

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bennett, Chair
Senator Norman, Vice Chair

MEETING DATE: Monday, March 7, 2011
TIME: 3:15 —5:15 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Bennett, Chair; Senator Norman, Vice Chair; Senators Dockery, Hill, Richter, Ring, Storms, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 88 Gaetz (Identical H 43)	Public Officers; Prohibits severance pay for nonelected public officers except under specified circumstances. Prohibits certain limitations on discussing an employment dispute or settlement. CA 03/07/2011 Fav/CS JU GO	Fav/CS Yeas 9 Nays 0
2	SB 998 Simmons (Identical H 701)	Property Rights; Shortens a notice period for certain actions. Provides for the state land planning agency to receive notice of claims. Revises procedures for determining a governmental entity's final decision identifying the allowable uses for a property. Provides that enactment of a law or adoption of a regulation does not constitute applying the law or regulation. Provides for a waiver of sovereign immunity for liability. Provides for prospective application, etc. CA 03/07/2011 Favorable JU BC	Favorable Yeas 9 Nays 0
3	SB 444 Bogdanoff (Identical H 441)	Scrutinized Companies; Prohibits a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Requires the DMS to notify the Attorney General after the act becomes law. Provides that the act becomes inoperative if federal law ceases to authorize states to enact such contracting prohibitions, etc. GO 02/08/2011 Fav/2 Amendments CA 03/07/2011 Fav/CS BC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, March 7, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 874 Hays (Similar H 597)	Public Records/Emergency Notification Information; Provides an exemption from public records requirements for information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Provides for retroactive effect of the exemption. Provides for future legislative review and repeal of the exemption. Provides a statement of public necessity. CA 03/07/2011 Favorable GO BC	Favorable Yeas 8 Nays 1
5	SB 890 Dean (Identical H 783)	Public Safety Telecommunicators; Exempts sworn state-certified law enforcement officers from certification requirements for public safety telecommunicators. CA 03/07/2011 Temporarily Postponed CJ BC	Temporarily Postponed
6	SB 870 Storms (Identical H 19)	Compensation of County Officials; Authorizes each member of a board of county commissioners, each clerk of the circuit court, county comptroller, each sheriff, each supervisor of elections, each property appraiser, and each tax collector to reduce his or her salary on a voluntary basis. CA 03/07/2011 Favorable BC	Favorable Yeas 9 Nays 0
7	SB 912 Bennett (Identical H 639, Compare S 1804)	Affordable Housing; Requires the inspector general to prepare an annual report. Provides a housing finance authority with an additional purpose for which it may exercise its power to borrow. Revises provisions relating to the elements of local comprehensive plans to authorize the inclusion of an element for affordable housing for certain seniors. Revises the allocation of certain proceeds distributed from the excise tax on documents that are paid into the State Treasury to the credit of the State Housing Trust Fund, etc. CA 03/07/2011 Favorable CF BC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Monday, March 7, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 396 Bennett (Compare H 849)	Building Construction and Inspection; Conforms provisions to changes made by the act. Redefines "sustainable building rating" to include the International Green Construction Code. Expands the categories of persons who may be certified as qualified for a license by endorsement as a home inspector. Revises requirements for selecting a member of the Florida Building Commission, etc. CA 02/21/2011 Temporarily Postponed CA 03/07/2011 Fav/CS RI BC	Fav/CS Yeas 8 Nays 1
9	SB 830 Thrasher (Identical H 1021)	Labor and Employment; Prohibits a state agency from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity. Prohibits a county, municipality, or other local governmental entity from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity, etc. CA 03/07/2011 GO BC	Amendments Adopted - Temporarily Postponed
10	Presentation by Janet Bowman, Nature Conservancy on Growth Management recommendations: "Planning for Quality Growth and Economic Prosperity for Florida's Future."		Discussed

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 Community Affairs Committee

BILL: CS/SB 88

INTRODUCER: Community Affairs Committee and Senator Gaetz

SUBJECT: Public Employee Compensation

DATE: March 7, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.			JU	
3.			GO	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 88 makes the following changes with respect to public employee compensation. It:

- prohibits the payment of severance pay with certain exceptions,
- restricts bonus schemes,
- deletes provisions of law inconsistent with these restrictions, and
- prohibits confidentiality agreements.

This Committee Substitute (CS) substantially amends the following sections of the Florida Statutes: 215.425, 166.021, and 112.061. The CS repeals the following sections of the Florida Statutes: 125.01(1)(bb) and 373.0795.

II. Present Situation:

Section 215.425, F.S., provides:

No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made, with the following exceptions:

- extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Management Services;

- extra compensation given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing boards of special districts or to employees of the clerk of the circuit court pursuant to written policy of the clerk; or
- a clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49, F.S.

Numerous attorney general opinions have been issued interpreting this section of law.¹ According to the attorney general opinions, the following forms of remuneration would violate s. 215.425, F.S.:

- Severance pay or wages in lieu of notice of termination;²
- Bonuses to existing employees for services for which they have already performed and been compensated, in the absence of a preexisting employment contract making such bonuses a part of their salary;³ and
- Lump-sum payments made as an incentive for an employee to end their employment.

The following were not deemed to violate s. 215.425, F.S.:

- Certain settlements;
- Lump-sum supplemental payments as an increased benefit to qualified current employees who elect early retirement; and
- Accrued annual or sick leave.⁴

The key issue in these attorney general opinions seemed to be whether the benefits were benefits that were anticipated as part of the initial contract or hiring policy or whether they were additional payment for services over and above that fixed by contract or law when the services were rendered.⁵ Benefits that were anticipated as part of the hiring process were deemed to be included in the salary/payment for services. Whereas, additional benefits, not anticipated at the hiring date or available to all employees as part of a retirement plan, were deemed to be extra compensation prohibited by the statute.

Sections 125.01(1)(bb) and 166.021(7), F.S., allow cities and counties to “provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years,” notwithstanding the prohibition against extra compensation set forth in s. 215.425, F.S.

Section 110.1245, F.S., tasks the Department of Management Services (DMS) with paying bonuses when funds are specifically appropriated by the Legislature for bonuses. Statutory eligibility criteria include that:

¹ See Op. Att’y Gen. Fla. 2009-03 (2009); Op. Att’y Gen. Fla. 2007-26 (2007); Op. Att’y Gen. Fla. 97-21 (1997); and Op. Att’y Gen. Fla. 91-51 (1991).

² Op. Att’y Gen. Fla. 2007-26 (2007); Op. Att’y Gen. Fla. 91-51 (1991).

³ Op. Att’y Gen. Fla. 91-51 (1991).

⁴ Op. Att’y Gen. Fla. 2009-03 (2009).

⁵ Op. Att’y Gen. Fla. 2007-26 (2007).

- The employee must have been employed prior to July 1 of that fiscal year and have been continuously employed through the date of distribution.
- The employee must not have been on leave without pay consecutively for more than 6 months during the fiscal year.
- The employee must have had no sustained disciplinary action during the period beginning July 1 through the date the bonus checks are distributed. Disciplinary actions include written reprimands, suspensions, dismissals, and involuntary or voluntary demotions that were associated with a disciplinary action.
- The employee must have demonstrated a commitment to the agency mission by reducing the burden on those served, continually improving the way business is conducted, producing results in the form of increased outputs, and working to improve processes.
- The employee must have demonstrated initiative in work and have exceeded normal job expectations.
- The employee must have modeled the way for others by displaying agency values of fairness, cooperation, respect, commitment, honesty, excellence, and teamwork.

DMS also has rules for:

- A process for peer input that is fair, respectful of employees, and affects the outcome of the bonus distribution.
- A division of the agency by work unit for purposes of peer input and bonus distribution.
- A limitation on bonus distributions equal to 35 percent of the agency's total authorized positions. This requirement may be waived by the Office of Policy and Budget in the Executive Office of the Governor upon a showing of exceptional circumstances.

Section 110.191, F.S., authorizes bonuses in specified circumstances to leased employees authorized by the Legislature, an agency, or the judicial branch.

Section 373.0795, F.S., prohibits severance pay for water management district employees. That section defines “severance pay” to mean the actual or constructive compensation, in salary, benefits, or perquisites, of an officer or employee of a water management district, or any subdivision or agency thereof, for employment services yet to be rendered for a term greater than 4 weeks before or immediately following termination of employment (excluding leave time and retirement).

III. Effect of Proposed Changes:

Section 1 amends s. 215.425, F. S., to revise existing law that prohibits extra compensation made to a public employee after the service has been rendered or the contract made. The CS deletes current provisions allowing counties, municipalities, or special districts to give bonuses as long as they have policies in place. The CS creates requirements for any policy, ordinance, rule, or resolution designed to implement a bonus scheme. The scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and

- Consider all employees for the bonus.

The CS prohibits units of government from contracting to give severance pay to an officer, agent, employee, or contractor.

An officer, agent, employee, or contractor may receive severance pay only if:

- Paid wholly from private funds and is not a violation of the employee code of ethics;⁶
- The severance pay is part of an interstate interchange of employees;⁷
- The severance pay is given as part of a settlement agreement if there is no prohibition against publicly discussing the settlement; or
- The severance pay is expressly included in a contract for employment which was entered into before July 1, 2011.

The CS clarifies that it does not create an entitlement to severance pay in the absence of its authorization.

The CS defines “severance pay” as the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

- Earned and accrued annual, sick, compensatory, or administrative leave; or
- Early retirement under provisions established in an actuarially funded pension plan subject to part VII of chapter 112, F.S.

Any agreement or contract involving extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract.

Section 2 deletes subsection (7) of 166.021, F.S., allowing municipalities to provide extra compensation programs.

Section 3 conforms cross references.

Section 4 deletes paragraph (bb) of s. 125.01, F.S., allowing counties to provide extra compensation programs. It also repeals s. 373.0795, F.S., which prohibits severance pay (under an inconsistent definition) for water management districts.

Section 5 provides an effective date of July 1, 2011.

Other Potential Implications:

Restrictions on severance pay will limit the ability of public employers to recruit employees by including severance pay clauses in their contract. Alternatively, it will eliminate abuses associated with severance pay that may be occurring now.

⁶ Under part III of chapter 112, F.S.

⁷ Under part II of chapter 112, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Cost savings may arise from the prohibition against severance pay. Under current law, employees could likely receive severance pay as a part of their initial contract, but not in an ad hoc manner subsequent to negotiating their terms of employment. Therefore, since ad hoc severance pay is already prohibited under s. 215.425, F.S., the bill will prohibit government employers from using severance pay as a recruitment tool.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by the Community Affairs Committee on March 7, 2011:

Makes the following changes with respect to public employee compensation. It:

- prohibits the payment of severance pay with certain exceptions,
- restricts bonus schemes,
- deletes inconsistent provisions of law, and

- prohibits confidentiality agreements.

B. Amendments:

None.

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



416656

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 215.425, Florida Statutes, is amended to
read:

215.425 Extra compensation claims prohibited; bonuses;
severance pay.—

(1) No Extra compensation shall be made to any officer,
agent, employee, or contractor after the service has been
rendered or the contract made; nor shall any money be



416656

13 appropriated or paid on any claim the subject matter of which
14 has not been provided for by preexisting laws, unless such
15 compensation or claim is allowed by a law enacted by two-thirds
16 of the members elected to each house of the Legislature.
17 However, when adopting salary schedules for a fiscal year, a
18 district school board or community college district board of
19 trustees may apply the schedule for payment of all services
20 rendered subsequent to July 1 of that fiscal year.

21 (2) The provisions of This section does de not apply to:

22 (a) Extra compensation given to state employees who are
23 included within the senior management group pursuant to rules
24 adopted by the Department of Management Services; ~~to extra~~
25 compensation given to county, municipal, or special district
26 employees pursuant to policies adopted by county or municipal
27 ordinances or resolutions of governing boards of special
28 districts or to employees of the clerk of the circuit court
29 pursuant to written policy of the clerk; or to

30 (b) A clothing and maintenance allowance given to
31 plainclothes deputies pursuant to s. 30.49.

32 (3) Any policy, ordinance, rule, or resolution designed to
33 implement a bonus scheme must:

34 1. Base the award of a bonus on work performance;

35 2. Describe the performance standards and evaluation
36 process by which a bonus will be awarded;

37 3. Notify all employees of the policy, ordinance, rule, or
38 resolution before the beginning of the evaluation period on
39 which a bonus will be based; and

40 4. Consider all employees for the bonus.

41 (4) (a) On or after July 1, 2011, a unit of government may



416656

42 not enter into a contract or employment agreement that contains
43 a provision for severance pay with an officer, agent, employee,
44 or contractor.

45 (b) On or after July 1, 2011, an officer, agent, employee,
46 or contractor may receive severance pay only if:

47 1. The severance pay is paid from wholly private funds, the
48 payment and receipt of which do not otherwise violate part III
49 of chapter 112;

50 2. The severance pay is administered under part II of
51 chapter 112 on behalf of an agency outside this state and would
52 be permitted under that agency's personnel system;

53 3. The severance pay represents the settlement of an
54 employment dispute. Such settlement may not include provisions
55 that limit the ability of any party to the settlement to discuss
56 the dispute or settlement; or

57 4. Provision for the severance pay is expressly included in
58 a contract for employment which was entered into before July 1,
59 2011.

60 (c) This subsection does not create an entitlement to
61 severance pay in the absence of its authorization.

62 (d) As used in this subsection, the term "severance pay"
63 means the actual or constructive compensation, including salary,
64 benefits, or perquisites, for employment services yet to be
65 rendered which is provided to an employee who has recently been
66 or is about to be terminated. The term does not include
67 compensation for:

68 1. Earned and accrued annual, sick, compensatory, or
69 administrative leave; or

70 2. Early retirement under provisions established in an



416656

71 actuarially funded pension plan subject to part VII of chapter
72 112.

73 (5) Any agreement or contract involving extra compensation
74 between a unit of government and an officer, agent, employee, or
75 contractor may not include provisions that limit the ability of
76 any party to the agreement or contract to discuss the agreement
77 or contract.

78 Section 2. Present subsections (8) through (10) of section
79 166.021, Florida Statutes, are redesignated as subsections (7)
80 through (9) respectively, and present subsection (7) of that
81 section is amended, to read:

82 166.021 Powers.—

83 ~~(7) Notwithstanding the prohibition against extra~~
84 ~~compensation set forth in s. 215.425, the governing body of a~~
85 ~~municipality may provide for an extra compensation program,~~
86 ~~including a lump-sum bonus payment program, to reward~~
87 ~~outstanding employees whose performance exceeds standards, if~~
88 ~~the program provides that a bonus payment may not be included in~~
89 ~~an employee's regular base rate of pay and may not be carried~~
90 ~~forward in subsequent years.~~

91 Section 3. Paragraphs (a) and (c) of subsection (14) of
92 section 112.061, Florida Statutes, are amended to read:

93 112.061 Per diem and travel expenses of public officers,
94 employees, and authorized persons.—

95 (14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT
96 SCHOOL BOARDS, SPECIAL DISTRICTS, AND METROPOLITAN PLANNING
97 ORGANIZATIONS.—

98 (a) The following entities may establish rates that vary
99 from the per diem rate provided in paragraph (6) (a), the



416656

100 subsistence rates provided in paragraph (6) (b), or the mileage
101 rate provided in paragraph (7) (d) if those rates are not less
102 than the statutorily established rates that are in effect for
103 the 2005-2006 fiscal year:

104 1. The governing body of a county by the enactment of an
105 ordinance or resolution;

106 2. A county constitutional officer, pursuant to s. 1(d),
107 Art. VIII of the State Constitution, by the establishment of
108 written policy;

109 3. The governing body of a district school board by the
110 adoption of rules;

111 4. The governing body of a special district, as defined in
112 s. 189.403(1), except those special districts that are subject
113 to s. 166.021(9) ~~166.021(10)~~, by the enactment of a resolution;
114 or

115 5. Any metropolitan planning organization created pursuant
116 to s. 339.175 or any other separate legal or administrative
117 entity created pursuant to s. 339.175 of which a metropolitan
118 planning organization is a member, by the enactment of a
119 resolution.

120 (c) Except as otherwise provided in this subsection,
121 counties, county constitutional officers and entities governed
122 by those officers, district school boards, special districts,
123 and metropolitan planning organizations, other than those
124 subject to s. 166.021(9) ~~166.021(10)~~, remain subject to the
125 requirements of this section.

126 Section 4. Paragraph (bb) of subsection (1) of section
127 125.01 and section 373.0795, Florida Statutes, are repealed.

128 Section 5. This act shall take effect July 1, 2011.



416656

129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to public employee compensation;
amending s. 215.425, F.S.; revising provisions
relating to the prohibition against the payment of
extra compensation; providing for bonuses; specifying
the conditions for paying bonuses; prohibiting
provisions in contracts that provide for severance
pay; allowing for severance pay under specified
circumstances; defining the term "severance pay";
prohibiting a contract provision that provides for
extra compensation to limit the ability to discuss the
contract; amending s. 166.021, F.S.; deleting a
provision that allows a municipality to pay extra
compensation; amending s. 112.061, F.S.; conforming
cross-references; repealing s. 125.01(1)(bb), F.S.,
relating to the power of a local government to pay
extra compensation; repealing s. 373.0795, F.S.,
relating to a prohibition against severance pay for
officers or employees of water management districts;
providing an effective date.

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 Community Affairs Committee

BILL: SB 998

INTRODUCER: Senator Simmons and others

SUBJECT: Property Rights

DATE: March 1, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends the Bert Harris Act to make the following changes to Florida’s statutory protections on real property rights. The bill:

- specifies that a moratorium on a development that is in effect for longer than 1 year is not a temporary impact to real property and may constitute an “inordinate burden;”
- changes a notification period from 180 days to 120 days;
- deletes the term “ripeness” and replaces it with language specifying when the prerequisites for judicial review are met;
- specifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property; and
- specifies that sovereign immunity is waived for purposes of the Bert Harris Act.

This bill substantially amends section 70.001 of the Florida Statutes.

II. Present Situation:

Takings

The Fifth Amendment to the United States Constitution guarantees that citizens’ private property shall not be taken for public use without just compensation. The “takings” clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property,

without due process of law” The government may acquire private property through the power of eminent domain, provided the property owner is compensated.¹

Article I, s. 2 of the State Constitution also guarantees all natural persons the right to “acquire, possess and protect property” and further provides that no person will be deprived of property without due process of law.² Article X, s. 6 of the State Constitution is complimentary to the Fifth and Fourteenth Amendments to the United States Constitution. It provides that “[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner”

In addition to actually physically infringing upon the property, certain regulations on property can constitute a taking. Where a governmental regulation results in permanent physical occupation of the property or deprives the owner of "all economically productive or beneficial uses" of the property, a "per se" taking is deemed to have occurred, thereby requiring full compensation for the property.³ Additionally, where the regulation does not substantially advance a legitimate state interest, it is invalid⁴ and the property owner may recover compensation for the period during which the invalid regulation deprived all use of the property.⁵

In other "takings" cases, courts have used a multi-factor, "ad hoc" analysis to determine whether a regulation has adversely affected the property to such an extent as to require government compensation. The factors considered by the courts include:

- the economic impact of the regulation on the property owner;
- the extent to which the regulation interferes with the property owner's investment-backed expectations;
- whether the regulation confers a public benefit or prevents a public harm (the nature of the regulation);
- whether the regulation is arbitrarily and capriciously applied; and
- the history of the property, history of the development, and history of the zoning and regulation.⁶

The Supreme Court, in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, rejected property owners' contentions that a three-year moratorium on development constituted a per se taking of property requiring compensation under the Takings Clause.⁷ The court recognized that there are a wide range of “moratoria” that occur as a regular part of land use regulation such as “normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like.”⁸ The court ultimately determined that the length of time that

¹ Chapters 73 and 74, F.S.

² Art. I, s. 9, Fla. Const.

³ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

⁴ *See Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

⁵ *See First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).

⁶ *See Reahard v. Lee County*, 968 F.2d 1131, 1136 (11th Cir. 1992). *See also Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Graham v. Estuary Properties*, 399 So. 2d 1374 (Fla. 1981).

⁷ 535 U.S. 302 (2002).

⁸ *See id.* (quoting *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987)).

a parcel of property was undevelopable was one of the many factors to be considered when determining whether a taking has occurred.

