

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 535 Low-voltage Alarm System Projects

**SPONSOR(S):** Local Administration, Federal Affairs & Special Districts Subcommittee, Snyder

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N, As CS	Burgess	Darden
3) Commerce Committee			

### SUMMARY ANALYSIS

A “low-voltage electric fence” is an alarm system that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure. Florida law sets out a streamlined process for permitting low-voltage electric fence projects.

If a low-voltage electric fence meets certain requirements, it may be permitted as a low-voltage alarm system project, and no other permit may be required. Requirements include:

- The low-voltage electric fence will be completely enclosed by a nonelectric fence or wall. Current law is unclear if the fence must be enclosed on both sides or enclosed only on the outside perimeter.
- The low-voltage electric fence will not be installed in an area zoned exclusively for single-family or multifamily residential use.

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with Florida Statutes.

Recently, two Florida trial courts differed on when an ordinance or rule relating to a low-voltage alarm system project is preempted and inconsistent with Florida law.

The bill clarifies that a nonelectric fence or wall must only be completely enclosed on the outside perimeter of the low-voltage electric fence but does not have to be completely enclosed on both sides. The bill requires a low-voltage electric fence to be 2 feet higher than the perimeter nonelectric fence or wall.

The bill provides that a local government must allow low-voltage electric fences in areas not exclusively zoned for single- or multi-family residential use and therefore may not prohibit such fences in areas zoned in multiple zoning categories.

The bill clarifies that any ordinance or rule with additional requirements beyond those set out in, or that is otherwise inconsistent, with Florida Statutes related to the installation or maintenance of a low-voltage alarm system project may not be adopted by a municipality, county, district, or other entity of local government.

The bill has no fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **The Florida Building Code**

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

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

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>4</sup>

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,<sup>5</sup> the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.<sup>6</sup>

##### **Building Permits**

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction for the protection of the public's health, safety, and welfare.<sup>7</sup> Every local government must enforce the Building Code and issue building permits.<sup>8</sup>

A building permit is an official document or certificate issued by the local building official that authorizes the performance of a specific activity.<sup>9</sup> Any construction work that requires a building permit also

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<sup>1</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Jan, 11, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan, 11, 2024).

<sup>4</sup> See s. 553.72(1), F.S.

<sup>5</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Jan, 11, 2024).

<sup>6</sup> S. 553.73(7)(a), F.S.

<sup>7</sup> S. 553.72, F.S.

<sup>8</sup> Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>9</sup> S. 468.603(2), F.S.; § 202, FBC, Building, 7th Ed., (2020).

requires plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.<sup>10</sup>

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>11</sup> A building permit is not valid until the fees for the permit have been paid.<sup>12</sup>

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.<sup>13</sup> An application for a permit must include building plans.<sup>14</sup> A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.<sup>15</sup>

### **Streamlined Permitting for Low-voltage Electric Fences**

Section 553.793, F.S., sets out a streamlined process for permitting low-voltage alarm system projects, which includes low-voltage electric fence projects.

A “low-voltage alarm system project” means a project for the installation, maintenance, inspection, replacement, or service of the following new or existing alarm systems, or any ancillary components thereof, by a licensed electrical or alarm systems contractor:<sup>16</sup>

- Hardwired and low-voltage<sup>17</sup> video cameras and closed-circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency; and
- Low-voltage electric fences.

A “low-voltage electric fence” is an alarm system that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.<sup>18</sup>

If a low-voltage electric fence meets all of the following requirements, it may be permitted as a low-voltage alarm system project, and no other permit may be required:<sup>19</sup>

- The electric charge produced by the fence upon contact does not exceed the international standard for energizer characteristics.<sup>20</sup>
- The low-voltage electric fence will be **completely enclosed** by a nonelectric fence or wall. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.
  - Current law is unclear if the fence must be enclosed on both sides or enclosed only on the outside perimeter.
- The low-voltage electric fence is identified using warning signs attached to the fence at intervals of not more than 60 feet.
- The low-voltage electric fence will not be installed in an area zoned exclusively for **single-family or multifamily residential use**.
- The low-voltage electric fence will not enclose **residential** portions of a property.

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<sup>10</sup> §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).

<sup>11</sup> See ss. 125.56(4)(a) and 553.79(1), F.S.

<sup>12</sup> § 109.1, FBC, Building, 7th Ed., (2020).

<sup>13</sup> Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.

<sup>14</sup> Ss. 468.603(8), and 553.79(2), F.S.

<sup>15</sup> S. 553.79(2), F.S.

<sup>16</sup> S. 553.793(1)(b), F.S.

<sup>17</sup> As defined in Standard 70, NEC. S. 553.793(1)(b), F.S.

<sup>18</sup> S. 553.793(1)(c), F.S.

<sup>19</sup> S. 553.793(3), F.S.

<sup>20</sup> § 22.108, Figure 102, IEC 60335-2-76.

