational arm of the beef industry in Florida, supporting the ability of cattlemen members to produce and market their products.¹⁷ As a direct-support organization of the Department of Agriculture and Consumer Services,¹⁸ this council is authorized to impose an assessment of not more than \$1 on each head of cattle sold to fund the purposes of the council.¹⁹ This follows the federally mandated check-off program, where half of the funds collected in Florida are designated for national promotion, research, consumer information and industry information programs; half the funds are used in Florida to disseminate nutritional and product information to the media, food service and retail industries, school educators, health professionals, consumers and producers.²⁰

The Florida Building Commission, created under s. 553.74(1), F.S., is within the Department of Business and Professional Regulation. Section 553.721 F.S. creates a surcharge to be assessed at the rate of 1.5% of the permit fees associated with the enforcement of the Florida Building Code (code), which is partly allocated to the Florida Building Commission. The Commission is responsible for adopting and enforcing the code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.²¹ The code is required to be updated every three years by the Florida Building Commission.²² Pursuant to s. 553.73, F.S., the Commission is authorized to adopt administrative rules, impose fees for

¹² Marcia Heroux Pounds, *As projects ramp up, skilled construction workers in short supply*, Sun Sentinel, Nov. 24, 2013, available at <http://www.sun-sentinel.com/business/careers/fl-tradesmen-shortage-20131124.0.4371525.story> (Last visited Jan. 21 2014).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See s. 570.9135(4), F.S.

¹⁶ See s. 570.9135(4)(a), F.S.

¹⁷ Florida Cattlemen's Associations, About, *Beef Council*, available at <http://www.floridacattlemen.org/fbc.html> (Last visited Feb. 11, 2014).

¹⁸ See s. 570.903 F.S., requirements of a Direct Support Organization under the Department of Agriculture and Consumer Services.

¹⁹ See s. 570.9135(4) F.S.

²⁰ Florida Cattlemen's Associations, About, *Beef Council*, available at <http://www.floridacattlemen.org/fbc.html> (Last visited Feb. 11, 2014).

²¹ See s. 553.73 and 553.74, F.S.

²² See s. 553.73(7)(a), F.S. See also Florida Department of Business & Professional Regulation, Florida Building Commission, available at http://www.floridabuilding.org/fbc/information/building_commission.htm (Last visited Dec. 9, 2013).

binding code interpretations, and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the code.

III. Effect of Proposed Changes:

Section 1 provides that the section may be cited as the “Concrete Masonry Education Act.”

Section 2 creates the Florida Concrete Masonry Education Council, Inc. (council) as a nonprofit corporation operating under a written contract as a direct-support organization of the Florida Department of Economic Opportunity.

The council is required to do the following:

- Plan, implement, and conduct programs of education for the purpose of training individuals in the field of concrete masonry.
- Develop and improve educational access to individuals seeking employment in the field of concrete masonry.
- Develop and implement outreach programs to ensure diversity among those trained in the field of concrete masonry.
- Coordinate educational programs with other state or national programs.
- Inform and educate the public concerning the sustainability and economic benefits of concrete masonry products in order to increase employment opportunities in the field of concrete masonry.
- Develop, implement, and monitor a system for collection of a self-imposed voluntary assessment on each concrete masonry unit produced and sold by concrete masonry manufacturers in this state.
- Submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by January of each year detailing the revenues it receives, industry participation, use of its funds, number of individuals trained or assisted, its goals and objectives for the year and information of job placement and industry workforce needs.

The council may:

- Upon request, provide governmental bodies with information relating to the concrete masonry industry;
- Sue and be sued as a council;
- Maintain a financial reserve for emergency use, which shall not exceed 10 percent of the council’s income;
- Employ subordinate officers and employees;
- Cooperate with other organizations and agencies engaged in activities related to concrete masonry education; and
- Meet with concrete masonry manufacturers in this state to coordinate collection of the self-imposed voluntary assessments on concrete masonry units.

The council is prohibited from:

- Participating in a political campaign, or state or local ballot initiatives;
- Using receipts to benefit directors, officers, or other private persons, not including reasonable compensation for services; and

- Participating in activities prohibited for non-profit corporations under federal tax law.