The Bert Harris Act

In 1995, the Bert Harris Act was enacted by the Legislature to provide a new cause of action for private property owners whose property has been “inordinately burdened” by state and local government action that may not rise to the level of a “taking” under the State or Federal Constitution.⁹ The inordinate burden applies either to an existing use of real property or a vested right to a specific use.¹⁰

Under the Bert Harris Act, the term “existing use” means:

an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.¹¹

In *City of Jacksonville v. Coffield*, the First District Court of Appeals held that a city’s closure of a public road did not inordinately burden an existing use or a vested right to use of the property under the Bert Harris Act.¹² The court held that the property owner’s planned development was not an existing use to the property, nor did he have a vested right to develop the property prior to the city’s closing the public road near the property.¹³ Specifically, the court stated that once the property owner “learned that an application had been filed to close the only roadway providing ingress and egress to the property, development of the property into eight single-family lots was, if still a possibility, by no means a ‘reasonably foreseeable, nonspeculative,’ use of the property.”¹⁴ Furthermore the court stated that:

Determinations under the Act that a claimant has “an existing use of the real property or a vested right to a specific use of the real property” and that government action has permanently precluded the claimant from attaining “the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property” are conclusions of law.¹⁵

The court then proceeded to review the case *de novo*.¹⁶

⁹ Section 70.001(1) and (9), F.S.

¹⁰ Section 70.001(2)-(3)(a), F.S.

¹¹ Section 70.001, F.S.

¹² 18 So. 2d (Fla. 1st DCA 2009).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

“The existence of a ‘vested right’ is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.”¹⁷ The common law doctrine of equitable estoppel limits the government in the exercise of its power over real property when “a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired.”¹⁸

An often quoted District Court of Appeal Case said, “the theory of estoppel amounts to nothing more than an application of the rules of fair play.”¹⁹ Equitable estoppel applies against a governmental entity “only in rare instances and exceptional circumstances;” the government’s act must “go beyond mere negligence.”²⁰

In addition to the elements of equitable estoppel, the landowner’s knowledge of future changes to a zoning ordinance is an important consideration in determining whether the landowner has obtained a vested right. A series of cases from the Florida Supreme Court have emphasized that the doctrine of equitable estoppel may not be invoked where “the party claiming to have been injured by relying upon an official determination had good reason to believe before or while acting to his detriment that the official mind would soon change.”²¹ *Sakolsky v. City of Coral Gables (Sakolsky)*,²² clarified the rule stating that “[n]otice or knowledge of mere equivocation independent of actual infirmities or pending official action cannot operate to negative or prevent reliance on the official act.”²³

An inordinate burden is a government action that has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for:

- the existing use of the real property;
- a vested right to a specific use of the real property with respect to the real property as a whole; or
- when the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

¹⁷ Section 70.001, F.S.

¹⁸ *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980). See also *Coral Springs Street Systems, Inc. v. City of Sunrise*, 371 F.3d 1320 (11th Cir. 2004).

¹⁹ *Equity Resources Inc. v. County of Leon*, 643 So. 2d 1112, 1119-1120 (Fla. 1st DCA 1994); *Branca v. City of Miramar*, 634 So. 2d 604, 606 (Fla. 1994); *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571 (Fla. 2d DCA 1975).

²⁰ *Villas of Lake Jackson, Ltd. v. Leon County*, 884 F. Supp. 1544 (N.D. Fla. 1995) (citing *Council Bros., Inc. v. City of Tallahassee*, 634 So. 2d 264, 266 (Fla. 1st DCA 1994) and *Alachua County v. Cheshire*, 603 So. 2d 1334, 1337 (Fla. 1st DCA 1992) *aff’d*, 121 F.3d 610 (11th Cir. 1997) (finding that although fact questions existed on issue of equitable estoppel and vested property right, rational basis for rezoning precluded due process claims).

²¹ *Sharrow v. City of Dania*, 83 So. 2d 274 (Fla. 1955); *Gross v. City of Miami*, 62 So. 2d 418 (Fla. 1953) (“It would appear childish to assert that the permittees were without knowledge of these undisputed facts and for the respondents to wholly disregard them and simultaneously incur financial obligations incidental to the construction of the building under the questioned permit, shows that they acted while red flags were flying and cannot complain of lack of notice.”); *City of Ft. Lauderdale v. Lauderdale Industrial Sites*, 97 So. 2d 47 (Fla. 2d DCA 1957); *City of Miami v. State ex rel. Ergene, Inc.*, 132 So. 2d 474, 476 (Fla. 3d DCA 1961) (*per curiam*).

²² 151 So. 2d 433 (Fla. 1963).

²³ *Id.*

The terms “inordinate burden” or “inordinately burdened” do not include:

- temporary impacts to real property;
- impacts to real property occasioned by governmental abatement;
- prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or
- impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner.

Under s. 70.001, F.S., a property owner seeking compensation must present a written claim to the head of the governmental agency whose action caused the inordinate burden 180 days (90 days for agriculture) prior to bringing a suit. The written notice must be accompanied by a valid appraisal that shows the loss of the fair market value. The property owner must commence his or her cause of action within one year of the date the “law or regulation is first applied by the governmental entity.” This has been interpreted as starting the running of the time limitation when the legislative or quasi-legislative restriction is adopted.²⁴

The governmental entity must make a written settlement offer within the 180-day-notice period that may include:

- An adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- Increases or modifications in the density, intensity, or use of areas of development;
- The transfer of development rights;
- Land swaps or exchanges;
- Mitigation, including payments in lieu of on-site mitigation;
- Location of the least sensitive portion of the property;
- Conditioning the amount of development permitted;
- A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- Issuance of the development order, a variance, special exception, or other extraordinary relief;
- Purchase of the real property, or an interest therein, by an appropriate governmental agency; or
- No changes to the action of the governmental entity.²⁵

If the property owner accepts the settlement offer, then the government implements it pursuant to s. 70.001(4)(d), F.S. If the settlement offer is declined, the government must issue within the 180-day period a written ripeness decision, which must contain identification of allowable uses on the affected land. This ripeness decision serves as the last prerequisite to judicial review, thus allowing the landowner to file a claim in circuit court.

Under s. 70.001(6)(a), F.S., the court decides if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property. Private property is inordinately burdened when a government action has directly

²⁴ See *Citrus County v. Halls River Development, Inc.*, 2009 WL 722053 (Fla. 5th DCA 2009).

²⁵ Section 70.001(4), F.S.

restricted or limited the use of the property so that the owner is unable to attain reasonable, investment-backed expectations for the existing use, or a vested right in the existing use, of the property as a whole. Alternatively, property is inordinately burdened if the owner is left with existing or vested uses which are unreasonable such that the owner would permanently bear a disproportionate share of a burden imposed for the public good which should be borne by the public at large.²⁶

If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved. The court then impanels a jury to decide the monetary value, pursuant to s. 70.001(6)(b), F.S., based upon the loss in fair market value attributable to the governmental action. The prevailing party is entitled to reasonable costs and attorney's fees, pursuant to s. 70.001(6)(c), F.S., if the losing party did not make, or reject, a bona fide settlement offer.

Citrus County v. Halls River Development held that the one-year limitation period applicable under the Bert Harris Act accrued on the date the statute was amended and first impacted the land in question by changing its zoning designation from mixed use to low intensity coastal and lakes.²⁷ However *M & H Profit, Inc. v. Panama City*, stated that the clear and unambiguous language of the Bert Harris Act establishes that the law is limited to "as-applied" challenges not facial challenges based on the mere enactment of a new ordinance or regulation.²⁸

Sovereign Immunity

The doctrine of sovereign immunity, as derived from the English common law, provides that the government cannot be sued in tort without its consent.²⁹ This blanket of immunity applies to all subdivisions of the state including its agencies, counties, municipalities, and school boards; however, Article X, s. 13 of the State Constitution, provides that sovereign immunity may be waived through an enactment of general law.

The Legislature, in s. 768.28, F.S., has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability. A claim or judgment by any one person may not exceed \$100,000, and may not exceed \$200,000 paid by the state or its agencies or subdivisions for claims arising out of the

²⁶ Section 70.001(3)(e), F.S.

²⁷ 8 So. 3d 413 (Fla. 5th DCA 2009).

²⁸ 28 So. 3d 71 (Fla. 1st DCA 2010).

²⁹ Wetherington and Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 Fla. L. Rev. 1 (1992); Public policy in support of sovereign immunity includes: (a) protecting public funds from excessive encroachments; (b) insulating the Legislature's authority over budget expenditures from judicial directives to disburse funds; (c) enabling government officials to engage in decision making without risking liability; and (d) ensuring that the efficient administration of government is not jeopardized by the constant threat of suit. Policy against sovereign immunity includes: (a) leaving those who have been injured by governmental negligence without remedy; (b) failing to deter wrongful government conduct; and (c) limiting public knowledge of governmental improprieties. House of Representatives Committee on Claims, *Sovereign Immunity: A Survey of Florida Law*, at 1-2, January 25, 2001.

same incident or occurrence. Notwithstanding this limited waiver of sovereign immunity, certain discretionary governmental functions remain immune from tort liability.³⁰

The Bert Harris Act provides a process for claims against a governmental entity for certain actions. Specifically, the provisions of the Act operate as a separate and distinct cause of action from the law of takings to provide “for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.”³¹

Section 70.001(13), F.S., provides that, “This section does not affect the sovereign immunity of government.” In 2003, the Third District Court of Appeal in *Royal World Metropolitan, Inc. v. City of Miami Beach* overturned a trial court's decision that subsection (13) serves to bar a cause of action against a governmental entity.³² Specifically, the court found s. 70.001, F.S., “evinces a sufficiently clear legislative intent to waive sovereign immunity as to a private property owner whose property rights are inordinately burdened”³³

III. Effect of Proposed Changes:

The bill contains a number of “whereas” clauses articulating the reasons for the amendments to current law.

Section 1 amends s. 70.001, F.S. The bill restructures the definition of existing use to make it clearer that the term “existing use” has two separate definitions:

- (1) an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity *or*
- (2) such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

The bill clarifies that both “inordinate burden” *and* “inordinately burdened” mean the same thing.

The bill specifies that a moratorium on a development³⁴ that is in effect for longer than 1 year is not a temporary impact to real property and may constitute an “inordinate burden.”

The bill changes the requirement that property owners who seek compensation under the Bert Harris Act present the claim in writing to the head of the governmental entity 180 days prior to filing an action to make it 120 days prior to an action.

³⁰ See *Commercial Carrier Corp., v. Indian River County*, 371 So. 2d 1010, 1019 (Fla. 1979), citing *Evangelical United Brethren Church v. State*, 67 Wash. 2d 246, 407 P.2d 440 (1965).

³¹ Section 70.001(1), F.S. Section 70.001(13), F.S., provides that “section does not affect the sovereign immunity of government”.

³² See *Royal World Metropolitan, Inc. v. City of Miami Beach*, 863 So. 2d 320 (Fla. 3rd DCA 2003).

³³ See *id.* at 322.

³⁴ Development, as defined in s. 380.04, F.S., means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

The bill specifies that payment of compensation can be part of a settlement offer from the local government.

The bill deletes the term “ripeness” but leaves the language requiring the local government to provide a written decision identifying the allowable uses to which the subject property may be put. The bill clarifies that the failure of the local government to issue the decision within the notice period constitutes the local government’s final decision identifying the uses for the subject property. For the purposes of fulfilling the prerequisites to judicial review on the merits, the issuance or failure to issue the written decision operates as a final decision that has been rejected by the property owner.

The bill specifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property. This provision should allow property owners to sue when the restrictions are applied to their property without being excluded by the statute of limitations even if the law or regulation was enacted more than a year before it is applied to the property.

The bill deletes the section that states that s. 70.001, F.S., does not affect the sovereign immunity of government and replaces it with language that waives sovereign immunity for causes of action under s. 70.001, F.S. This is consistent with how the section of law was interpreted by the courts in *Royal World Metropolitan, Inc. v. City of Miami Beach*.³⁵

Section 2 states that the act is applied prospectively and does not affect pending litigation.

Section 3 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁵ See *Royal World Metropolitan, Inc. v. City of Miami Beach*, 863 So. 2d 320 (Fla. 3rd DCA 2003).

B. Private Sector Impact:

The bill expands the options for private property owners to obtain compensation or another remedy for governmental action that inordinately burdens real property by making it clear that certain moratoria lasting more than one year are not necessarily “temporary” so as to be excluded from the definition of inordinate burden.

C. Government Sector Impact:

The bill reduces the timeframe for the governmental entity to respond to the claim, and expressly waives sovereign immunity for claims under the Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the second “whereas” clause states that it intends to clarify that certain determinations under the act are questions of law and fact, none of the bill language seems to do anything to change the decision of the court in *City of Jacksonville v. Coffield* that the issues discussed are questions of law.³⁶

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

³⁶ 18 So. 2d (Fla. 1st DCA 2009).



781182

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/09/2011	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment

Delete line 105
and insert:
the greater of \$2 million or twice the amount of the contract
for



439830

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/09/2011	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment

Delete line 114
and insert:
false certification is submitted.

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 Community Affairs Committee

BILL: CS/SB 444

INTRODUCER: Community Affairs Committee and Senator Bogdanoff

SUBJECT: Scrutinized Companies

DATE: March 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	Fav/2 amendments
2.	Wolfgang	Yeatman	CA	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more.

The bill also:

- Requires public entities to have a contract provision that allows contracts to be terminated if the company submitted a false certification or is placed on either of the Scrutinized Companies list.
- Provides an exception to the prohibition.
- Requires a company seeking to enter into a contract of \$1 million or more to certify that it is not a scrutinized business operation.
- Provides a process by which an agency or local government can report a false certification and by which the relevant government attorney may bring civil suit.
- Specifies penalties for a company that makes a false certification.

- States that the act preempts any ordinance or rule of any local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.
- Requires the Department of Management Services must submit a written notice describing the act to the Attorney General of the United States within 30 days after July 1, 2011.
- States that the act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in the act.

This bill creates section 287.135 of the Florida Statutes.

II. Present Situation:

International and federal law has been evolving to address concerns regarding Iran's policy of nuclear development as well as its state support of terrorism and human rights violations. The Congressional Research Service recently reported the following:

There appears to be a growing international consensus to adopt progressively strict economic sanctions against Iran to try to compel it to verifiably confine its nuclear program to purely peaceful uses. The U.S. view—shared by major allies—is that sanctions should target Iran's energy sector that provides about 80% of government revenues, and try to isolate Iran from the international financial system. Measures adopted since mid-2010 by the United Nations Security Council, the European Union, and several other countries target those sectors, and complement the numerous U.S. laws and regulations that have long sought to try to pressure Iran. U.S. efforts to curb international energy investment in Iran's energy sector began in 1996 with the Iran Sanctions Act (ISA), a U.S. law that mandates U.S. penalties against foreign companies that conduct certain business with Iran's energy sector. ISA represented a U.S. effort to persuade foreign firms to choose between the Iranian market and the much larger U.S. and other developed markets. In the 111th Congress, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA, P.L. 111-195) expanded ISA significantly to try to restrict Iran's ability to make or import gasoline, for which Iran depends heavily on imports. CISADA also adds a broad range of other measures further restricting the already limited amount of U.S. trade with Iran and restricting some high technology trade with countries that allow WMD-useful technology to reach Iran.

As indicators of the broadening international adoption of stricter sanctions against Iran, CISADA's enactment followed the June 9, 2010, adoption of U.N. Security Council Resolution 1929. That Resolution, the latest in a series of U.N. resolutions against Iran that began in 2006, imposes a ban on sales of heavy weapons to Iran, and authorized - but did not mandate - sanctions on Iran's energy or broad financial sector. European Union sanctions, imposed July 27, 2010, align the EU with the U.S. position, to a large extent, by prohibiting EU involvement in Iran's energy sector and restricting trade financing and banking relationships with Iran, among other measures. National measures announced by Japan and South Korea in early September 2010— both are large buyers of

Iranian energy—impose restrictions similar to those of the EU. Even India, perceived as highly hesitant to antagonize Iran, has begun to impose sanctions on Iran by refusing to use certain financial mechanisms to process payments to Iran. Because so many major economic powers have imposed sanctions on Iran, the sanctions are, by all accounts, having a growing effect. In January 2011, Secretary of State Clinton claimed that sanctions have accomplished a core objective of slowing Iran’s nuclear program. Economically, the sanctions are reinforcing the effects of Iran’s economic mismanagement and key bottlenecks. Among other indicators, there has been a stream of announcements by major international firms during 2010 that they are exiting the Iranian market. Iran’s oil production has fallen slightly to about 3.9 million barrels per day, from over 4.1 million barrels per day several years ago, although Iran now has small natural gas exports that it did not have before Iran opened its fields to foreign investment in 1996. Sales to Iran of gasoline have fallen dramatically since CISADA was enacted. U.S. officials say that the cumulative effect of sanctions could harm Iran’s economy to the point where domestic pressure compels Iranian leaders to accept a nuclear compromise, although nuclear talks in late January 2011 made virtually no progress. Possibly in an effort to accomplish the separate objective of promoting the cause of the domestic opposition in Iran, the Obama Administration and Congress are increasingly emphasizing measures that would sanction Iranian officials who are human rights abusers and facilitate the democracy movement’s access to information.¹

On February 7, 2011, “the U.S. Department of State recognized the Southern Sudan referendum results and the creation of the Government of Southern Sudan. Secretary of State Clinton also declared that the United States is ‘initiating the process of withdrawing Sudan’s State Sponsor of Terrorism designation, the first step of which is initiating a review of that designation.’”²

State Sponsors of Terrorism

Countries which are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as “State Sponsors of Terrorism” and are subject to sanctions under the Export Administration Act³, and the Arms Export Control Act.⁴ The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.⁵ Some

¹ CONGRESSIONAL RESEARCH SERVICE, IRAN SANCTIONS RS20871 (Feb. 3, 2011). *See also* CONGRESSIONAL RESEARCH SERVICE REPORT, IRAN SANCTIONS RS20871 (Feb 2, 2010).

² FLORIDA STATE BOARD OF ADMINISTRATION, PROTECTING FLORIDA’S INVESTMENTS ACT (PFIA); QUARTERLY REPORT (February 22, 2011) *available at* <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=YY6ZTOCV0qO%3D&tabid=751&mid=2408> (last visited March 4, 2011).

³ U.S. Export Administration Act, Pub. L. No. 96-72 § 6(j) (1979) expired in 1994 but is periodically revived by executive order through the International Emergency Economic Powers Act, 50 U.S.C. 1701. *See generally*, CONGRESSIONAL RESEARCH SERVICE, THE EXPORT ADMINISTRATION ACT: EVOLUTION, PROVISIONS, AND DEBATE (July 15, 2009).

⁴ U.S. Arms Export Control Act, 22 U.S.C. 2778.

⁵ U.S. DEPARTMENT OF STATE, OFFICE OF COORDINATOR FOR COUNTERTERRORISM, STATE SPONSORS OF TERRORISM, <http://www.state.gov/s/ct/c14151.htm> (last visited Feb. 28, 2011).

of the miscellaneous restrictions include opposition to loans by the World Bank and other financial institutions, removal of diplomatic immunity to allow victims of terrorism to file civil lawsuits, denial of tax credits to companies and individuals for income earned in named countries, authority to prohibit U.S. citizens from engaging in transactions without a Treasury Department license, and prohibition of Department of Defense contracts above \$100,000 with companies controlled by terrorist-list states.⁶

The four countries currently designated by the U.S. Secretary of State as “State Sponsors of Terrorism” are Cuba, Iran, Sudan, and Syria.⁷

The Voice Act

In addition, Congress directed the President of the United States to submit a report on non-Iranian persons, including corporations with United States subsidiaries, that have knowingly or negligently provided hardware, software, or other forms of assistance to the Government of Iran that has furthered Iran’s efforts to filter online political content, disrupt cell phone and Internet communications, and monitor the online activities of Iranian citizens.⁸

State Law Pertaining to Foreign Trade

Section 288.855, F.S., prohibits the export or sale of any goods or services to a foreign country in violation of federal law and restricts interference with foreign export except as otherwise prohibited by law.