The streamlined permitting process is as follows:

- First, instead of requiring individualized permits, the local enforcement agency must make uniform basic permit labels available for purchase in bulk by an electrical or alarm systems contractor to be used for the installation or replacement of a new or existing alarm system at a cost of not more than \$40 per label per project per unit.<sup>21</sup>
  - The local enforcement agency may not require a contractor, as a condition of purchasing a label, to submit any information other than identification information and proof of license.<sup>22</sup>
- Second, before commencing a project, the contractor must post an unused uniform basic permit label in a conspicuous place on the premises of the low-voltage alarm system project site.<sup>23</sup>
  - The contractor is not required to notify the local enforcement agency before commencing work.
- Third, within 14 days after completing the project, the contractor must submit a notice of completing the project<sup>24</sup> to the local enforcement agency.<sup>25</sup>
- Fourth, to inspect the project for compliance with applicable codes and standards, a local enforcement agency may coordinate directly with the owner or customer to inspect the project.
  - If the project fails the inspection, the contractor must take corrective action as necessary to pass inspection.<sup>26</sup>

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with s. 553.793, F.S.<sup>27</sup>

### Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>28</sup> To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.<sup>29</sup> Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”<sup>30</sup>

Where state preemption applies, a local government may not exercise authority in that area.<sup>31</sup> Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the government may declare the preempted ordinance void.<sup>32</sup>

### **Recent Litigation Concerning Low-voltage Electric Fences**

Recently, two Florida trial courts differed on whether an ordinance or rule relating to a low-voltage alarm system project is preempted and inconsistent with Florida law as set forth in s. 553.793, F.S.

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<sup>21</sup> S. 553.793(5), F.S.

<sup>22</sup> S. 553.793(5)(b), F.S.

<sup>23</sup> S. 553.793(6), F.S.

<sup>24</sup> The form requirements are outlined in s. 553.793(8), F.S.

<sup>25</sup> S. 553.793(7), F.S.

<sup>26</sup> S. 553-793(9), F.S.

<sup>27</sup> S. 553.793(10), F.S.

<sup>28</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).

<sup>29</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>30</sup> *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

<sup>31</sup> *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

<sup>32</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

## Hillsborough County

In a case filed in Hillsborough County,<sup>33</sup> the trial court held that the county ordinance for low-voltage electric fences was inconsistent with and preempted by state law “to the extent that it prohibits or imposes additional requirements for low-voltage electric fences in areas of Hillsborough County other than those areas zoned exclusively for single-family or multiple-family residential use, where these fences satisfy the requirements of s. 553.793, F.S.” The ordinance imposed restrictions on such fences in mixed-use areas.<sup>34</sup>

## City of Orlando

In a case addressing a requirement in the City of Orlando’s zoning code which prohibited the installation of electric fences in a certain heritage zoning district,<sup>35</sup> the trial court disagreed with the finding in the Hillsborough County case. The court held that the “standard is not whether the city’s code imposes *additional* requirements, but whether those requirements *conflict* with [s. 553.793, F.S.]. That is, whether the code and the statute cannot coexist, or if the Plaintiff must violate one to comply with the other.”<sup>36</sup>

The court also held that “as long as the ordinance is not inconsistent with [that section], a municipality is not prevented from enacting regulations regarding electric fences.”<sup>37</sup>

The court also found that the city’s ordinance was not preempted by s. 553.793, F.S, as the ordinance at issue:

Does not require an additional permit for an electric fence--it only regulates where the electric fences can be installed. It is within Orlando’s police powers to maintain its communities, and the city has a legitimate interest in maintaining the appearance of the [heritage zoning] district with importance to the community.<sup>38</sup>

Accordingly, the City of Orlando’s regulation prohibiting low-voltage electric fences in certain locations did not constitute an additional requirement for installing such fences, and the court found in favor of the City of Orlando.<sup>39</sup>

## **Effect of the Bill**

The bill clarifies that a nonelectric fence or wall must only be completely enclosed on **the outside perimeter** of the low-voltage electric fence but does not have to be completely enclosed on both sides. The low-voltage electric fence must be 2 feet higher than the perimeter nonelectric fence or wall.

The bill provides that a local government must allow low-voltage electric fences in areas not exclusively zoned for single- or multi-family residential use and therefore may not prohibit such fences in areas zoned in multiple zoning categories.

The bill provides any ordinance or rule with additional requirements beyond those set out in, or that is otherwise inconsistent, with s. 553.793, F.S., for the installation or maintenance of a low-voltage alarm system project may not be adopted by a municipality, county, district, or other entity of local government.

## B. SECTION DIRECTORY:

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<sup>33</sup> See *Electric Guard Dog, LLC v. Hillsborough Co., Fla.*, (Case No. 17-CA-010362, Fla.13th Jud. Cir. 2019), at pp. 1-2.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> See *Amarok Security, LLC v. City of Orlando, Fla.*, (Case No. 2022-CA-011454-0, Div. 35, Fla. 9th Jud. Cir. 2023).

<sup>36</sup> *Id.* at p. 8.

<sup>37</sup> *Id.* at p. 9.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

- Section 1: Amends s. 553.793, F.S.; providing requirements for low-voltage electric fence permits.  
Section 2: Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.
2. Expenditures:  
None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

2. Other:  
None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment requires a low-voltage electric fence to be 2 feet higher than the perimeter nonelectric fence or wall.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.