Governing Board

The Florida Concrete Masonry Education Council, Inc., shall be governed by a board of directors serving without compensation, except for reimbursement for per diem and travel expenses incurred in carrying out the intent and purposes of this section. Thirteen members will occupy the board, as follows:

- Eight members representing concrete masonry manufacturers:
 - Each must represent a different manufacturer;
 - Each must have been employed by a manufacturer engaging in manufacturing of the concrete masonry products and one member of whom must have at least five years of experience prior to starting service on the board; and
 - At least five must be members of the Masonry Association of Florida (MAF);
- One member representing a major building industry association in the state;
- One member having expertise in apprenticeship or workforce education training;
- Two members who are masonry contractors and members of the MAF; and
- One member who is not a masonry contractor but who is otherwise a stakeholder in the masonry industry.

The initial board shall be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each making five appointments, with five members serving 1-year terms, four members serving 2-year terms, and four members serving 3-year terms. Each person who appoints the board has a designated number of appointees allocated per each year-term category. Thereafter, members shall be appointed to serve 3-year terms and may be reappointed to serve one additional consecutive term.

Participation in the voluntary assessment on concrete masonry units is not a requirement of appointment.

In addition to the fifteen voting members, the executive director of the Department of Economic Opportunity or their designee shall serve as an ex officio nonvoting member.

Acceptance of Grants and Gifts

The bill authorizes the council to receive grants and donations provided that there are no restrictions that the council considers to be inconsistent with the objectives of the program.

Payments to Organizations

The bill authorizes the council to make payments to other organizations for services rendered through a written agreement which is consistent with the objectives of this section.

Before making such payments:

- The council must secure a written agreement that the organization will furnish reports of program activity, including financial data relative to the council's funding of such activities. These must be furnished at annually or, on the request of the council, more frequently; and
- The council may require proof of security on the payments.

Collection of Moneys

The bill requires manufacturers electing to pay the voluntary assessment to collect money for each masonry unit produced and sold by the manufacturer, and forward these moneys to the council on a quarterly basis. Participating manufacturers must commit to pay the assessment for at least one year before electing to terminate payment or continue payment for the next year. The council must maintain a separate accounting of all moneys received and provide for an annual financial audit.

Bylaws

The bill requires the council to adopt bylaws by September 30, 2014 to carry out the purposes of this section, which must conform to this section but may also address any matter not in conflict with the general law of this state.

Section 3 provides for an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 3, Art. II of the State Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The bill creates a direct support organization for the Department of Economic Opportunity. The board of directors of this direct support organization will be appointed by the Governor, President of the Senate, and the Speaker of the House of Representatives. If the direct support organization is an entity of the executive branch of state government, it is unclear whether the structure of the appointment process of executive branch officials (the board of directors), with the direct involvement of the presiding officers of the legislature, is a violation of the principle of separation of powers.

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

None.

B. Private Sector Impact:

Proposed payments by concrete masonry manufacturers to Florida Concrete Masonry Council, Inc., are self-imposed voluntary assessments on concrete masonry units produced and sold in the state. Additionally, the council may accept grants, donations, contributions, or gifts.

The fiscal impact cannot be determined because of the voluntary nature of the anticipated revenue.

C. Government Sector Impact:

The council may provide governmental bodies with requested information relating to subjects of concern to the industry. The council may act jointly or in cooperation with the state or federal government and their agencies in the development or administration of programs that the council considers to be consistent with this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section 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/CS by Governmental Oversight and Accountability on April 3, 2014:

The committee substitute:

- Provides that the council must operate pursuant to a written contract with specified provisions;
- Changes the size of the council's board of directors from 15 to 13 members;
- Deletes a provision that the Chancellor of Career and Adult Education must be on the board; and
- Provides that the council's audits must be performed in accordance with s. 215.981, F.S.

CS by Regulated Industries February 13, 2014:

The committee substitute (CS) creates the “Concrete Masonry Council, Inc., a nonprofit corporation operating as a direct-support organization of the Department of Economic Opportunity rather than the Department of Education.

- The council is required to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by January of each year on revenues, participation, use of funds, number of persons trained and other information.
- The funds held in reserve may not exceed 10 percent of the council’s income.
- The initial board of fifteen members shall be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each making five appointments after soliciting recommendations from the Masonry Association of Florida, and of these five, a designated number of appointees per each year-term category.
- Participation in the voluntary assessment on concrete masonry units is not a requirement of appointment.
- In addition to the fifteen voting members, the executive director of the Department of Economic Opportunity or their designee shall serve as an ex officio nonvoting member.

B. Amendments:

None.