State Agency Procurement of Commodities and Services

The comprehensive process contained in ch. 287, F.S., for the procurement of commodities and contractual services by executive agencies⁹ sets forth numerous requirements for fair and open competition among vendors, agency maintenance of written documentation that supports procurement decisions, and implementation of monitoring mechanisms. Legislative intent language for the chapter explains that the process is necessary in order to:

- Reduce improprieties and opportunities for favoritism;
- Ensure the equitable and economical award of public contracts; and
- Inspire public confidence in state procurement.¹⁰

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency

⁶ U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON TERRORISM, 181-82 (2008), *available at* <http://www.state.gov/documents/organization/122599.pdf> (last visited Feb. 28, 2011).

⁷ *See supra* n. 4.

⁸ VOICE Act, Pub. L. No. 111-84, § 1265, 123 Stat. 2190 (2009).

⁹ Section 287.012(1), F.S., provides that the term “agency” for purposes of ch. 287, F.S., “. . . means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. ‘Agency’ does not include the university and college boards of trustees or the state universities and colleges.”

¹⁰ Section 287.001, F.S.

implementation of the ch. 287, F.S., competitive procurement process;¹¹ creating uniform agency procurement rules;¹² implementing the online procurement program;¹³ and establishing state term contracts.¹⁴ The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

Protecting Florida's Investments Act: Scrutinized Companies

On June 8, 2007, the Protecting Florida's Investments Act (PFIA) was signed into law. The PFIA requires the State Board of Administration (SBA), acting on behalf of the Florida Retirement System Trust Fund (the FRSTF), to assemble and publish a list of Scrutinized Companies that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA will not affect any FRSTF investments in U.S. companies. The PFIA will solely affect foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production or military support activities.¹⁵

The definition of scrutinized companies in Sudan and Iran is in s. 215.473(1)(t), F.S., and the SBA website retains a complete list of scrutinized companies and companies that are under continuing examination. Scrutinized companies are judged according to whether they meet the following criteria:

Sudan:

1. Have a material business relationship with the government of Sudan or a government-created project involving oil related, mineral extraction, or power generation activities, or
2. Have a material business relationship involving the supply of military equipment, or
3. Impart minimal benefit to disadvantaged citizens that are typically located in the geographic periphery of Sudan, or
4. Have been complicit in the genocidal campaign in Darfur.

¹¹ Sections 287.032 and 287.042, F.S.

¹² Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

¹³ Section 287.057(23), F.S.

¹⁴ Sections 287.042(2), 287.056 and 287.1345, F.S.

¹⁵ FLORIDA STATE BOARD OF ADMINISTRATION, PROTECTING FLORIDA'S INVESTMENTS ACT (PFIA); QUARTERLY REPORT (February 22, 2011) *available at* <http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=YY6ZTOCV0qQ%3D&tabid=751&mid=2408> (last visited March 4, 2011).

Iran:

1. Have a material business relationship with the government of Iran or a government-created project involving oil related or mineral extraction activities, or
2. Have made material investments with the effect of significantly enhancing Iran's petroleum sector.¹⁶

State and Local Government Authority to Prohibit Contracts

In the past, state and local governments have proposed or enacted measures restricting their agencies' economic transactions with firms that do business with or in foreign countries whose conduct the jurisdictions find objectionable. However, there is case law that indicates that the dormant federal foreign affairs power may preempt state and local governments from enacting these restrictions. For example, in 2000, the U.S. Supreme Court unanimously held in *Crosby v. National Foreign Trade Council* that a Massachusetts law restricting state transactions with firms doing business in Burma was preempted by a federal Burma statute.¹⁷ Therefore, in the absence of a grant of federal authority statutes that prohibit contracting with companies on the scrutinized companies list may be unconstitutional.

With respect to Sudan¹⁸ and Iran,¹⁹ the federal government has expressly given state and local governments the authority to divest from companies directly invested in certain Sudanese or Iranian sectors. The statutes, authorizing state and local governments to prohibit the investment of assets in these countries, define "investment" to include the "entry into or renewal of a contract for goods or services."²⁰ The statutes require that:

- The state or local government shall provide written notice to each person to which a measure is to be applied.
- The measure shall apply to a person not earlier than 90 days after the date on which written notice is provided.
- The state or local government shall provide an opportunity to comment in writing to each person to which a measure is to be applied. If the person demonstrates to the State or local government that the person does not engage in investment activities in Iran, the measure shall not apply to the person.
- The state or local government enacting such a measure must send notice to the U.S. Attorney General within 30 days after adopting a measure.

III. Effect of Proposed Changes:

The CS provides the following definitions for the created section of law:

¹⁶ *Id.*

¹⁷ 530 U.S. 363 (2000). *See also*, *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003); *but see Faculty Senate of Fla. Int'l Univ. v. Winn*, 616 F.3d 1206 (11th Cir. 2010) (upholding a university prohibition on using state or nonstate funds on activities related to travel to a terrorist state).

¹⁸ The Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, §§ 1 to 12, Dec. 31, 2007, 121 Stat. 2516, as amended Pub. L. No. 111-195, Title II, § 205(a), July 1, 2010, 124 Stat. 1344.

¹⁹ 22 U.S.C. § 8532.

²⁰ The Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, § 3(f), 121 Stat. 2516 (2007); 22 U.S.C. § 8532(g)(2)(C).

- “Awarding body” for purposes of state contracts, an agency or department, and for purposes of local contracts, means the governing body of the local governmental entity.
- “Local governmental entity” means a county, municipality, special district, or other political subdivision of the state.

The CS prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency²¹ or local governmental entity for goods or services of \$1 million or more.

The CS provides that any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2011, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

The bill allows an agency or local governmental entity to make a case-by-case exception to the prohibition if:

- The scrutinized business operations²² were made before July 1, 2010;
- The scrutinized business operations have not been expanded or renewed after July 1, 2010;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One* of the following occurs:
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not a scrutinized business operation under s. 215.473, F.S.

²¹ As defined in s. 287.012(1), F.S.

²² S. 215.473(1)(s), F.S., defines “scrutinized business operations” to mean “business operations that have resulted in a company becoming a scrutinized company.”

If an agency or local governmental entity determines that a company has submitted a false certification that it is not a scrutinized business operation and has provided the company with written notice and 90 days to respond in writing to such determination, and the company fails to demonstrate that it has ceased its engagement in scrutinized business operations, then:

- The awarding body *must* report the company to the Attorney General and provide information demonstrating the false certification. The Attorney General must determine whether to bring a civil action against the company. The awarding body *may* report the company to the municipal attorney, county attorney, or district attorney and provide information demonstrating the false certification. Such attorney may determine whether to bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification) and a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted. A civil action to collect the penalties must commence within 3 years after the date the false certification is made.
- The bill specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.
- An existing contract with the company shall be terminated at the option of the awarding body.
- The company is ineligible to bid on any contract with an agency or a local governmental entity for 3 years after the date of determining that the company submitted a false certification.

The bill specifies that the act preempts any ordinance or rule of any local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

In accordance with the requirements of federal law,²³ the Department of Management Services must submit a written notice describing the act to the Attorney General of the United States within 30 days after July 1, 2011.

The act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in the act.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²³ The Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, §§ 1 to 12, Dec. 31, 2007, 121 Stat. 2516, as amended Pub. L. No. 111-195, Title II, § 205(a), July 1, 2010, 124 Stat. 1344.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Without Congressional authorization, it might be possible that this bill would be an unconstitutional preemption of federal authority (see present situation discussion). However, Congress has authorized the contractual restrictions included in this bill and the bill contains a provision that specifically makes it inoperative if Congress ever rescinds that authority. Therefore, this bill should not violate the Supremacy Clause of the U.S. Constitution.

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

None.

B. Private Sector Impact:

The bill will adversely affect companies on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List that seek to enter into contracts with Florida governmental entities.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by the Community Affairs Committee on March 7, 2011:

The CS requires public entities to have a contract provision that allows contracts to be terminated if the company submitted a false certification or is placed on either of the Scrutinized Companies list.

B. Amendments:

None.

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



887208

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete everything after the enacting clause and insert:

Section 1. Section 287.135, Florida Statutes, is created to read:

287.135 Prohibition against contracting with scrutinized companies.—

(1) In addition to the terms defined in ss. 287.012 and 215.473, as used in this section, the term:

(a) "Awarding body" means, for purposes of state contracts, an agency or the department, and for purposes of local



887208

13 contracts, the governing body of the local governmental entity.

14 (b) "Local governmental entity" means a county,
15 municipality, special district, or other political subdivision
16 of the state.

17 (2) A company that, at the time of bidding or submitting a
18 proposal for a new contract or renewal of an existing contract,
19 is on the Scrutinized Companies with Activities in Sudan List or
20 the Scrutinized Companies with Activities in the Iran Petroleum
21 Energy Sector List, created pursuant to s. 215.473, is
22 ineligible for, and may not bid on, submit a proposal for, or
23 enter into or renew a contract with an agency or local
24 governmental entity for goods or services of \$1 million or more.

25 (3) Any contract with an agency or local governmental
26 entity for goods or services of \$1 million or more entered into
27 or renewed on or after July 1, 2011, must contain a provision
28 that allows for the termination of such contract at the option
29 of the awarding body if the company is found to have submitted a
30 false certification as provided under subsection (5) or been
31 placed on the Scrutinized Companies with Activities in Sudan
32 List or the Scrutinized Companies with Activities in the Iran
33 Petroleum Energy Sector List.

34 (4) Notwithstanding subsection (2) or subsection (3), an
35 agency or local governmental entity, on a case-by-case basis,
36 may permit a company on the Scrutinized Companies with
37 Activities in Sudan List or the Scrutinized Companies with
38 Activities in the Iran Petroleum Energy Sector List to be
39 eligible for, bid on, submit a proposal for, or enter into or
40 renew a contract for goods or services of \$1 million or more
41 under either of the following conditions:



887208

42 (a) All of the following occur:

43 1. The scrutinized business operations were made before
44 July 1, 2011.

45 2. The scrutinized business operations have not been
46 expanded or renewed after July 1, 2011.

47 3. The agency or local governmental entity determines that
48 it is in the best interest of the state or local community to
49 contract with the company.

50 4. The company has adopted, has publicized, and is
51 implementing a formal plan to cease scrutinized business
52 operations and to refrain from engaging in any new scrutinized
53 business operations.

54 (b) One of the following occurs:

55 1. The local governmental entity makes a public finding
56 that, absent such an exemption, the local governmental entity
57 would be unable to obtain the goods or services for which the
58 contract is offered.

59 2. For a contract with an executive agency, the Governor
60 makes a public finding that, absent such an exemption, the
61 agency would be unable to obtain the goods or services for which
62 the contract is offered.

63 3. For a contract with an office of a state constitutional
64 officer other than the Governor, the state constitutional
65 officer makes a public finding that, absent such an exemption,
66 the office would be unable to obtain the goods or services for
67 which the contract is offered.

68 (5) At the time a company submits a bid or proposal for a
69 contract or before the company enters into or renews a contract
70 with an agency or governmental entity for goods or services of



887208

71 \$1 million or more, the company must certify that the company is
72 not on the Scrutinized Companies with Activities in Sudan List
73 or the Scrutinized Companies with Activities in the Iran
74 Petroleum Energy Sector List.

75 (a) If, after the agency or the local governmental entity
76 determines, using credible information available to the public,
77 that the company has submitted a false certification, the agency
78 or local governmental entity shall provide the company with
79 written notice of its determination. The company shall have 90
80 days following receipt of the notice to respond in writing and
81 to demonstrate that the determination of false certification was
82 made in error. If the company does not make such demonstration
83 within 90 days after receipt of the notice, the agency or the
84 local governmental entity shall bring a civil action against the
85 company. If a civil action is brought and the court determines
86 that the company submitted a false certification, the company
87 shall pay the penalty described in subparagraph 1. and all
88 reasonable attorney's fees and costs, including any costs for
89 investigations that led to the finding of false certification.

90 1. A civil penalty equal to the greater of \$2 million or
91 twice the amount of the contract for which the false
92 certification was submitted shall be imposed.

93 2. The company is ineligible to bid on any contract with an
94 agency or local governmental entity for 3 years after the date
95 the agency or local governmental entity determined that the
96 company submitted a false certification.

97 (b) A civil action to collect the penalties described in
98 paragraph (a) must commence within 3 years after the date the
99 false certification is submitted.



100 (6) Only the agency or local governmental entity that is a
101 party to the contract may cause a civil action to be brought
102 under this section. This section does not create or authorize a
103 private right of action or enforcement of the penalties provided
104 in this section. An unsuccessful bidder, or any other person
105 other than the agency or local governmental entity, may not
106 protest the award of a contract or contract renewal on the basis
107 of a false certification.

108 (7) This section preempts any ordinance or rule of any
109 agency or local governmental entity involving public contracts
110 for goods or services of \$1 million or more with a company
111 engaged in scrutinized business operations.

112 (8) The department shall submit to the Attorney General of
113 the United States a written notice describing this section
114 within 30 days after July 1, 2011. This section becomes
115 inoperative on the date that federal law ceases to authorize the
116 states to adopt and enforce the contracting prohibitions of the
117 type provided for in this section.

118 Section 2. This act shall take effect July 1, 2011.

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

120 And the title is amended as follows:

121 Delete everything before the enacting clause
122 and insert:

123 A bill to be entitled

124 An act relating to scrutinized companies; creating s.
125 287.135, F.S.; providing definitions; prohibiting a
126 state agency or local governmental entity from
127 contracting for goods and services of more than a
128 certain amount with a company that is on the



887208

129 Scrutinized Companies with Activities in Sudan List or
130 the Scrutinized Companies with Activities in the Iran
131 Petroleum Energy Sector List; providing for a contract
132 provision that allows for termination of the contract
133 if the company is found to have been placed on such
134 list; providing exceptions; providing for a civil
135 action; providing penalties; providing a statute of
136 repose; prohibiting a private right of action;
137 requiring the Department of Management Services to
138 notify the Attorney General after the act becomes law;
139 providing that the act becomes inoperative if federal
140 law ceases to authorize states to enact such
141 contracting prohibitions; providing an effective date.
142

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 Community Affairs Committee

BILL: SB 874

INTRODUCER: Senator Hays

SUBJECT: Public Records/Emergency Notification Information

DATE: March 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for personal identifying information held by an agency for the purpose of being provided with emergency notification.

The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.¹

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.²

This bill substantially amends section 119.071 of the Florida Statutes.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

Section 24(a), Art. I, of the State Constitution, provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record³ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency⁴ records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public records” to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Only the Legislature is authorized to create exemptions to open government requirements.⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.¹⁰

³ Section 119.011(12), F.S.

⁴ Section 119.011(2), F.S., defines “agency” as “...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁷ Article I, s. 24(c) of the State Constitution.

⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁹ Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ Section 24(c), Art. I of the State Constitution.

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.¹¹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Emergency Notifications

State agencies are required by law to have emergency plans in place in case of a natural disaster.¹³ These emergency plans are not required to have any sort of associated notification system. The Department of Health has taken steps to keep the public health community informed of public health emergencies using the Florida Department of Health Emergency Notification System or FDENS.¹⁴

Sheriff's offices, universities, public utilities and other entities throughout Florida have in place emergency notification systems. For example, the Sumter County Sheriff's Office uses the CodeRED Emergency Notification System. It is a high-speed telephone communication service for emergency notifications that works off of a database compiled from the phone database maintained for the Sheriff's office by the purveyors of the CodeRED system. "This system allows [the Sumter County Sheriff's Office] to telephone all or targeted areas of the County in case of an emergency situation that requires immediate action (such as a boil-water notice, missing child or evacuation notices)."¹⁵ Brevard County has in place a similar emergency alert notification system for natural emergencies.¹⁶ Florida State University has a more comprehensive alert system that includes text messages, voice-mail messages, email messages, facebook messages, indoor and outdoor sirens, a hotline and more.¹⁷

¹¹ Op. Att'y Gen. Fla. 85-62 (1985).

¹² *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).

¹³ *See, e.g.*, s. 252.35, F.S.

¹⁴ Florida Health Alert Network, <http://www.doh.state.fl.us/fdens/index.html> (last visited March 01, 2011).

¹⁵ Sumter County, Florida, Sheriff's Office, <http://www.sumtercountysheriff.org/emergencymanagement/codered.asp> (last visited March 01, 2011).

¹⁶ Brevard County Emergency Management Office, <http://embrevard.com/> (last visited March 01, 2011).

¹⁷ Florida State University ALERT, Emergency Notification System, <http://www.safety.fsu.edu/emergencymanagement/fsualert.html> (last visited March 01, 2011) see generally, Florida Department of Law Enforcement, State Working Group On Domestic Preparedness Ad Hoc Committee on University and College Emergency Notification Systems, <http://www.fdle.state.fl.us/Content/getdoc/c2c4f5df-1fa5-4b26-adad-4d3e23665c43/SWGUniversityCollegeEmergencyNotificationSystems.aspx>.

A limited public records exemption already exists for persons requesting emergency assistance through E911. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S. Any information furnished for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption applies to information held by an agency, before, on, or after the effective date of this exemption.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 creates an undesignated section of law providing a statement of Legislative intent supporting the constitutionally required public necessity statement. The bill states that using current technology, agencies may contact members of the public by a variety of electronic means, including cellular telephones and electronic mail, to alert them of imminent natural and manmade disasters, medical emergencies, criminal emergencies, and other dangerous conditions. Public safety is significantly enhanced through the use of such emergency notification programs, and expansion of such programs further increases public safety. The exemption is designed to alleviate concerns about disclosure of information in these circumstances that could be used for criminal purposes. Therefore, the bill states that the public-records exemption necessary for the effective implementation of and broad participation in emergency notification programs conducted by agencies.

Section 3 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement: Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

¹⁸ Section 365.171(12), F.S.

Subject Requirement: Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

Public Necessity Statement: Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.¹⁹ This bill does not specify what agencies²⁰ it applies to or what emergency notification programs it is intended to include. To survive constitutional scrutiny, the bill must be narrowly tailored to alleviate concerns about disclosure of information in these circumstances that could be used for criminal purposes.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

²⁰ By default it will apply to “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” Section 119.011, F.S.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

The Florida Senate
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 Community Affairs Committee

BILL: SB 890

INTRODUCER: Senator Dean

SUBJECT: Public Safety Telecommunicators

DATE: February 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wood	Yeatman	CA	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill exempts sworn state-certified law enforcement officers from current certification requirements for public safety telecommunicators.

This bill substantially amends section 401.465, Florida Statutes.

II. Present Situation:

Public safety telecommunicators, also known as 911 operators or emergency dispatchers, are often the initial point of contact for the public when emergency assistance is required. Emergency dispatchers receive emergency calls from the public requesting police, fire, medical or other emergency services. These personnel then determine the nature, location, and priority of the emergency, and communicate this information to police, fire, ambulance, or other emergency units as necessary and in accordance with established procedures. Emergency dispatchers receive and process 911 emergency calls, maintain contact with all units on assignment, and maintain status and location of police, fire, and other emergency units, as necessary. Emergency dispatchers may be trained to enter, update, and retrieve information from a variety of computer systems to assist callers. If equipped, they may also use Emergency Medical Dispatch (EMD), a program that tells them how to help people treat themselves over the phone, while sending the appropriate EMS or fire units to the scene.

Section 365.171, F.S., governs Florida’s public policy on the emergency telephone number “911.” This statute specifies that it is the intent of the Legislature to “establish and implement a cohesive statewide emergency telephone number ‘911’ plan which will provide citizens with rapid direct access to public safety agencies by dialing the telephone number ‘911’ with the

objective of reducing response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.”

All 67 Florida counties have enhanced 911 (E911) equipment, which allows an emergency dispatch center’s computers to automatically provide the caller’s name, address and mapped location. The map also identifies the closest police, fire, and emergency medical services (EMS) agencies. The state E911 board is working to move towards Next Generation 911 (NG911) equipment which includes video and data transmission capability.¹

There are 258 Public Safety Answering Points (PSAPs) statewide, with each county having between one and forty of these. There is no standard procedure defining which local agency operates these call centers, but many are operated by Sheriff’s Offices, Police Departments, Fire Rescue, or a variety of local administrative agencies.²

Department of Education Curriculum Framework and Standards

The Division of Workforce Education at the Department of Education publishes curriculum frameworks and standards for both Public Safety Telecommunication and Law Enforcement.

The Public Safety Telecommunication framework is designed to prepare students for employment as police, fire, and ambulance dispatchers. The intended outcomes for the Public Safety Telecommunication course include the ability of the dispatcher to:

- Describe and demonstrate professional ethics and the role of telecommunicator;
- Describe Guidelines and Operational Standards of call classification and prioritization;
- Identify and explain communication equipment and resources;
- Demonstrate communication and interpersonal skills;
- Perform operational skills;
- Demonstrate understanding of fire department role and responses as well as hazardous materials awareness;
- Demonstrate understanding of emergency medical services role and responses;
- Demonstrate understanding of law enforcement role and responses;
- Understand the duties of a public safety telecommunicator;
- Comprehend stress management techniques;
- Demonstrate an understanding of Emergency Management practices; and
- Demonstrate CPR proficiency.³

The Public Safety Telecommunication program curriculum is currently taught at various community colleges and vocational/technical centers across the state. Thirty public safety

¹ State of Florida E911 Board 2010 Annual Report, *available at* http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board (last visited Mar. 03, 2011).

² David Gulliver, Ed., *Florida 911: The State of Emergency*, Gulf Coast Community Foundation of Venice, <http://www.a911.org/sites/default/files/Florida-911-Report.pdf> (last visited Feb. 23, 2011).

³ See Florida Department of Education, “Curriculum Framework, Public Safety Telecommunication,” July 2010, http://www.fldoe.org/workforce/dwdframe/law_cluster_frame10.asp (last visited Feb. 22, 2011).

agencies have been certified to teach the curriculum since 2008, including twenty-two local law enforcement agencies.⁴

The Florida DOE curriculum framework for Law Enforcement Officers includes its own set of intended outcomes, overlapping with seven of the twelve Public Safety Telecommunication outcomes. The five Public Safety Telecommunication outcomes which are not covered by the Law Enforcement Officer curriculum are the first three, relating to the role of telecommunicator, call classification and prioritization, and E911 equipment; the fifth, relating to operational skills; and the tenth, relating to understanding the duties of a public safety telecommunicator. No specific, formal public safety telecommunication training is presently known to be provided to law enforcement officers.⁵

Although the total number of 911 call center staff statewide cannot be identified, it was estimated in 2010 that the state's 235 call centers employ 6,000 staff.⁶ The Gulf Coast Community Foundation of Venice had previously commissioned an independent consultant in 2009 to analyze Florida's 911 system, and found 5,498 staff in 258 public safety answering points. That report cited Liberty County as an example of a need for more staff in public safety answering points; only one call-taker is available to take calls at any time of day, with the responsibility of answering four lines. They also found a difficulty statewide in maintaining personnel long-term because of the stress and low pay associated with the work, leading to high turnover and a lack of experienced personnel.⁷

Section 401.465, F.S.

The Florida Legislature made several changes to this section in 2010, including introducing the term "public safety telecommunicator" to replace "911 emergency dispatcher" throughout Florida law and introducing a definition for "public safety telecommunication training program" which includes any program certified by the Department of Health to meet the curriculum framework established by the Department of Education, which must be a minimum of 232 hours of training.

The most significant change to this section in 2010 was the transition of certification from a voluntary to a mandatory procedure. Effective October 1, 2012, all public safety telecommunicators must be certified by the DOH if they are employed at an "answering point," defined as a "public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls"⁸ unless they are enrolled in a training program and have been employed less than 12 months.

⁴ Florida Department of Health "911 Public Safety Telecommunicator Program: Overview", available at <http://www.doh.state.fl.us/DEMO/EMS/dispatchers.html> (last visited Feb. 22, 2011).

⁵ See Florida Department of Education, "Curriculum Framework, Law Enforcement Officer," July 2010, http://www.fldoe.org/workforce/dwdframe/law_cluster_frame10.asp (last visited Feb. 23, 2011).

⁶ Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, Report No. 10-12, (Jan. 2010) <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-12> (last visited Feb. 22, 2011).

⁷ David Gulliver, Ed., *Florida 911: The State of Emergency*, Gulf Coast Community Foundation of Venice, <http://www.al911.org/sites/default/files/Florida-911-Report.pdf> (last visited Feb. 23, 2011).

⁸ Section 365.172(3)(a), F.S.

Also effective October 1, 2012, all public safety telecommunicators will be required to pass an exam administered by the DOH in order to receive certification; an alternative process for initial certification of public safety telecommunicators already employed as such for 3 years since January 1, 2002, will expire on the same date.

The requirements for the mandatory certification of 911 public safety telecommunicators may be temporarily waived by the DOH in a geographic area of Florida where a state of emergency has been declared by the Governor.

Section 401.465(2)(j), F.S., includes a requirement that persons “employed as a 911 public safety telecommunicator, a sworn state-certified law enforcement officer, or a state-certified firefighter before April 1, 2012,” pass the examination, at which point completion of the training program would be waived and they would be certified.

In a 2010 Advisory Legal Opinion, Florida Attorney General Bill McCollum addressed a question posed by Springfield, FL, Chief of Police as to whether the law now required “all law enforcement officers who are likely to work in the city's dispatch center and serve as a call-taker and dispatcher of 911 calls to be trained and certified?” The Attorney General clarified that certification is the only requirement. Currently law enforcement officers employed prior to April 1, 2012, are only required to pass the exam in order to be certified. McCollum stated, “it is my opinion that pursuant to section 401.465(2)(a), Florida Statutes, any public agency employee whose duties and responsibilities include answering, receiving, transferring, and dispatching functions related to 911 calls or supervising or serving as the command officer to a person or persons having these duties and responsibilities at a public safety answering point is required to be certified by the Department of Health by October 1, 2012.”⁹

Newly employed sworn state-certified law enforcement officers beginning who begin their employment on or after April 1, 2012 will be required to be certified by both taking a training course and passing the exam.

III. Effect of Proposed Changes:

Section 1 creates an exemption for sworn state-certified law enforcement officers who serve as 911 public safety telecommunicators from the certification requirements of section 401.465, F.S.

The first clause of the exemption, “[n]otwithstanding any provision of law to the contrary,” removes any question of whether current sworn state-certified law enforcement officers would be expected to pass the public safety telecommunication examination specified by s. 401.465 (2)(j), F.S., which directs anyone employed as such prior to April 1, 2012, to pass the examination in order to be exempted from completion of the training course. Under this new exemption, sworn state-certified law enforcement officers would be required to complete neither the course nor the examination. The amount of state-certified law enforcement officers presently engaging in public safety telecommunication is unknown and, because of the non-uniform nature of E911 equipment and protocol across the state, the effect of officers serving without becoming certified is indeterminate.

⁹ Op. Atty Gen. Fla. 10-27 (2010).

Section 2 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may reduce the cost for local governments who use sworn state-certified law enforcement officers in their answering points. The number of the estimated 6,000 call-takers and dispatchers currently employed statewide who would qualify is unknown.¹⁰ The Department of Highway Safety and Motor Vehicles states, “This bill will have a positive future fiscal impact for state and local governments by eliminating the costs of certification for sworn state-certified law enforcement officers that would have been required beginning October 1, 2012.”¹¹ There are 50,936 sworn state-certified law enforcement officers in Florida; the Florida Department of Law Enforcement employs 418 of these, and eight of those are employed as public safety telecommunicators.¹²

VI. Technical Deficiencies:

None.

¹⁰ Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, Report No. 10-12, (Jan. 2010) <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-12> (last visited Feb. 22, 2011).

¹¹ Department of Highway Safety and Motor Vehicles, *Senate Bill 890 Agency Bill Analysis* (Feb. 11, 2011) (on file with the Senate Committee on Community Affairs).

¹² E-mail from Rachel Truxell, Government Analyst II, Florida Department of Law Enforcement, to Galen Wood, Intern, Florida Senate (Mar. 3, 2011) (on file with the Senate Committee on Community Affairs).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
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 Community Affairs Committee

BILL: SB 870

INTRODUCER: Senator Storms

SUBJECT: Compensation of County Officials

DATE: February 24, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill allows certain county officials to reduce their salary on a voluntary basis. The county officers include each: member of a board of county commissioners, clerk of the circuit court, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector.

This bill substantially amends the following sections of the Florida Statutes: 145.031, 145.051, 145.071, 145.09, 145.10 and 145.11.

II. Present Situation:

Compensation of County Officials

Article II, s. 5(c), of the Florida Constitution provides that “the powers, duties, compensation and method of payment of state and county officers shall be fixed by law.”¹ Chapter 145, F.S., articulates Legislative intent to provide uniform compensation of county officials that have substantially equal duties and responsibilities.² Chapter 145, F.S., outlines the salary schedules for specified county officials “based on a classification of counties according to each county’s population.”³

The salary schedules for the following county officers are provided respectively in ss. 145.031-145.11, F.S.: board of county commissioners, clerk of the circuit court, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector (see below). Each county

¹ FLA. CONST. art. II, s. 5(c).

² Section 145.011(3), F.S.

³ Section 145.011(4), F.S.

officer receives a salary of the amount indicated in the schedule, based on the population of his or her county. Additional compensation is made “for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate.”⁴

Salary Computation Methodology and Formula

Computation of a county official’s salary begins by determining the following figures provided in the statutory salary schedules for county officials, outlined in ss.145.031-145.11, F.S.:

- The relevant population group number for the elected officer, based on the county’s population range;
- The official’s relevant base salary and group rate according to his or her prescribed salary schedule; and
- The difference between the county’s population estimate and the minimum group rate.⁵

After determining these figures, the following computation formula is then used to calculate the county official’s salary:

$$\text{Salary} = [\text{Base Salary} + (\text{Population above Group Minimum} \times \text{Group Rate})] \times \text{Initial Factor} \times \text{Certified Annual Factor} \times \text{Certified Cumulative Annual Factor}$$

6

Section 145.19(1), F.S., defines the terms “annual factor,” “cumulative annual factor,” and “initial factor,” as follows:

- *Annual Factor* means 1 plus the lesser of either: 1) the average percentage increase in the salaries of state career service employees for the current fiscal year as determined by the Department of Management Services or as provided in the General Appropriations Act; or 2) 7 percent.
- *Cumulative Annual Factor* means the product of all annual factors certified under this act prior to the fiscal year for which salaries are being calculated.
- *Initial Factor* means a factor of 1.292, which is the product, rounded to the nearest thousandth, of an earlier cost-of-living increase factor authorized by Chapter 73-173, Laws of Florida, and intended by the Legislature to be preserved in adjustments to salaries made prior to the enactment of Chapter 76-80, Laws of Florida, multiplied by the annual increase factor authorized by Chapter 79-327, Laws of Florida.

⁴ Sections 145.031, 145.051, 145.071, 145.09, 145.10 and 145.11, F.S.

⁵ Florida Legislative Committee on Intergovernmental Relations, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2009-10*, at 4. (Sept. 2009) (on file with the Senate Committee on Community Affairs).

⁶ Florida Legislative Committee on Intergovernmental Relations, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2009-10*, at 4. (Sept. 2009) (on file with the Senate Committee on Community Affairs).

In 2009, the Florida Legislative Committee on Intergovernmental Relations provided the following sample computation of a tax collector’s salary:

Sample Computation of Salary ⁷
<u>Officer:</u> Tax Collector
<u>2008 Population Estimate:</u> 252,388
<u>Group Number Minimum (IV):</u> 200,000
<u>Corresponding Base Salary (Group IV):</u> \$30,175
<u>Corresponding Group Rate (Group IV):</u> \$0.01575
<u>Initial Factor:</u> 1.292
<u>Certified Annual Factor:</u> 1.0000
<u>Certified Cumulative Annual Factor:</u> 3.1681

$$\text{Salary} = [\$30,175 + [252,388 - 200,000] \times 0.01575] \times 1.292 \times 1.0000 \times 3.1681$$

$$= \$126,889$$

Additional Compensation for Special Qualification Salary

The following county officers qualify for an additional \$2,000 per year special qualification salary, pursuant to specified requirements:

- Each clerk of the circuit court who has met the certification requirements established by the Supreme Court, within 6 years after first taking office, and who completes continuing education courses each year prescribed by the Supreme Court.⁸
- Each sheriff who has met the qualification requirements established by the Department of Law Enforcement, within 6 years after first taking office and who completes continuing education courses each year prescribed by the Department of Law Enforcement.⁹
- Each supervisor of elections who has met the certification requirements established by the Division of Elections of the Department of State, within 6 years after first taking office and who completes continuing education courses each year prescribed by the Division.¹⁰
- Each property appraiser who has met the requirements established by the Department of Revenue and who has been designated a certified Florida property appraiser, within 4 years after first taking office. The property appraiser must also complete continuing education courses each year as prescribed by the Department of Revenue to remain certified.¹¹
- Each tax collector who has met the requirements established by the Department of Revenue and who has been designated a certified Florida tax collector, within 4 years after first taking office. The tax collector must also complete continuing education courses each year as prescribed by the Department of Revenue to remain certified.¹²

⁷ *Id.*

⁸ Section 145.051(2), F.S.

⁹ Section 145.071(2), F.S.

¹⁰ Section 145.09(3), F.S.

¹¹ Section 145.10(2), F.S. (Note, this section allows the executive director of the Department of Revenue to waive these requirements for any property appraiser who is 60 years of age and who has been a property appraiser for 20 years. *See* s. 145.10(2)(c), F.S.)

¹² Section 145.11(2), F.S.

Salary Schedules for County Officials ¹³

Elected County Constitutional Officers	Population Group Numbers	County Population Range		Base Salary	Group Rate
		Minimum	Maximum		
-Clerk of Circuit Court -County Comptroller -Property Appraiser -Tax Collector <i>ss. 145.051, 145.10, and 145.11, F.S.</i>	I	-0-	49,999	\$21,250	\$0.07875
	II	50,000	99,999	\$24,400	\$0.06300
	III	100,000	199,999	\$27,550	\$0.02625
	IV	200,000	399,999	\$30,175	\$0.01575
	V	400,000	999,999	\$33,325	\$0.00525
	VI	1,000,000		\$36,475	\$0.00400
-Supervisor of Elections <i>s. 145.09</i>	I	-0-	49,999	\$17,228	\$0.075
	II	50,000	99,999	\$20,228	\$0.060
	III	100,000	199,999	\$23,228	\$0.025
	IV	200,000	399,999	\$25,728	\$0.015
	V	400,000	999,999	\$28,728	\$0.005
	VI	1,000,000		\$31,728	\$0.004
-Sheriff <i>s.145.071, F.S</i>	I	-0-	49,999	\$23,350	\$0.07875
	II	50,000	99,999	\$26,500	\$0.06300
	III	100,000	199,999	\$29,650	\$0.02625
	IV	200,000	399,999	\$32,275	\$0.01575
	V	400,000	999,999	\$35,425	\$0.00525
	VI	1,000,000		\$38,575	\$0.00400
-Board of County Commissioners <i>s. 145.031</i>	I	-0-	9,999	\$4,500	\$0.150
	II	10,000	49,999	\$6,000	\$0.075
	III	50,000	99,999	\$9,000	\$0.060
	IV	100,000	199,999	\$12,000	\$0.045
	V	200,000	399,999	\$16,500	\$0.015
	VI	400,000	999,999	\$19,500	\$0.005
	VII	1,000,000		\$22,500	\$0.000

Attorney General Opinion

In 2008, Florida Attorney General Bill McCollum issued an advisory opinion stating that a sheriff does not have the authority to voluntarily reduce his/her salary due to the salary uniformity requirements provided in both ch. 145, F.S., and article II, s. 5(c), of the Florida Constitution.¹⁴ The Attorney General supported his position by referencing the legislative intent behind ch. 145, F.S., provided in s. 145.011, F.S., and further referencing the language in s. 145.16(1), F.S., which states that:

¹³ Sections 145.031(1), 145.051(1), 145.071(1), 145.09(1), 145.10(1) and 145.11(1), F.S.

¹⁴ Op. Atty Gen. Fla. 2008-28 (May 28, 2008) (on file with the Senate Committee on Community Affairs).

. . . the preservation of statewide uniformity of county officials' salaries is essential to the fulfillment of the legislative intent expressed in this chapter and intends by this section to prevent any laws which would allow officials in individual counties to be excepted from the uniform classification provided in this chapter.

The Attorney General Opinion also highlighted the provisions of article II, s. 5(c), of the Florida Constitution, which require the compensation of county officers to be fixed by law. The Attorney General articulated that the Supreme Court also recognizes that the authority to set salaries for county officers is vested in the Legislature, as provided in the 1925 Supreme Court case of *State ex rel. Buford v. Spencer*.¹⁵

In conclusion, the Attorney General held that:

[t]o permit a county officer to alter the statutorily prescribed compensation would be contrary to the expressly stated legislative intent for uniformity in enacting Chapter 145 and the provisions of Article II, section 5(c), Florida Constitution, which requires that the salary of county officers be 'fixed by law.'¹⁶

2009 Amendments Affecting Compensation of Certain School District Officials

In 2009, the Legislature made amendments to current general law to allow certain school officials to reduce their salary rate on a voluntary basis.

Chapter 2009-3, Laws of Florida, (CS/CS/SB 6-A) amended s. 1001.395, F.S., to provide that "notwithstanding the provisions of s. 1001.395 or s. 145.19, F.S., district school board members may reduce their salary rate on a voluntary basis."¹⁷ This change became effective on February 1, 2009.

Chapter 2009-59, Laws of Florida, (CS/CS/SB 1676) amended s. 1001.47, F.S., to provide that "notwithstanding the provisions of s. 1001.47 or s. 145.19, F.S., elected school superintendents may reduce their salary rate on a voluntary basis . . . and that the salary of each elected school superintendent shall be reduced by 2 percent"¹⁸ These changes became effective on July 1, 2009.

III. Effect of Proposed Changes:

Section 1 amends s. 145.031, F.S., to allow each member of the board of county commissioners to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

¹⁵ See 87 So. 2d 634 (Fla. 1921).

¹⁶ Op. Atty Gen. Fla. 2008-28 (May 28, 2008) (on file with the Senate Committee on Community Affairs).

¹⁷ Florida Legislative Committee on Intergovernmental Relations, *supra* note 5, at 2. See also s. 1001.395(2), F.S.

¹⁸ Florida Legislative Committee on Intergovernmental Relations, *supra* note 5, at 2. See also s. 1001.47(6)-(7), F.S.

Section 2 amends s. 145.051, F.S., to allow each clerk of the circuit court and each county comptroller to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 3 amends s. 145.071, F.S., to allow each sheriff to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 4 amends s. 145.09, F.S., to allow each supervisor of elections to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 5 amends s. 145.10, F.S., to allow each property appraiser to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 6 amends s. 145.11, F.S., to allow tax collector to reduce his or her salary on a voluntary basis, notwithstanding the provisions of this section or s. 145.19, F.S.

Section 7 provides that this act shall take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

As a result of this bill, certain county officials will be allowed to reduce their salary on a voluntary basis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

The Florida Senate
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 Community Affairs Committee

BILL: SB 912

INTRODUCER: Senator Bennett

SUBJECT: Affordable Housing

DATE: February 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill removes the statutory limitation on documentary stamp tax revenues that go into the State and Local Government Housing Trust Funds and restricts the use of affordable housing funds for new construction activities for a certain period. The bill also provides targeted assistance for persons with special needs.

The bill allows the Florida Housing and Finance Corporation (FHFC) to receive federal funds for which no corresponding program has been created in statute and empowers local housing authorities to invest surplus funds. The bill provides preference for general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing and deletes current preference language. The bill also authorizes an inspector general position within the FHFC and deletes the requirement that the inspector general of DCA serve that function on behalf of the FHFC.

This bill substantially amends the following sections of the Florida Statutes: 20.055, 159.608, 163.3177, 163.31771, 201.15, 212.08, 215.5586, 420.0003, 420.0004, 420.0006, 420.503, 420.504, 420.506, 420.507, and 420.5087.

This bill retroactively repeals s. 8, of chapter 2009-121, Laws of Florida.

II. Present Situation:

Agency Inspectors General

Section 20.055, F.S., requires each state agency¹ created in the organizational structure of state government to have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Under current law, the Florida Housing Finance Corporation is not deemed to be a “state agency” for the purposes of the inspector general section. Instead, the inspector general of the Department of Community Affairs performs the inspector general function for the Florida Housing Finance Corporation.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC)² is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.³ It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Community Affairs (DCA), but is a separate budget entity not subject to the control, supervision, or direction of the DCA. Instead, it is governed by a nine member board of directors comprised of the Secretary of DCA, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;⁴
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership Program (SHIP), which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and

¹ For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, and the state courts system are considered “state agencies,” in addition to the departments created in Ch. 20, F.S.

² Formerly the Florida Housing Finance Agency.

³ Housing is determined to be affordable when a family is spending no more than 30 percent of its total income on housing. *See Florida Housing Finance Corporation Handbook, Overview of Florida Housing Finance Corporation’s Mission and Programs*, at 3 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

⁴ Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.

- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.⁵ Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.⁶

Documentary Stamp Tax

The documentary stamp tax imposes an excise tax on deeds or other documents that convey an interest in Florida real property. The Department of Revenue classifies the documentary stamp taxes as two taxes imposed on different bases at different tax rates.⁷ The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interest that are granted, assigned, transferred, conveyed or vested in a purchaser.⁸ The second tax rate is 35 cents per each \$100 of consideration for certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements.⁹

Section 201.15, F.S., provides for the distribution of documentary stamp taxes, which are primarily used to fund various land and water conservation, preservation, and maintenance trust funds and certain transportation trust funds (described in further detail below).¹⁰ In 1992, the William E. Sadowski Act created a dedicated source of revenue from documentary stamp tax revenues for affordable housing. This was generated from:

- Additional revenues from a 10-cent increase in the documentary stamp tax rate imposed on real estate transfers; and
- A re-allocation of ten cents of the existing documentary stamp tax revenues from general revenue to the affordable housing trust funds beginning in FY 1995-96.¹¹

According to the FHFC, "30 percent of these revenues flow into the State Housing Trust Fund and 70 percent flow into the Local Government Housing Trust Fund."¹² In 2005, the Legislature capped the rate of growth for distribution of documentary stamp tax revenues into these trust funds to \$243 million per year.¹³ In the 2010-2011 FY, the Legislature appropriated \$37.5 million to the FHFC.¹⁴

⁵ Sections 201.15(9) and (10), F.S.

⁶ See ss. 420.507(33) and 159.608, F.S.

⁷ Florida Revenue Estimating Conference, *2010 Florida Tax Handbook*, at 67-73 (2010) (on file with the Senate Committee on Community Affairs).

⁸ *Id.* See also s. 201.02(1), F.S.

⁹ *Id.*

¹⁰ Section 201.15(1), F.S.

¹¹ Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation's Mission and Programs*, at 4 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

¹² *Id.*, see also ss. 201.15(9) and (10), F.S.

¹³ Senate Bill 1110 (2005).

¹⁴ Chapter 2010-152, s. 5 Laws of Fla. (HB 5001, General Appropriations Act and Implementing Bill for 2010-2011 Fiscal Year) (on file with the Senate Committee on Community Affairs).

Distribution of Documentary Stamp Taxes (s. 8, of ch. 2009-131, Laws of Florida)

Section 201.15, F.S., sets forth the distribution of the documentary stamp taxes. The first proceeds of the tax revenues are distributed to the General Revenue Fund as service charges under s. 215.20, F.S., or retained by the Department of Revenue as the cost of collection and enforcement of the taxes. The remaining revenues are distributed as follows:

- 63.31% to pay debt service on Preservation 2000 bonds, Florida Forever bonds, Everglades Restoration bonds. Any amount not needed for these payments is deposited into the General Revenue Fund.
- The lesser of 7.56% or \$84.9 million to the Land Acquisition Trust Fund;
- The lesser of 1.94% or \$26 million to the Land Acquisition Trust Fund for coastal lands;
- The lesser of 4.2% or \$60.5 million to the Water Management Lands Trust Fund;
- 3.52% to the Conservation and Recreation Lands Trust Fund;
- The lesser of 2.28% or \$34.1 million to the Invasive Plant Control Trust Fund;
- The lesser of 0.5% or \$9.3 million to the State Game Trust Fund;
- 0.5% divide equally between the Water Quality Assurance Trust Fund and the General Inspections Trust Fund;
- The lesser of 7.53% or \$107 million to the State Housing Trust Fund, half of which shall be credited to the Local Government Housing Trust Fund;
- The lesser of 8.66% or \$136 million, of which 12.5% shall be credited to the State Housing Trust Fund and 87.5% shall be credited to the Local Government Housing Trust Fund;
- The remainder to the General Revenue Fund.¹⁵

In 2009, the Legislature amended s. 201.15, F.S., to provide that all documentary stamp taxes collected by the state may be used to pay the debt service on bonds authorized before January 1, 2010. Provided in s. 8, of ch. 2009-131, of the Laws of Florida, the 2009 amendment further provided that:

(16) If amounts necessary to pay debt service or any other amounts payable with respect to Preservation 2000 bonds, Florida Forever bonds, or Everglades Restoration bonds authorized before January 1, 2010, exceed the amounts distributable pursuant to subsection (1), all moneys distributable pursuant to this section are available for such obligations and transferred in the amounts necessary to pay such obligations when due. However, amounts distributable pursuant to subsection (2), subsection (3), subsection (4), subsection (5), paragraph (9)(a), or paragraph (10)(a) are not available to pay such obligations to the extent that such moneys are necessary to pay debt service on bonds secured by revenues pursuant to those provisions.¹⁶

¹⁵ Fla. S. Comm. on Judiciary, CS/CS/CS/SB 2430 and SB 1960 (2009) Staff Analysis 7-8 (on file with the Senate Committee on Community Affairs). *See also* s. 201.15(1)-(17), F.S.

¹⁶ Chapter 2009-131, s. 8, Laws of Fla., *See also* s. 201.15(16), F.S.

State Housing Strategy Act

The State Housing Strategy Act, located in Part I, of ch. 420, F.S., was created by the Legislature in 1992 to guarantee adequate affordable housing for Florida residents.¹⁷ Pursuant to s. 420.0003, F.S., the Department of Community Affairs and the FHFC annually coordinate with the Shimberg Center for Affordable Housing at the University of Florida¹⁸ to develop and maintain statewide data on affordable housing needs for specific populations.¹⁹ These studies are then used to review and evaluate existing affordable housing accommodations to ensure that they are consistent with current need assessments and to recommend any improvements or plan modifications.²⁰

The Florida Housing Data Clearinghouse (FHDC) within the Shimberg Center provides specialized affordable housing data for special needs populations which include farm workers, individuals with disabilities, homeless people, and extremely low income households.²¹ Under current law, ss. 420.0003 (3) and (4), F.S., do not specifically require affordable housing studies for persons with disabilities, youth aging out of foster care, disabled veterans and survivors of domestic violence; nor are multifamily rental housing funds required to be administered to address the needs of extremely low income households. According to the Affordable Housing Commission report conducted in 2004, 637,394 households were classified as extremely low income households: 226,661 of which were multi-family rental housing units, and 181,145 having at least one person with a disability.²²

Local Government Investment Policies

Section 218.415, F.S., provides the statutory guidelines for local government investment policies for excess public funds,²³ requiring that such policies be structured to provide objectives for the safety of capital, liquidity of funds, and investment returns.²⁴ These investment policies must also specify performance measures that are commensurate with the nature and size of all the public funds in its custody.²⁵ Sections 218.415 (16) and (17), F.S., contain lists of authorized

¹⁷ Section 420.0003, F.S.

¹⁸ The Shimberg Center was established at the University of Florida in 1988 to “facilitate safe, decent and affordable housing throughout the state of Florida” and was named after Jim Shimberg Sr., a Tampa homebuilder dedicated to affordable housing. The Center’s Florida Housing Data Clearinghouse provides public information on Florida housing needs, programs and demographics. For more information visit: <http://www.shimberg.ufl.edu/aboutUs2.html> (last visited on March 11, 2010).

¹⁹ Section 420.0003(4)(c), F.S.

²⁰ *Id.*

²¹ Florida Housing Data Clearing House (FHDC) Shimberg Center for Affordable Housing, *Databases for Farm workers and Special Needs Populations*, available online at http://flhousingdata.shimberg.ufl.edu/SpecNeed_introduction.html (last visited on March 12, 2010).

²² Affordable Housing Study Commission, *Final Report 2004* (page 12-13, Table 2) available online at <http://www.floridahousing.org/NR/rdonlyres/B43F4998-A49B-4171-B564-4F257C1D1887/0/2004FINALREPORT.pdf> (last visited on March 12, 2010).

²³ In lieu of a written investment policy, local governments also have the option to meet alternative investment guidelines provided under s. 218.415(17), F.S., see s. 218.415(1), F.S.

²⁴ Section 218.415(2), F.S. (Note that this section also states that “[s]uch policies shall be structured to place the highest priority on the safety of principal and the liquidity of funds.”).

²⁵ Section 218.415(3), F.S.

trust funds and accounts that local government units can invest and reinvest surplus public funds into by resolution.²⁶

The Florida Security for Public Deposits Act, located in ch. 280, F.S., establishes certain criteria that banks and financial institutions must meet to be considered a “qualified public depository” that is eligible to receive local government investments.²⁷ Section 280.03(3), F.S., provides exemptions to this restriction for certain kinds of investments, including “public deposits which are fully secured under federal regulations.”²⁸

Some local housing finance authorities have opined that state restrictions pertaining to qualified public depositories do not apply to investments that are fully insured by the Federal Deposit Insurance Corporation (FDIC); however, other parties have interpreted the exemptions in s. 280.03(3)(e), F.S., not to include FDIC insured accounts.

Local Government Comprehensive Plans

The Local Government Comprehensive Planning and Land Development Regulation Act,²⁹ in Part II, of ch. 163, F.S., requires all counties and municipalities to adopt Local Government Comprehensive Plans that prescribe the future “economic, social, physical, environmental, and fiscal development of the area.”³⁰ These comprehensive plans must include nine mandatory “elements” that address:

- Capital improvements,
- Future land use,
- Traffic circulation,
- Sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge,
- Conservation,
- Recreation and open space,
- Housing,
- Coastal management, and
- Intergovernmental coordination.³¹

The legislative policy behind comprehensive planning is to control the flow of development to ensure that public services and facilities continue to be adequate and sufficient.³² According to planning officials within the Florida Department of Community Affairs, the five main areas of statewide interest are: school coordination, urban sprawl, urban infill and redevelopment, water supply planning, and rural land stewardship.³³

²⁶ See ss. 218.415(16)(a)-(i), F.S., *see also* ss. 218.415(17)(a)-(d), F.S.

²⁷ Section 280.02(26), F.S.

²⁸ Section 280.03(3)(e), F.S.

²⁹ Also known as “The Growth Management Act”

³⁰ Section 163.3177, F.S.

³¹ *Id.*

³² Roth, Cari L. *Transportation Concurrency in Dense Urban Land Use Areas after Passage of the Community Renewal Act of 2009*, 83 Fla. B.J. 29, 29 (October 2009).

³³ Florida Department of Community Affairs, *Florida Planning Officials Basic Training: The Comprehensive Plan* (power point presentation, slide 14) available online at <http://www.dca.state.fl.us/FDCP/DCP/compplanning/Files/PlanningOfficialsTraining.pdf> (last visited on March 12, 2010).

III. Effect of Proposed Changes:

Section 1 amends s. 20.055, F.S., to include the FHFC to be a “state agency” for purposes of the agency’s inspector general and amends the definition for “agency head” to include the board of directors of the Florida Housing Finance Corporation. This section also requires the inspector general of the Florida Housing Finance Corporation to prepare an annual summary report of their activities in the preceding fiscal year no later than 90 days after the end of each fiscal year.

Section 2 amends s. 159.608, F.S., to authorize local housing finance authorities to invest and reinvest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation (FDIC), regardless of whether the bank or financial institution is a qualified public depository pursuant to s. 280.02, F.S.

Section 3 amends s. 163.3177(6)(f), F.S., to require local government comprehensive plans to include information on senior affordable housing, and to direct local governments to dispose real property conveyed to them for affordable housing pursuant to s. 125.379 or s. 166.0451, F.S.

Section 4 removes the statutory cap on documentary stamp tax revenue that is distributed into the State and Local Housing Trust Funds. This is accomplished by amending ss. 201.15(9) and (10), F.S., so that “seven and fifty-three hundredths” (7.53 %), of net documentary stamp tax collections are split 50% to the State Housing Trust Fund and 50% to the Local Government Trust Fund, and “eight and sixty-six hundredths” (8.66%) of the net collections are split 12.5% to the State Housing Trust Fund and 87.5% to the Local Government Housing Trust Fund.

Section 5 repeals section 8, of chapter 2009-131, Laws of Florida, retroactive to June 30, 2009.

Section 6 amends s. 420.0003, F.S., of the State Housing Strategy Act to require annual affordable housing evaluations to specifically address persons with special needs.

Section 7 provides definitions under ss. 420.0004(7) and (13), F.S., for “disabling condition” and “person with special needs.”

Section 8 amends s. 420.0006, F.S., to remove an obsolete cross-reference and to delete the requirement that the inspector general of DCA perform the inspector general function for the FHFC, to make it consistent with the changes in section 1 of the bill.

Section 9 amends s. 420.504, F.S., to provide that the FHFC board of directors shall be composed of the Secretary of Community Affairs as an ex officio and voting member “or a senior-level agency employee designated by the secretary” and eight members specified by the Governor subject to the confirmation of the Senate based on the current statutory criteria.

Section 10 amends s. 420.506, F.S., to authorize the executive director of the FHFC to appoint or remove an inspector general with the advice and consent of the corporation’s board of directors. This section also provides certain responsibilities of the corporation’s inspector general and allows the FHFC to establish additional qualifications deemed necessary to meet the unique needs of the FHFC.

Section 11 amends s. 420.507, F.S., to extend the availability of low interest mortgage loans under the SAIL Program to include projects that set aside units for persons with special needs. This section also grants the FHFC the authority to receive federal funding for which no corresponding program has been created in statute and to establish selection criteria for such funds by request for proposals or other competitive solicitation.

This section deletes current preference language pertaining to “domicile” and “substantial experience” as they relate to developers and general contractors in competitive affordable housing programs and replaces it with “a preference for developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.”

Section 12 amends s. 420.5087, F.S., to include persons with special needs as a qualified tenant group for specified purposes of the SAIL Program, limiting the reservation of funds for this group to no more than 10 percent of the funds available at that time. This section also conforms the preference language for developers and general contractors who demonstrate job creation in affordable housing development and construction to be consistent with the changes made in Section 11 of the bill.

Sections 13-16 amend current statutes to conform to cross-references provided in the bill.

Section 17 prohibits the use of affordable housing dollars for financing or assisting new construction until July 1, 2012. These affordable housing dollars include funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for the State Apartment Incentives Loan (SAIL) Program, Florida Homeownership Assistance Program (FHAP), Community Workforce Housing Innovation Pilot (CWHIP) Program, and the State Housing Initiatives Partnership (SHIP) Program.

The bill expressly states that nothing in this section shall restrict the use of funds to assist with the purchase of newly constructed homes that were completed prior to December 31, 2010, or the acquisition and rehabilitation of apartments that received their initial certificate of occupancy prior to December 31, 1996.

Section 18 provides that the bill will take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The one year restriction on affordable housing funds for the finance or assistance of new construction could temporarily affect entities that build, construct, or finance affordable housing units within the state.

C. Government Sector Impact:

The Revenue Estimating Conference has not determined the fiscal impact of this bill; however, in reviewing similar legislation filed during the 2009-2010 Legislative Session (SB 262/HB 665), the Revenue Estimating Conference determined that the removal of the statutory limitation on documentary stamp tax revenue distributions into the State Housing Trust Fund and the Local Government Housing Trust Fund would have no fiscal impact on state funds in fiscal year 2010-11. However, based on a four-year outlook, the Conference estimated a negative \$7.1 million impact on recurring general revenue receipts and a positive recurring impact in the same amount on the state housing trust funds.³⁴

This bill authorizes the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute and establishes selection criteria for such funds by request for proposals or other competitive solicitation.

The bill also empowers local housing authorities to invest and reinvest surplus funds into interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation (FDIC), regardless of whether the bank or financial institution is a qualified public depository pursuant to s. 280.02, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁴ Revenue Estimating Conference, *Fiscal Impact for CS/SB 262, Removal of the Housing Trust Fund Distribution Cap* (March 22, 2010).

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

The Florida Senate
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 Community Affairs Committee

BILL: CS/SB 396

INTRODUCER: Senate Committee on Community Affairs and Senator Bennett

SUBJECT: Building Construction and Inspection

DATE: February 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.			RI	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute (CS) provides that the Florida Building Code is no longer required to be submitted to the Legislature for ratification before becoming effective. It also provides for a Florida supplement to the International Code Council’s set of building codes containing Florida-specific Codes.

The CS redefines the term “sustainable building rating” to include the International Green Construction Code (IGCC), making conforming changes thereto, and amends the membership composition requirements for the Florida Building Commission. The CS also expands the categories of persons who may be certified as qualified for licensure by endorsement as a home inspector and requires at least 2 hours of hurricane mitigation training to be included as part of a home inspector’s continuing education requirements.

This CS replaces one of the public lodging industry seats on the Department of Health Advisory Board with a county or local building official and clarifies that the Habitat for Humanity exemption also applies to the rehabilitation of certain family residences. The CS also removes an exemption that allowed Division I contractors to do both inspections and repairs to a home and adds the term “glass and glazing contractor” to the definition of the term “contractor.”

The CS provides for state agency compliance with the 2011 version of the NFPA 58 for LP gas tank separation standards and states that nothing shall prohibit a landscape designer from submitting plans to government agencies for approval. The CS also requires compliance with the Florida Building Code when a roof is “replaced or recovered” and replaces specific references to energy efficiency requirements with a reference to the Florida Energy Efficiency Code for Building Construction.

The CS requires products advertised as hurricane windstorm or impact protection from wind-borne debris to be approved as such under Florida’s product approval program and prohibits the Florida Building Commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements.

This CS substantially amends the following sections of the Florida Statutes: 120.80, 161.053, 255.252, 255.253, 255.257, 255.2575, 468.8316, 468.8319, 468.8323, 468.8324, 481.329, 489.103, 489.105, 489.107, 489.141, 514.028, 527.06, 527.21, 553.73, 553.74, 553.842, 553.909, and 627.711.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act located in part IV, of ch. 553, F.S., is “to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code,” known as the Florida Building Code.¹ Section 553.72, F.S., defines the Florida Building Code as a “single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state” which establishes minimum standards that shall be enforced by authorized state and local government enforcement agencies.

Florida Building Commission

The Florida Building Commission is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.² The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.³ The Commission is required to update the Florida Building Code triennially based upon the “code development cycle of the national model building codes, . . .”⁴ Pursuant to s. 553.73, F.S., the Commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.⁵

¹ Section 553.72(1), F.S.

² See s. 553.74(1)(a)-(w), F.S.

³ Sections 553.73 and 553.74, F.S.

⁴ Florida Building Commission, *Report to the 2009 Legislature*, at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).

⁵ See ss. 553.76, 553.775, and 553.73(7), F.S., respectively.

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the Florida Building Code, to enter into agreements with other governmental units in order to delegate their code enforcement powers, and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

Home Inspector License

In 2007, the Legislature created the home inspection services licensing program under part XV, ch. 468, F.S.,⁶ to provide, in part, for the licensure and regulation of private home inspectors by the Department of Business and Professional Regulation (Department). The program provides licensing and continuing education requirements, including certificates of authorizations for corporations offering home inspection services to the public.

Section 468.8311(4), F.S., defines the term "home inspection services" to mean:

a limited visual examination of one or more of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.⁷

Any person who wishes to be licensed as a home inspector must apply to the Department for certification after he or she satisfies the statutory examination requirements provided in s. 468.8313, F.S.

Prior to practicing as a home inspector in Florida, s. 468.8313, F.S., requires an applicant to:

- Pass the required examination,
- Be of good moral character, and
- Complete a course study of at least 120 hours that covers all of the following components of the home:
 - Structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure.⁸

An applicant for licensure must also submit to a criminal background check and maintain a commercial general liability insurance policy in an amount of not less than \$300,000.⁹

Section 468.8314, F.S., provides that the Department shall certify any applicant for licensure who satisfies the examination requirements of s. 468.8313, F.S., and who passes the licensing exam, unless he or she has engaged in disciplinary actions as prescribed in s. 468.832, F.S.¹⁰ This section also allows the Department to certify an applicant by endorsement if he or she:

⁶ Section 2, ch. 2007-235, L.O.F.

⁷ Section 468.8311(4), F.S.

⁸ See s. 468.8313(2), F.S.

⁹ Sections 468.8313(6) and 468.8322, F.S.

¹⁰ Section 468.8314(2), F.S.

- Is of good moral character;
- Holds a valid home inspector license in another state or territory of the United States, whose educational requirements are substantially equivalent to those required herein; and
- Has passed a substantially similar national, regional, state, or territorial licensing examination.¹¹

Florida home inspector licensees are required to complete at least 14 hours of continuing education every two years prior to his or her application for license renewal.¹²

Energy Efficiency

The Florida Energy Conservation and Sustainable Buildings Act, located in ch. 255, F.S., declares an important state interest in promoting the construction of energy-efficient and sustainable buildings.¹³ To further this notion, s. 255.252, F.S., provides that it shall be the policy of the state, that buildings constructed and financed by the state and the renovation of existing state facilities be designed and constructed to comply with:

- The United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- The Green Building Initiative's Green Globes rating system,
- The Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.¹⁴

These rating systems have been defined in s. 255.253(7), F.S., to mean “sustainable building rating.”

As pertains to buildings occupied by state agencies, section 255.257, F.S., requires all state agencies to adopt the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services for all new buildings and renovations to existing buildings.

Section 255.2575, F.S., further provides that:

“all county, municipal, school district, water management district, state university, community college, and Florida state court buildings shall be constructed to meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance

¹¹ Section 468.8314(3), F.S.

¹² Section 468.8316(1), F.S.

¹³ Section 255.2575(1), F.S.

¹⁴ Section 255.252(3)-(4), F.S.

green building rating system as approved by the Department of Management Services.”

International Green Construction Code (IGCC)

The International Green Construction Code (IGCC) establishes baseline green and sustainability “regulations for new and existing traditional and high-performance buildings related to energy conservation, water efficiency, building owner responsibilities, site impacts, building waste, and materials and other considerations.”¹⁵ The IGCC is sponsored and endorsed by the International Code Council (ICC), the American Institute of Architects, ASTM International, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the U.S. Green Building Council (USGBC), and the Illuminating Engineering Society (IES).¹⁶

The ICC recently revealed the latest version of the IGCC, Public Version 2.0, in December of 2010.¹⁷ The ICC provides that the new code complements existing rating systems and guidelines by providing minimum baseline requirements along with a “jurisdictional electives” section of the code that allows jurisdictions to customize the codes beyond its baseline provisions.¹⁸ The IGCC acts as a model code that becomes law after it is adopted by the state or local government entity that governs construction standards. To date, Rhode Island is the only state to adopt the ICGG as part of their Rhode Island Green Buildings Act in 2010.¹⁹ The new Act “applies to any public project that is owned, leased or controlled by the State of Rhode Island.”²⁰

Product Evaluation and Approval

Section 553.842, F.S., provides the Florida Building Commission with the authority to adopt rules to develop a product evaluation and approval system that applies statewide to operate in coordination with the Florida Building Code. Rules relating to product approval are contained in ch. 9N-3.006, of the Florida Administrative Code (F.A.C).²¹

The Commission is authorized to enter into contracts to provide for administration of the product evaluation and approval system. The system must rely on national and international consensus standards whenever such standards are adopted into the Florida Building Code, to demonstrate

¹⁵ The International Code Council (ICC), The International Green Construction Code (ICGG) Brochure, *IGCC: A New Approach for Safe & Sustainable Construction*, available online at http://www.iccsafe.org/cs/IGCC/Documents/Media/IGCC_Flyer.pdf (last visited on Feb. 15, 2011).

¹⁶ *Id.*

¹⁷ News Release, The International Code Council (ICC), *Code Council Releases New IGCC Public Version 2.0* (Dec. 8, 2010) (on file with the Senate Committee on Community Affairs). Note that the initial public version of the code was released on March 15, 2010, after an eight month drafting period.

¹⁸ The International Code Council (ICC) website, *see supra* fn. 14. *See also* News Release, The International Code Council (ICC), *New Construction Code Unveiled* (March. 15, 2010) (on file with the Senate Committee on Community Affairs).

¹⁹ News Release, The International Code Council (ICC), *Rhode Island Recognized by International Code Council as First State to Adopt Green Construction Code* (Oct. 19, 2010) (on file with the Senate Committee on Community Affairs).

²⁰ *Id.*

²¹ Florida Administrative Weekly & Florida Administrative Code, Rule List *available online at* <https://www.flrules.org/gateway/result.asp> (last visited on Feb. 21, 2011).

compliance with code standards. Other standards which meet or exceed state requirements must also be considered.²²

Subsection (5) of section 553.842, F.S., provides the methods that must be used by the Florida Building Commission for statewide approval of products, methods, or systems of construction.²³ These methods must be used by the Commission to approve “panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components.”²⁴

The Commission is required to maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities.²⁵ The Commission is also authorized to adopt a rule that identifies standards that are equivalent to or more stringent than those specifically adopted by the Florida Building Code, thereby allowing the use in this state of the products that comply with the equivalent standard.²⁶

Section 553.8425, F.S., provides the methodology to be used for local product approval for products or systems of construction in order to demonstrate compliance with the structural windload requirements prescribed in the Florida Building Code.²⁷

Uniform Mitigation Verification Form

Section 627.711, F.S., requires insurers to notify residential property insurance applicants or policyholders of premium insurance discounts, rates or credits that are available for windstorm mitigation fixtures or construction techniques located on the insured property. In factoring discounts for wind insurance, insurers must use the uniform mitigation verification inspection form adopted by the Financial Services Commission.²⁸

Under current law, an insurer must accept as valid, a uniform mitigation verification form that is signed by certain certified individuals outlined in s. 627.711(2), F.S.²⁹ One of the certified individuals outlined in s. 627.711(2), F.S., is a home inspector that is licensed under s. 468.8314, F.S., and who has completed at least 3 hours of hurricane mitigation training, including hurricane mitigation techniques and compliance with the uniform mitigation verification form, and completion of a proficiency exam. Pursuant to this section, the home inspector must complete at least 2 hours related to mitigation inspection and the uniform mitigation form, as part of their continuing education requirements provided in s. 468.8316, F.S.

²² Equivalence of standards for product approval are standards for products which meet or exceed the standards referenced in the Florida Building Code, and which are certified as equivalent for purposes of determining code compliance (Chapter 9N-3.015, F.A.C.).

²³ See s. 553.842(5)(a)-(b), F.S.

²⁴ *Id.*

²⁵ Section 553.842(13), F.S.

²⁶ Section 553.842(16), F.S.

²⁷ See s. 553.8425(1)(a)-(f), F.S.

²⁸ Section 627.711(2), F.S.

²⁹ See s. 627.711(2)(a)1.-6., F.S. (the additional certified individuals include: a building code inspector certified under s. 468.607, F.S.; a general building or residential contractor licensed under s. 489.111, F.S.; a professional engineer licensed under s. 471.015, F.S.; a professional architect licensed under s. 481.213, F.S.; or any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form).

Mechanical Equipment

The Florida Building Code requires roof-mounted equipment to be elevated from the roof surface. With respect to a roof-mounted air conditioner, the code requires that this equipment be elevated to a prescribed distance above the roof surface. The distance varies depending on the width of the air conditioning unit. For example, an 18 inch clearance is required for a roof-mounted air conditioning unit that is 24 to 36 inches in width.³⁰ According to the DCA, this requirement allows for maintenance of the roof surface beneath the equipment. Additionally, the code requires that all roof mounted mechanical equipment must be designed to withstand the forces exerted by wind. According to the DCA, this requirement originated with the model code that served as the foundation for the first edition of the Florida Building Code, the 2001 International Mechanical Code, and has been in effect in Florida since March 1, 2002.

During the 2010 Legislative Session, the Legislature created a new subsection (15) to s. 553.73, F.S., which provides that:

An agency or local government may not require that existing mechanical equipment on the surface of a roof be installed in compliance with the requirements of the Florida Building Code until the equipment is required to be removed or replaced.³¹

Thermal Efficiency Standards-Appliance Requirements

Florida's Thermal Efficiency Code in s. 553.900, F.S., requires the Department of Community Affairs to provide a "statewide uniform standard for energy efficiency in thermal design and operation of all buildings statewide."³² The standard is adopted into the Florida Building Code by the Commission and is updated at least every three years to include "the most cost-effective energy-saving equipment and techniques available."³³ A schedule of increases in thermal efficiency is outlined in s. 553.9061, F.S. Subsection (2) of s. 553.9061, F.S., requires the Commission to identify within the code the specified building options and elements that are available to meet energy efficiency goals.

Section 553.909, F.S., states that the Florida Energy Efficiency Code for Building Construction shall set the minimum energy requirements for commercial or residential swimming pool pumps, swimming pool water heaters, and water heaters used to heat portable water.

Section 553.909(3), F.S., currently provides minimum energy requirements for commercial and residential pool pumps and/or water motors that are manufactured on or after July 1, 2011. Subsection (4) of s. 553.909, F.S., requires residential pool pump motor controls that have a total horsepower of 1 HP or more to operate at a minimum of two speeds, with a low speed override capability being for a temporary period not to exceed one normal cycle or 24 hours, whichever is less. This subsection does not include the circulation speed for solar pool heating systems, which are permitted to run at higher speeds during periods of usable solar heat gain. Subsection (5) of

³⁰ See Table 1509.7 in ch. 15, Florida Building Code (2007), including the 2009 supplements, relating to rooftop structures.

³¹ Section 553.73(15), F.S. See also ch. 2010-176, s. 32, Laws of Fla.

³² Section 553.900, F.S.

³³ Section 553.901, F.S.

s. 553.909, F.S., prohibits a portable electric spa standby power from being “greater than $5(\sqrt{2/3})$ watts where V = the total volume, in gallons, when spas are measured in accordance with the spa industry test protocol.

Department of Health Advisory Board

Chapter 514, F.S., provides statutory criteria pertaining to public swimming and bathing facilities. This chapter allows the Department of Health to adopt and enforce rules in order “to protect the health, safety, or welfare of persons using public swimming pools and bathing places.”³⁴

Section 514.028, F.S., allows the Governor to appoint certain specified members to an established advisory review board which shall recommend agency action on variance request, rule and policy development, and other technical review problems. The advisory review board must meet as necessary or at least quarterly, and must be comprised of the following individuals:

- A representative from the office of licensure and certification of the department.
- A representative from the county health departments.
- Three representatives from the swimming pool construction industry.
- Two representatives from the public lodging industry.³⁵

Landscape Design

The Legislature added the regulation of landscape designers to part II of ch. 481, F.S., in 1998.³⁶ In general, part II, of ch. 481, F.S., provides for the regulation of landscape architects by the Board of Landscape Architecture within the Department of Business and Professional Regulation (DBPR). Prior to 1998, landscape designers were not regulated in Florida, except to the extent that they were not permitted to perform tasks of a landscape architect.³⁷ In 1998, the Legislature adopted ch. 1998-245, of the Laws of Florida, to define the term “landscape design” and to provide an exemption from landscape architect license requirements for landscape designers.

Section 481.303(7), F.S., defines the term landscape design to mean:

consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

³⁴ Section 514.021(1), F.S.

³⁵ Section 514.028(1)(a)-(d), F.S.

³⁶ Chapter 1998-245, s. 27, Laws of Fla.

³⁷ Fla. S. Comm. on Regulated Industries, CS/SB 1066 (1998) Staff Analysis 1 (on file with the Senate Committee on Community Affairs).

Section 481.329, F.S. provides exceptions and exemptions from landscape architect license requirements. Subsection (5) of s. 481.329, F.S., provides that “nothing in this part prohibits any person from engaging in the practice of landscape design, as defined in s. 481.303(7).”

The National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code

The National Fire Protection Association (NFPA) is an international nonprofit organization that was established in 1896 to reduce the risks and effects of fires by establishing building consensus codes.³⁸ The NFPA 58, also known as the Liquefied Petroleum Gas Code, applies to “the storage, handling, transportation, and use of LP-Gas[es],” which is defined by the code to mean “gasses at normal room temperature and atmospheric pressure [that] liquefy under moderate pressure and readily vaporize upon release of the pressure.”³⁹

Section 527.06(3), F.S., provides the Department of Agriculture and Consumer Services (DACS), with the authority to adopt rules that are in substantial conformity with NFPA’s published safety standards. Subsection (3), specifically provides that:

Rules in substantial conformity with the published standards of the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

The NFPA has recently published the 2011 edition of the NFPA 58, Liquefied Petroleum Gas Code. As a result, DACS has filed a Notice of Rule Development (Rule 5F-11.002) to adopt the 2011 edition of the NFPA 58, Liquefied Petroleum Gas Code.⁴⁰

State agencies that currently enforce the LP gas container separation distances, adopt changes in the NFPA safety codes as standards evolve and technology changes.

Coastal Construction and Excavation

Section 161.053, F.S., within the Beach and Shore Preservation Act, provides for the protection of Florida beaches and coastal barrier dunes against “imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.”⁴¹

Florida Statutes direct the Department of Environmental Protection (DEP) to establish coastal construction control lines on a county basis along the state beaches in order to enforce the provisions of this Act.⁴² Pursuant to this statutory authority, DEP’s Coastal Construction Control

³⁸ National Fire Protection Association Website, *Overview*, available online at <http://www.nfpa.org/categoryList.asp?categoryID=495&URL=About%20NFPA/Overview> (last visited on March 4, 2011).

³⁹ National Fire Protection Association Website, *Document Scope of NFPA 58* available online at <http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=58> (last visited on March 4, 2011).

⁴⁰ Florida Department of Agriculture & Consumer Services, *Senate Bill 960 Fiscal Analysis* (Feb. 14, 2011) (on file with the Senate Committee on Community Affairs).

⁴¹ Sections 161.011 and 161.053(1)(a), F.S.

⁴² Section 161.053(1), F.S.

Line Permitting Program establishes special siting and design criteria for construction and related activities occurring seaward of the coastal construction control lines adopted by the Department.⁴³ DEP's permit criterion is guided by the coastal construction control and erosion projection requirements in s. 161.053, F.S.

Florida Statutes also provides exemptions from these requirements, one of which is provided in paragraph (11)(a) of s. 161.053, F.S. This paragraph states that:

The coastal construction requirements defined in subsection (1) and the requirements of the erosion projections in subsection (5) do not apply to any modification, maintenance, or repair of any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure.

The Florida Building Commission is proposing to amend Rule 3109.1.1 of the Florida Building Code to limit the extent of the statutory exemption currently provided in paragraph (11)(a) of s. 161.053, F.S. Proposed through Modification # SP 4203, the Commission's amendment would state (indicated by underlined text):

Exception: The standards for buildings seaward of a CCL area do not apply to any modification, maintenance or repair of any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure, except for substantial improvement of or additions to existing habitable structures.⁴⁴

Statement of Estimated Regulatory Costs

Section 120.541, F.S., requires an agency to prepare a statement of estimated regulatory costs (SERC) prior to the adopting, amendment, or repeal of any agency rule that has an adverse economic impact on small businesses or that is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate.

Paragraph (2)(a) of s. 120.541, F.S., also requires an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact in excess of \$1 million in the aggregate on economic growth, private-sector job creation or employment, private-sector investment, business competitiveness (including productivity, innovation, or ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets). This paragraph also requires an economic analysis on whether the proposed rule directly or indirectly increases regulatory costs, including any transactional costs in excess of \$1 million in the aggregate.

⁴³ Florida Department of Environmental Protection website, *The Coastal Construction Control Line Permitting (CCCL)*, available online at http://www.dep.state.fl.us/beaches/programs/ccclprog.htm#view_rules (last visited on March 8, 2011).

⁴⁴ Letter from David M. Levin, Attorney, Icard, Merrill, P.A., to Senator Michael Bennett, President Pro Tempore, the Florida Senate (Dec. 16, 2010) (on file with the Senate Committee on Community Affairs).

Subsection (3), of s. 120.541, F.S., provides that if the adverse impact or regulatory costs of an agency rule exceed any of the criteria established in paragraph (2)(a), then the rule must be submitted to the President of the Senate and the Speaker of the House of Representatives 30 days before the next regular legislative session, and may not take effect until ratified by the Legislature.

III. Effect of Proposed Changes:

Section 1 exempts the Florida Building Code from the estimated regulatory costs provisions in s. 120.541(3), F.S., and from the requirement that the code be submitted to the Legislature for ratification before it becomes effective.

Section 2 amends paragraph (11)(a) of s. 161.053, F.S., to prohibit the Florida Building Commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements for the modification or repair of existing structures within the limits of an existing foundation.

Sections 3-6 redefine the term “sustainable building rating” to include the International Green Construction Code (IGCC) and make conforming changes to existing law. Specifically, these sections substitute references to the individual green code ratings with the term “sustainable building rating.”

Sections 7 and 23 amend ss. 468.8316 and 627.711, F.S., to require at least 2 hours of hurricane mitigation training to be included as part of a home inspector’s required 14 hours of continuing education. The hurricane mitigation training must be approved by the Construction Industry Licensing Board.

Section 8 amends s. 468.8319, F.S., to remove an exemption that allowed Division I contractors to do both the inspection and repairs to a home.

Section 9 provides a glitch amendment to s. 468.8323, F.S., to state that if it is “not” self evident, the home inspector shall report a reason why the system or component is significantly deficient or near end of its service life.

Section 10 amends s. 468.8324 F.S., to allow individuals with the following certifications and/or licenses to meet Florida home inspector licensure requirements, if the individual submits an application to the department postmarked on or before July 1, 2012:

- Possesses a one and two family dwelling inspector certification issued by the International Code Council or the Southern Building Code Congress International;
- Has been certified as a one and two family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII, of this chapter; or
- Possesses a Division I contractor license under part I, of ch. 489, F.S.

Section 11 amends subsection (5) of s. 481.329, F.S., to provide that nothing in part II, of ch. 481, F.S., shall prohibit a person engaging in the practice of landscape design from submitting such plans to government agencies for approval.

Section 12 amends s. 489.103, F.S., to clarify that Habitat for Humanity International, Inc., or its local affiliates are exempt from contracting licensing requirements for the rehabilitation of certain family residences.

Section 13 amends s. 489.105, F.S., to define the term “glass and glazing contractor” within the definition of “contractor” under Florida Statutes. Specifically, this section moves the provisions for glass and glazing specialty contractors from the Department of Business and Professional Regulation rule into statute and allows them to add installation of hurricane shutters to their existing license permitted activities.

Sections 14 and 15 amend ss. 489.107 and 489.141, F.S., to make conforming changes to cross-references as a result of this CS.

Section 16 amends s. 514.028, F.S., to replace one of the public lodging industry seats on the Department of Health Advisory Board with a county or local building official.

Section 17 amends s. 527.06, F.S., to prohibit the Department of Agriculture and Consumer Services and other state agencies from requiring compliance with certain national standards for LP gas tanks unless they are in compliance with the minimum LP gas container separation distances included in the 2011 version of NFPA 58.

Section 18 amends s. 527.21, F.S., to specify that the definition for propane is defined by the NFPA 58, Liquefied Petroleum Gas Code.

Section 19 amends s. 553.73, F.S., to provide for a Florida supplement to the International Code Council’s set of building codes, rather than being adopted by the Commission as part of the Florida Building Code. This section also specifies the national codes to be used in forming the foundation for state building standards and codes, and allows the Commission to approve technical amendments to the code once every 3 years. The CS requires proposed amendments to base codes to provide a specific justification for why this state is different from other areas that have adopted the base code.

This section also clarifies that a local government may also require mechanical equipment on the surface of a roof to meet Florida Building Code requirements when the “roof is replaced or recovered.”

Section 20 amends s. 553.74(1)(v), F.S., to revise the membership requirements of the Florida Building Commission for the participating member who is a representative of the green building industry, to include “a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).”

Section 21 amends s. 553.842, F.S., to require products advertised as hurricane, windstorm or impact protection from wind-borne debris during a hurricane or windstorm, to actually be approved as such under Florida's product approval program.

Section 22 amends s. 553.909, F.S., to replace the specific energy efficiency requirements for commercial and residential pool pumps, motors, heaters and spas, with a reference to the Florida Energy Efficiency Code for Building Construction.

Section 24 provides that this act shall take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Division I Contractors and one and two family dwelling inspectors will be permitted to be licensed as home inspectors by endorsement. The Florida Department of Business and Professional Regulation estimates that there are currently over 40,000 Division I Contractors and over 1,000 one and two family dwelling inspectors certified and licensed in the state of Florida.⁴⁵

As a result of this CS, Division I Contractors will no longer be permitted to perform both the inspection and repairs on a home and landscape designers will not be prohibited from submitting landscape design plans to government agencies for approval.

This CS will allow local governments to require mechanical equipment on the surface of a roof to abide by the Florida Building Code when the roof is "replaced or recovered."

⁴⁵ Florida Department of Revenue, *SB 396 Legislative Analysis*, at 2 (Jan. 28, 2011) (on file with the Senate Committee on Community Affairs).

This CS will also require that products advertised as hurricane, windstorm or impact protection actually be approved as such under Florida's product approval program.

C. Government Sector Impact:

State agencies will be required to adopt the International Green Construction Code (IGCC) as a sustainable building rating system for all new buildings and renovations to existing buildings. In addition, all county, municipal, school district, water management district, state university, community college, and state court buildings will be required to comply with the International Green Construction Code (IGCC) as part of the sustainable building rating system.

The Florida Department of Business and Professional Regulation estimated that there will be between 8,000 and 10,000 new licenses as a result of this CS, generating an increase in licensing revenue. Based on the projection of 8,000 additional biennial licenses, the Department estimates that this CS will generate \$2,640,000 in revenue for FY 2011-12 and \$1,640,000 in revenue for FY 2013-14.⁴⁶ The Department also states that this CS will cause a projected 13,513 additional calls to the Call Center per year, resulting in the need for an additional FTE, Regulatory Specialist II. The FTE, Regulatory Specialist II is estimated to cost the Department \$51,202 per year.⁴⁷

As a result of this CS, the Florida Building Commission will be required to provide a Florida supplement to the International Code Council's set of building codes instead of adopting the codes as part of the Florida Building Code. The Florida Building Commission will also be prohibited from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements for the modification or repair of existing structures within the limits of an existing foundation.

The Department of Health will need to replace one of its public lodging industry seats on its Advisory Board with a county or local building official.

This CS will require all state agencies to enforce the same LP gas container separation distances included in the 2011 version of NFPA 58.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴⁶ *Id.* at 3. (The Department states that applications cost \$125, new licenses cost \$200, and renewal licenses cost \$200 each.)

⁴⁷ *Id.*

VIII. Additional Information:

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

CS by Community Affairs on March 7, 2011:

This CS makes the following changes:

- Exempts the adoption of the Florida Building Code from the requirements that the code go back to the Legislature for adoption before it becomes effective.
- Redefines the term “sustainable building rating” to also include the International Green Construction Code (IGCC) and substitutes references to the individual “green” codes with the term “sustainable building rating.”
- Allows Division I contractors and building officials to receive an endorsement to be a home inspector if they apply to the Department before July 1, 2012.
- Requires specified hurricane mitigation training to be included as part of home inspectors’ required 14 hours of continuing education.
- Removes an exemption that allowed Division I contractors to do both the inspections and the repairs.
- Prohibits anything in part II of ch. 481, F.S., from precluding a landscape designer from submitting landscape design plans to government agencies for approval.
- Clarifies that Habitat for Humanity is exempt from the contracting licensing requirements for *rehabilitation* of residences.
- Moves the provisions of a glass and glazing specialty contractor from DBPR rule to the statute and allows them the ability to install hurricane shutters to their existing license permitted activities.
- Replaces one of the public lodging seats on the Department of Health Advisory Board with a county or local building official.
- Prohibits the Department of Agriculture and Consumer services and other state agencies from requiring compliance with national LP gas tank standards unless they are in compliance with the minimum LP gas container separation distances included in the 2011 version of NFPA 58.
- Specifies that the definition for “propane” is as defined by the NFPA 58, Liquefied Petroleum Gas Code.
- Clarifies that a local government may require that mechanical equipment on a roof meet the Florida Building Code requirements when the equipment or the roof is “removed, replaced or recovered.”
- Requires products advertised as hurricane, windstorm or impact protection *actually be approved as such* under Florida’s product approval program.
- Replaces the specific energy efficiency requirements for pool pumps, motors, heaters, and spas, with a reference to the Florida Energy Efficiency Code.
- Provides for a Florida supplement to the International Code Council’s set of building codes that addresses provisions specific to Florida.
- Prohibits the Florida Building Commission from adopting rules that limit any of the exceptions or exemptions provided in paragraph (11)(a) of s. 161.053, F.S.
- Provides title amendments.

B. Amendments:

None.

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



342646

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) is added to subsection (16) of section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(16) FLORIDA BUILDING COMMISSION.—

(d) Rule proceedings relating to updates and modifications of the Florida Building Code pursuant to s. 553.73 are exempt from ss. 120.54(3) and 120.541(3).

Section 2. Subsections (3) and (4) of section 255.252,



342646

13 Florida Statutes, are amended to read:

14 255.252 Findings and intent.—

15 (3) In order for ~~that such~~ energy-efficiency and
16 sustainable materials considerations to become a function of
17 building design and a model for future application in the
18 private sector, it is ~~shall be~~ the policy of the state that
19 buildings constructed and financed by the state be designed and
20 constructed to comply with a sustainable building rating ~~the~~
21 ~~United States Green Building Council (USGBC) Leadership in~~
22 ~~Energy and Environmental Design (LEED) rating system, the Green~~
23 ~~Building Initiative's Green Globes rating system, the Florida~~
24 ~~Green Building Coalition standards, or a nationally recognized,~~
25 ~~high performance green building rating system as approved by the~~
26 ~~department.~~ It is further the policy of the state, if when
27 economically feasible, to retrofit existing state-owned
28 buildings in a manner that minimizes ~~which will minimize~~ the
29 consumption of energy used in the operation and maintenance of
30 such buildings.

31 (4) In addition to designing and constructing new buildings
32 to be energy-efficient, it is ~~shall be~~ the policy of the state
33 to operate and maintain state facilities in a manner that
34 minimizes ~~which will minimize~~ energy consumption and maximizes
35 ~~maximize~~ building sustainability, and to operate as well as
36 ~~ensure that~~ facilities leased by the state ~~are operated~~ so as to
37 minimize energy use. It is further the policy of the state that
38 the renovation of existing state facilities be in accordance
39 with a sustainable building rating ~~the United States Green~~
40 ~~Building Council (USGBC) Leadership in Energy and Environmental~~
41 ~~Design (LEED) rating system, the Green Building Initiative's~~



342646

42 ~~Green Globes rating system, the Florida Green Building Coalition~~
43 ~~standards, or a nationally recognized, high-performance green~~
44 ~~building rating system as approved by the department.~~ State
45 agencies are encouraged to consider shared savings financing of
46 ~~such~~ energy-efficiency and conservation projects, using
47 contracts that ~~which~~ split the resulting savings for a specified
48 period of time between the state agency and the private firm or
49 cogeneration contracts and that ~~which~~ otherwise permit the state
50 to lower its net energy costs. Such energy contracts may be
51 funded from the operating budget.

52 Section 3. Subsection (7) of section 255.253, Florida
53 Statutes, is amended to read:

54 255.253 Definitions; ss. 255.251-255.258.—

55 (7) "Sustainable building rating" means a rating
56 established by the United States Green Building Council (USGBC)
57 Leadership in Energy and Environmental Design (LEED) rating
58 system, the International Green Construction Code (IGCC), the
59 Green Building Initiative's Green Globes rating system, the
60 Florida Green Building Coalition standards, or a nationally
61 recognized, high-performance green building rating system as
62 approved by the department.

63 Section 4. Subsection (4) of section 255.257, Florida
64 Statutes, is amended to read:

65 255.257 Energy management; buildings occupied by state
66 agencies.—

67 (4) ADOPTION OF STANDARDS.—

68 (a) All state agencies shall adopt a sustainable building
69 rating system ~~the United States Green Building Council (USGBC)~~
70 ~~Leadership in Energy and Environmental Design (LEED) rating~~



342646

71 ~~system, the Green Building Initiative's Green Globes rating~~
72 ~~system, the Florida Green Building Coalition standards, or a~~
73 ~~nationally recognized, high-performance green building rating~~
74 ~~system as approved by the department~~ for all new buildings and
75 renovations to existing buildings.

76 (b) No state agency shall enter into new leasing agreements
77 for office space that does not meet Energy Star building
78 standards, except when ~~determined by~~ the appropriate state
79 agency head determines that no other viable or cost-effective
80 alternative exists.

81 (c) All state agencies shall develop energy conservation
82 measures and guidelines for new and existing office space where
83 state agencies occupy more than 5,000 square feet. These
84 conservation measures shall focus on programs that may reduce
85 energy consumption and, when established, provide a net
86 reduction in occupancy costs.

87 Section 5. Subsection (2) of section 255.2575, Florida
88 Statutes, is amended to read:

89 255.2575 Energy-efficient and sustainable buildings.-

90 (2) All county, municipal, school district, water
91 management district, state university, community college, and
92 ~~Florida~~ state court buildings shall be constructed to comply
93 with a sustainable building rating system ~~meet the United States~~
94 ~~Green Building Council (USGBC) Leadership in Energy and~~
95 ~~Environmental Design (LEED) rating system, the Green Building~~
96 ~~Initiative's Green Globes rating system, the Florida Green~~
97 ~~Building Coalition standards, or a nationally recognized, high-~~
98 ~~performance green building rating system as approved by the~~
99 ~~Department of Management Services.~~ This section applies shall



342646

100 ~~apply~~ to all county, municipal, school district, water
101 management district, state university, community college, and
102 ~~Florida~~ state court buildings the architectural plans of which
103 are commenced after July 1, 2008.

104 Section 6. Subsection (1) of section 468.8316, Florida
105 Statutes, is amended to read:

106 468.8316 Continuing education.-

107 (1) The department may not renew a license until the
108 licensee submits proof satisfactory to the department that
109 during the 2 years before ~~prior to his or her~~ application for
110 renewal the licensee ~~has~~ completed at least 14 hours of
111 continuing education. Of the 14 hours, at least 2 hours must be
112 in hurricane mitigation training that includes hurricane
113 mitigation techniques and compliance with the uniform mitigation
114 verification inspection form developed under s. 627.711(2). The
115 department shall adopt rules establishing criteria for approving
116 continuing education providers and courses ~~course content shall~~
117 ~~be approved by the department by rule.~~

118 Section 7. Paragraph (f) of subsection (1) and subsection
119 (3) of section 468.8319, Florida Statutes, are amended to read
120 468.8319 Prohibitions; penalties.-

121 (1) A person may not:

122 (f) Perform or offer to perform any repairs to a home on
123 which the inspector or the inspector's company has prepared a
124 home inspection report. This paragraph does not apply to:
125 ~~1.~~ a home warranty company that is affiliated with or
126 retains a home inspector to perform repairs pursuant to a claim
127 made under a home warranty contract.

128 ~~2. A certified contractor who is classified in s.~~



342646

129 ~~489.105(3) as a Division I contractor. However, the department~~
130 ~~may adopt rules requiring that, if such contractor performs the~~
131 ~~home inspection and offers to perform the repairs, the contract~~
132 ~~for repairs provided to the homeowner discloses that he or she~~
133 ~~has the right to request competitive bids.~~

134 ~~(3) This section does not apply to unlicensed activity as~~
135 ~~described in paragraph (1)(a), paragraph (1)(b), or s. 455.228~~
136 ~~that occurs before July 1, 2011.~~

137 Section 8. Paragraph (b) of subsection (1) of section
138 468.8323, Florida Statutes, is amended to read:

139 468.8323 Home inspection report.—Upon completion of each
140 home inspection for compensation, the home inspector shall
141 provide a written report prepared for the client.

142 (1) The home inspector shall report:

143 (b) If not self-evident, a reason why the system or
144 component reported under paragraph (a) is significantly
145 deficient or near the end of its service life.

146 Section 9. Subsections (1) and (2) of section 468.8324,
147 Florida Statutes, are amended to read:

148 468.8324 Grandfather clause.—

149 (1) A person who performs home inspection services ~~as~~
150 ~~defined in this part~~ may qualify for licensure ~~by the department~~
151 as a home inspector under this part if the person submits an
152 application to the department postmarked on or before July 1,
153 2012 ~~March 1, 2011~~, which shows that the applicant:

154 (a) Is certified as a home inspector by a state or national
155 association that requires, for such certification, successful
156 completion of a proctored examination on home inspection
157 services and completes at least 14 hours of verifiable education



342646

158 on such services; or

159 (b) Has at least 3 years of experience as a home inspector
160 at the time of application and has completed 14 hours of
161 verifiable education on home inspection services. To establish
162 the 3 years of experience, an applicant must submit at least 120
163 home inspection reports prepared by the applicant.

164
165 ~~(2)~~ The department may investigate the validity of a home
166 inspection report submitted under paragraph (b) ~~(1)(b)~~ and, if
167 the applicant submits a false report, may take disciplinary
168 action against the applicant under s. 468.832(1)(e) or (g).

169 (2) A person who performs home inspection services may
170 qualify for licensure as a home inspector under this part if the
171 person submits an application to the department postmarked on or
172 before July 1, 2012, which shows that the applicant:

173 (a) Possesses certification as a one- and two-family
174 dwelling inspector issued by the International Code Council or
175 the Southern Building Code Congress International;

176 (b) Has been certified as a one- and two-family dwelling
177 inspector by the Florida Building Code Administrators and
178 Inspectors Board under part XII of this chapter; or

179 (c) Possesses a Division I contractor license under part I
180 of chapter 489.

181 Section 10. Subsection (18) of section 489.103, Florida
182 Statutes, is amended to read:

183 489.103 Exemptions.—This part does not apply to:

184 (18) Any one-family, two-family, or three-family residence
185 constructed or created by Habitat for Humanity International,
186 Inc., or its local affiliates. Habitat for Humanity



342646

187 International, Inc., or its local affiliates, must:

188 (a) Obtain all necessary building permits.

189 (b) Obtain all required building code inspections.

190 (c) Provide for supervision of all work by an individual
191 with construction experience.

192 Section 11. Subsection (3) of section 489.105, Florida
193 Statutes, is amended to read

194 489.105 Definitions.—As used in this part:

195 (3) "Contractor" means the person who is qualified for, and
196 is shall only ~~be~~ responsible for, the project contracted for and
197 means, except as exempted in this part, the person who, for
198 compensation, undertakes to, submits a bid to, or does himself
199 or herself or by others construct, repair, alter, remodel, add
200 to, demolish, subtract from, or improve any building or
201 structure, including related improvements to real estate, for
202 others or for resale to others; and whose job scope is
203 substantially similar to the job scope described in one of the
204 subsequent paragraphs of this subsection. For the purposes of
205 regulation under this part, "demolish" applies only to
206 demolition of steel tanks over 50 feet in height; towers over 50
207 feet in height; other structures over 50 feet in height, other
208 than buildings or residences over three stories tall; and
209 buildings or residences over three stories tall. Contractors are
210 subdivided into two divisions, Division I, consisting of those
211 contractors defined in paragraphs (a)-(c), and Division II,
212 consisting of those contractors defined in paragraphs (d)-(r)
213 ~~(d)-(q)~~:

214 (a) "General contractor" means a contractor whose services
215 are unlimited as to the type of work which he or she may do, who



342646

216 may contract for any activity requiring licensure under this
217 part, and who may perform any work requiring licensure under
218 this part, except as otherwise expressly provided in s. 489.113.

219 (b) "Building contractor" means a contractor whose services
220 are limited to construction of commercial buildings and single-
221 dwelling or multiple-dwelling residential buildings, which
222 ~~commercial or residential buildings~~ do not exceed three stories
223 in height, and accessory use structures in connection therewith
224 or a contractor whose services are limited to remodeling,
225 repair, or improvement of any size building if the services do
226 not affect the structural members of the building.

227 (c) "Residential contractor" means a contractor whose
228 services are limited to construction, remodeling, repair, or
229 improvement of one-family, two-family, or three-family
230 residences not exceeding two habitable stories above no more
231 than one uninhabitable story and accessory use structures in
232 connection therewith.

233 (d) "Sheet metal contractor" means a contractor whose
234 services are unlimited in the sheet metal trade and who has the
235 experience, knowledge, and skill necessary for the manufacture,
236 fabrication, assembling, handling, erection, installation,
237 dismantling, conditioning, adjustment, insulation, alteration,
238 repair, servicing, or design, if ~~when~~ not prohibited by law, of
239 ferrous or nonferrous metal work of U.S. No. 10 gauge or its
240 equivalent or lighter gauge and of other materials, including,
241 but not limited to, fiberglass, used in lieu thereof and of air-
242 handling systems, including the setting of air-handling
243 equipment and reinforcement of same, the balancing of air-
244 handling systems, and any duct cleaning and equipment sanitizing



342646

245 ~~that which~~ requires at least a partial disassembling of the
246 system.

247 (e) "Roofing contractor" means a contractor whose services
248 are unlimited in the roofing trade and who has the experience,
249 knowledge, and skill to install, maintain, repair, alter,
250 extend, or design, if ~~when~~ not prohibited by law, and use
251 materials and items used in the installation, maintenance,
252 extension, and alteration of all kinds of roofing,
253 waterproofing, and coating, except when coating is not
254 represented to protect, repair, waterproof, stop leaks, or
255 extend the life of the roof. The scope of work of a roofing
256 contractor also includes required roof-deck attachments and any
257 repair or replacement of wood roof sheathing or fascia as needed
258 during roof repair or replacement.

259 (f) "Class A air-conditioning contractor" means a
260 contractor whose services are unlimited in the execution of
261 contracts requiring the experience, knowledge, and skill to
262 install, maintain, repair, fabricate, alter, extend, or design,
263 if ~~when~~ not prohibited by law, central air-conditioning,
264 refrigeration, heating, and ventilating systems, including duct
265 work in connection with a complete system if ~~only to the extent~~
266 such duct work is performed by the contractor as ~~is~~ necessary to
267 ~~make~~ complete an air-distribution system, boiler and unfired
268 pressure vessel systems, and all appurtenances, apparatus, or
269 equipment used in connection therewith, and any duct cleaning
270 and equipment sanitizing ~~that which~~ requires at least a partial
271 disassembling of the system; to install, maintain, repair,
272 fabricate, alter, extend, or design, if ~~when~~ not prohibited by
273 law, piping, insulation of pipes, vessels and ducts, pressure



342646

274 and process piping, and pneumatic control piping; to replace,
275 disconnect, or reconnect power wiring on the load side of the
276 dedicated existing electrical disconnect switch; to install,
277 disconnect, and reconnect low voltage heating, ventilating, and
278 air-conditioning control wiring; and to install a condensate
279 drain from an air-conditioning unit to an existing safe waste or
280 other approved disposal other than a direct connection to a
281 sanitary system. The scope of work for such contractor ~~shall~~
282 also includes ~~include~~ any excavation work incidental thereto,
283 but does ~~shall~~ not include any work such as liquefied petroleum
284 or natural gas fuel lines within buildings, except for
285 disconnecting or reconnecting changeouts of liquefied petroleum
286 or natural gas appliances within buildings; potable water lines
287 or connections thereto; sanitary sewer lines; swimming pool
288 piping and filters; or electrical power wiring.

289 (g) "Class B air-conditioning contractor" means a
290 contractor whose services are limited to 25 tons of cooling and
291 500,000 Btu of heating in any one system in the execution of
292 contracts requiring the experience, knowledge, and skill to
293 install, maintain, repair, fabricate, alter, extend, or design,
294 if when not prohibited by law, central air-conditioning,
295 refrigeration, heating, and ventilating systems, including duct
296 work in connection with a complete system only to the extent
297 such duct work is performed by the contractor as ~~is~~ necessary to
298 ~~make~~ complete an air-distribution system being installed under
299 this classification, and any duct cleaning and equipment
300 sanitizing that ~~which~~ requires at least a partial disassembling
301 of the system; to install, maintain, repair, fabricate, alter,
302 extend, or design, if when not prohibited by law, piping and



342646

303 insulation of pipes, vessels, and ducts; to replace, disconnect,
304 or reconnect power wiring on the load side of the dedicated
305 existing electrical disconnect switch; to install, disconnect,
306 and reconnect low voltage heating, ventilating, and air-
307 conditioning control wiring; and to install a condensate drain
308 from an air-conditioning unit to an existing safe waste or other
309 approved disposal other than a direct connection to a sanitary
310 system. The scope of work for such contractor ~~shall~~ also
311 includes ~~include~~ any excavation work incidental thereto, but
312 does ~~shall~~ not include any work such as liquefied petroleum or
313 natural gas fuel lines within buildings, except for
314 disconnecting or reconnecting changeouts of liquefied petroleum
315 or natural gas appliances within buildings; potable water lines
316 or connections thereto; sanitary sewer lines; swimming pool
317 piping and filters; or electrical power wiring.

318 (h) "Class C air-conditioning contractor" means a
319 contractor whose business is limited to the servicing of air-
320 conditioning, heating, or refrigeration systems, including any
321 duct cleaning and equipment sanitizing that ~~which~~ requires at
322 least a partial disassembling of the system, and whose
323 certification or registration, issued pursuant to this part, was
324 valid on October 1, 1988. Only a ~~No~~ person who was ~~not~~
325 ~~previously~~ registered or certified as a Class C air-conditioning
326 contractor as of October 1, 1988, shall be so registered or
327 certified after October 1, 1988. However, the board shall
328 continue to license and regulate those Class C air-conditioning
329 contractors who held Class C licenses before ~~prior to~~ October 1,
330 1988.

331 (i) "Mechanical contractor" means a contractor whose



342646

332 services are unlimited in the execution of contracts requiring
333 the experience, knowledge, and skill to install, maintain,
334 repair, fabricate, alter, extend, or design, if ~~when~~ not
335 prohibited by law, central air-conditioning, refrigeration,
336 heating, and ventilating systems, including duct work in
337 connection with a complete system if ~~only to the extent~~ such
338 duct work is performed by the contractor as ~~is~~ necessary to ~~make~~
339 complete an air-distribution system, boiler and unfired pressure
340 vessel systems, lift station equipment and piping, and all
341 appurtenances, apparatus, or equipment used in connection
342 therewith, and any duct cleaning and equipment sanitizing that
343 ~~which~~ requires at least a partial disassembling of the system;
344 to install, maintain, repair, fabricate, alter, extend, or
345 design, if ~~when~~ not prohibited by law, piping, insulation of
346 pipes, vessels and ducts, pressure and process piping, pneumatic
347 control piping, gasoline tanks and pump installations and piping
348 for same, standpipes, air piping, vacuum line piping, oxygen
349 lines, nitrous oxide piping, ink and chemical lines, fuel
350 transmission lines, liquefied petroleum gas lines within
351 buildings, and natural gas fuel lines within buildings; to
352 replace, disconnect, or reconnect power wiring on the load side
353 of the dedicated existing electrical disconnect switch; to
354 install, disconnect, and reconnect low voltage heating,
355 ventilating, and air-conditioning control wiring; and to install
356 a condensate drain from an air-conditioning unit to an existing
357 safe waste or other approved disposal other than a direct
358 connection to a sanitary system. The scope of work for such
359 contractor ~~shall~~ also includes ~~include~~ any excavation work
360 incidental thereto, but does ~~shall~~ not include any work such as



342646

361 potable water lines or connections thereto, sanitary sewer
362 lines, swimming pool piping and filters, or electrical power
363 wiring.

364 (j) "Commercial pool/spa contractor" means a contractor
365 whose scope of work involves, but is not limited to, the
366 construction, repair, and servicing of any swimming pool, or hot
367 tub or spa, whether public, private, or otherwise, regardless of
368 use. The scope of work includes the installation, repair, or
369 replacement of existing equipment, any cleaning or equipment
370 sanitizing that ~~which~~ requires at least a partial disassembling,
371 excluding filter changes, and the installation of new pool/spa
372 equipment, interior finishes, the installation of package pool
373 heaters, the installation of all perimeter piping and filter
374 piping, and the construction of equipment rooms or housing for
375 pool/spa equipment, and also includes the scope of work of a
376 swimming pool/spa servicing contractor. The scope of such work
377 does not include direct connections to a sanitary sewer system
378 or to potable water lines. The installation, construction,
379 modification, or replacement of equipment permanently attached
380 to and associated with the pool or spa for the purpose of water
381 treatment or cleaning of the pool or spa requires licensure;
382 however, the usage of such equipment for the purposes of water
383 treatment or cleaning does ~~shall~~ not require licensure unless
384 the usage involves construction, modification, or replacement of
385 such equipment. Water treatment that does not require such
386 equipment does not require a license. In addition, a license is
387 ~~shall~~ not ~~be~~ required for the cleaning of the pool or spa in a
388 ~~any~~ way that does not affect the structural integrity of the
389 pool or spa or its associated equipment.



342646

390 (k) "Residential pool/spa contractor" means a contractor
391 whose scope of work involves, but is not limited to, the
392 construction, repair, and servicing of a ~~any~~ residential
393 swimming pool, or hot tub or spa, regardless of use. The scope
394 of work includes the installation, repair, or replacement of
395 existing equipment, any cleaning or equipment sanitizing that
396 ~~which~~ requires at least a partial disassembling, excluding
397 filter changes, and the installation of new pool/spa equipment,
398 interior finishes, the installation of package pool heaters, the
399 installation of all perimeter piping and filter piping, and the
400 construction of equipment rooms or housing for pool/spa
401 equipment, and also includes the scope of work of a swimming
402 pool/spa servicing contractor. The scope of such work does not
403 include direct connections to a sanitary sewer system or to
404 potable water lines. The installation, construction,
405 modification, or replacement of equipment permanently attached
406 to and associated with the pool or spa for the purpose of water
407 treatment or cleaning of the pool or spa requires licensure;
408 however, the usage of such equipment for the purposes of water
409 treatment or cleaning does ~~shall~~ not require licensure unless
410 the usage involves construction, modification, or replacement of
411 such equipment. Water treatment that does not require such
412 equipment does not require a license. In addition, a license is
413 ~~shall~~ not ~~be~~ required for the cleaning of the pool or spa in a
414 ~~any~~ way that does not affect the structural integrity of the
415 pool or spa or its associated equipment.

416 (l) "Swimming pool/spa servicing contractor" means a
417 contractor whose scope of work involves, but is not limited to,
418 the repair and servicing of a ~~any~~ swimming pool, or hot tub or



342646

419 spa, whether public or private, or otherwise, regardless of use.
420 The scope of work includes the repair or replacement of existing
421 equipment, any cleaning or equipment sanitizing that ~~which~~
422 requires at least a partial disassembling, excluding filter
423 changes, and the installation of new pool/spa equipment,
424 interior refinishing, the reinstallation or addition of pool
425 heaters, the repair or replacement of all perimeter piping and
426 filter piping, the repair of equipment rooms or housing for
427 pool/spa equipment, and the substantial or complete draining of
428 a swimming pool, or hot tub or spa, for the purpose of ~~any~~
429 repair or renovation. The scope of such work does not include
430 direct connections to a sanitary sewer system or to potable
431 water lines. The installation, construction, modification,
432 substantial or complete disassembly, or replacement of equipment
433 permanently attached to and associated with the pool or spa for
434 the purpose of water treatment or cleaning of the pool or spa
435 requires licensure; however, the usage of such equipment for the
436 purposes of water treatment or cleaning does ~~shall~~ not require
437 licensure unless the usage involves construction, modification,
438 substantial or complete disassembly, or replacement of such
439 equipment. Water treatment that does not require such equipment
440 does not require a license. In addition, a license is ~~shall~~ not
441 ~~be~~ required for the cleaning of the pool or spa in a ~~any~~ way
442 that does not affect the structural integrity of the pool or spa
443 or its associated equipment.

444 (m) "Plumbing contractor" means a contractor whose
445 contracting business consists of the execution of contracts
446 requiring the experience, financial means, knowledge, and skill
447 to install, maintain, repair, alter, extend, or, if ~~when~~ not



342646

448 prohibited by law, design plumbing. A plumbing contractor may
449 install, maintain, repair, alter, extend, or, if ~~when~~ not
450 prohibited by law, design the following without obtaining an ~~any~~
451 additional local regulatory license, certificate, or
452 registration: sanitary drainage or storm drainage facilities;
453 venting systems; public or private water supply systems; septic
454 tanks; drainage and supply wells; swimming pool piping;
455 irrigation systems; or solar heating water systems and all
456 appurtenances, apparatus, or equipment used in connection
457 therewith, including boilers and pressure process piping and
458 including the installation of water, natural gas, liquefied
459 petroleum gas and related venting, and storm and sanitary sewer
460 lines; and water and sewer plants and substations. The scope of
461 work of the plumbing contractor also includes the design, if
462 ~~when~~ not prohibited by law, and installation, maintenance,
463 repair, alteration, or extension of air-piping, vacuum line
464 piping, oxygen line piping, nitrous oxide piping, and all
465 related medical gas systems; fire line standpipes and fire
466 sprinklers if ~~to the extent~~ authorized by law; ink and chemical
467 lines; fuel oil and gasoline piping and tank and pump
468 installation, except bulk storage plants; and pneumatic control
469 piping systems, all in ~~such~~ a manner that complies ~~as to comply~~
470 with all plans, specifications, codes, laws, and regulations
471 applicable. The scope of work of the plumbing contractor applies
472 ~~shall apply~~ to private property and public property, including
473 ~~shall include~~ any excavation work incidental thereto, and
474 includes ~~shall include~~ the work of the specialty plumbing
475 contractor. Such contractor shall subcontract, with a qualified
476 contractor in the field concerned, all other work incidental to



342646

477 the work but which is specified ~~herein~~ as being the work of a
478 trade other than that of a plumbing contractor. ~~Nothing in~~ This
479 definition does not ~~shall be construed to~~ limit the scope of
480 work of any specialty contractor certified pursuant to s.
481 489.113(6), and does not. ~~Nothing in this definition shall be~~
482 ~~construed to~~ require certification or registration under this
483 part of any authorized employee of a public natural gas utility
484 or of a private natural gas utility regulated by the Public
485 Service Commission when disconnecting and reconnecting water
486 lines in the servicing or replacement of an existing water
487 heater.

488 (n) "Underground utility and excavation contractor" means a
489 contractor whose services are limited to the construction,
490 installation, and repair, on public or private property, whether
491 accomplished through open excavations or through other means,
492 including, but not limited to, directional drilling, auger
493 boring, jacking and boring, trenchless technologies, wet and dry
494 taps, grouting, and slip lining, of main sanitary sewer
495 collection systems, main water distribution systems, storm sewer
496 collection systems, and the continuation of utility lines from
497 the main systems to a point of termination up to and including
498 the meter location for the individual occupancy, sewer
499 collection systems at property line on residential or single-
500 occupancy commercial properties, or on multioccupancy properties
501 at manhole or wye lateral extended to an invert elevation as
502 engineered to accommodate future building sewers, water
503 distribution systems, or storm sewer collection systems at storm
504 sewer structures. However, an underground utility and excavation
505 contractor may install empty underground conduits in rights-of-



342646

506 way, easements, platted rights-of-way in new site development,
507 and sleeves for parking lot crossings no smaller than 2 inches
508 in diameter if, ~~provided that~~ each conduit system installed is
509 designed by a licensed professional engineer or an authorized
510 employee of a municipality, county, or public utility and ~~that~~
511 the installation of ~~any~~ such conduit does not include
512 installation of any conductor wiring or connection to an
513 energized electrical system. An underground utility and
514 excavation contractor may ~~shall~~ not install ~~any~~ piping that is
515 an integral part of a fire protection system as defined in s.
516 633.021 beginning at the point where the piping is used
517 exclusively for such system.

518 (o) "Solar contractor" means a contractor whose services
519 consist of the installation, alteration, repair, maintenance,
520 relocation, or replacement of solar panels for potable solar
521 water heating systems, swimming pool solar heating systems, and
522 photovoltaic systems and any appurtenances, apparatus, or
523 equipment used in connection therewith, whether public, private,
524 or otherwise, regardless of use. A contractor, certified or
525 registered pursuant to ~~the provisions of~~ this chapter, is not
526 required to become a certified or registered solar contractor or
527 to contract with a solar contractor in order to provide ~~any~~
528 services enumerated in this paragraph that are within the scope
529 of the services such contractors may render under this part.

530 (p) "Pollutant storage systems contractor" means a
531 contractor whose services are limited to, and who has the
532 experience, knowledge, and skill to install, maintain, repair,
533 alter, extend, or design, if ~~when~~ not prohibited by law, and use
534 materials and items used in the installation, maintenance,



342646

535 extension, and alteration of, pollutant storage tanks. Any
536 person installing a pollutant storage tank shall perform such
537 installation in accordance with the standards adopted pursuant
538 to s. 376.303.

539 (q) "Glass and glazing contractor" means a contractor whose
540 services are unlimited in the execution of contracts requiring
541 the experience, knowledge, and skill to install, attach,
542 maintain, repair, fabricate, alter, extend, or design, in
543 residential and commercial applications without any height
544 restrictions, all types of windows, glass, and mirrors, whether
545 fixed or movable; swinging or sliding glass doors attached to
546 existing walls, floors, columns, or other structural members of
547 the building; glass holding or supporting mullions or horizontal
548 bars; structurally anchored impact-resistant opening protection
549 attached to existing building walls, floors, columns, or other
550 structural members of the building; prefabricated glass, metal,
551 or plastic curtain walls; storefront frames or panels; shower
552 and tub enclosures; metal fascias; and caulking incidental to
553 such work and assembly.

554 (r) ~~(q)~~ "Specialty contractor" means a contractor whose
555 scope of work and responsibility is limited to a particular
556 phase of construction established in a category adopted by board
557 rule and whose scope is limited to a subset of the activities
558 described in one of the paragraphs of this subsection.

559 Section 12. Paragraphs (b) and (c) of subsection (4) of
560 section 489.107, Florida Statutes, are amended to read:

561 489.107 Construction Industry Licensing Board.—

562 (4) The board shall be divided into two divisions, Division
563 I and Division II.



342646

564 (b) Division II is comprised of the roofing contractor,
565 sheet metal contractor, air-conditioning contractor, mechanical
566 contractor, pool contractor, plumbing contractor, and
567 underground utility and excavation contractor members of the
568 board; one of the members appointed pursuant to paragraph
569 (2) (j); and one of the members appointed pursuant to paragraph
570 (2) (k). Division II has jurisdiction over the regulation of
571 contractors defined in s. 489.105(3) (d)-(g) ~~489.105(3) (d)-(p)~~.

572 (c) Jurisdiction for the regulation of specialty
573 contractors defined in s. 489.105(3) (r) ~~489.105(3) (q)~~ shall lie
574 with the division having jurisdiction over the scope of work of
575 the specialty contractor as defined by board rule.

576 Section 13. Paragraph (g) of subsection (2) of section
577 489.141, Florida Statutes, is amended to read:

578 489.141 Conditions for recovery; eligibility.—

579 (2) A claimant is not qualified to make a claim for
580 recovery from the recovery fund, if:

581 (g) The claimant has contracted with a licensee to perform
582 a scope of work described in s. 489.105(3) (d)-(r) ~~489.105(3) (d)-~~
583 ~~(q)~~.

584 Section 14. Subsection (1) of section 514.028, Florida
585 Statutes, is amended to read:

586 514.028 Advisory review board.—

587 (1) The Governor shall appoint an advisory review board
588 which shall meet as necessary or at least quarterly, to
589 recommend agency action on variance request, rule and policy
590 development, and other technical review problems. The board
591 shall be comprised of ~~the following~~:

592 (a) A representative from the office of licensure and



342646

593 certification of the department.

594 (b) A representative from the county health departments.

595 (c) Three representatives from the swimming pool
596 construction industry.

597 (d) A representative ~~Two representatives~~ from the public
598 lodging industry.

599 (e) A representative from a county or local building
600 department.

601 Section 15. Subsection (15) of section 553.73, Florida
602 Statutes, is amended to read:

603 553.73 Florida Building Code.—

604 (15) An agency or local government may not require that
605 existing mechanical equipment on the surface of a roof be
606 installed in compliance with ~~the requirements of~~ the Florida
607 Building Code until the equipment is required to be removed or
608 replaced, or the roof is replaced or recovered.

609 Section 16. Paragraph (v) of subsection (1) of section
610 553.74, Florida Statutes, is amended to read:

611 553.74 Florida Building Commission.—

612 (1) The Florida Building Commission is created and shall be
613 located within the Department of Community Affairs for
614 administrative purposes. Members shall be appointed by the
615 Governor subject to confirmation by the Senate. The commission
616 shall be composed of 25 members, consisting of the following:

617 (v) One member who is a representative of the green
618 building industry and who is a third-party commission agent, a
619 Florida board member of the United States Green Building Council
620 or Green Building Initiative, a professional who is accredited
621 under the International Green Construction Code (IGCC), or a



342646

622 professional who is accredited under Leadership in Energy and
623 Environmental Design (LEED) ~~LEED-accredited professional.~~

624
625 Any person serving on the commission under paragraph (c) or
626 paragraph (h) on October 1, 2003, and who has served less than
627 two full terms is eligible for reappointment to the commission
628 regardless of whether he or she meets the new qualification.

629 Section 17. Subsection (5) of section 553.842, Florida
630 Statutes, is amended to read:

631 553.842 Product evaluation and approval.—

632 (5) Statewide approval of products, methods, or systems of
633 construction may be achieved by one of the following methods.
634 One of these methods must be used by the commission to approve
635 the following categories of products: panel walls, exterior
636 doors, roofing, skylights, windows, shutters, and structural
637 components as established by the commission by rule. Products
638 advertised, sold, offered, provided, distributed, or marketed as
639 hurricane, windstorm, or impact protection from wind-borne
640 debris during a hurricane or windstorm must be approved in
641 accordance with s. 553.842 or s. 553.8425.

642 (a) Products for which the code establishes standardized
643 testing or comparative or rational analysis methods shall be
644 approved by submittal and validation of one of the following
645 reports or listings indicating that the product or method or
646 system of construction was ~~evaluated to be~~ in compliance with
647 the Florida Building Code and that the product or method or
648 system of construction is, for the purpose intended, at least
649 equivalent to that required by the Florida Building Code:

650 1. A certification mark or listing of an approved



342646

651 certification agency, which may be used only for products for
652 which the code designates standardized testing;
653 2. A test report from an approved testing laboratory;
654 3. A product evaluation report based upon testing or
655 comparative or rational analysis, or a combination thereof, from
656 an approved product evaluation entity; or
657 4. A product evaluation report based upon testing or
658 comparative or rational analysis, or a combination thereof,
659 developed and signed and sealed by a professional engineer or
660 architect, licensed in this state.
661
662 A product evaluation report or a certification mark or listing
663 of an approved certification agency which demonstrates that the
664 product or method or system of construction complies with the
665 Florida Building Code for the purpose intended is ~~shall be~~
666 equivalent to a test report and test procedure ~~as~~ referenced in
667 the Florida Building Code. An application for state approval of
668 a product under subparagraph 1. must be approved by the
669 department after the commission staff or a designee verifies
670 that the application and related documentation are complete.
671 This verification must be completed within 10 business days
672 after receipt of the application. Upon approval by the
673 department, the product shall be immediately added to the list
674 of state-approved products maintained under subsection (13).
675 Approvals by the department shall be reviewed and ratified by
676 the commission's program oversight committee except for a
677 showing of good cause that a review by the full commission is
678 necessary. The commission shall adopt rules providing means to
679 cure deficiencies identified within submittals for products



342646

680 approved under this paragraph.

681 (b) Products, methods, or systems of construction for which
682 there are no specific standardized testing or comparative or
683 rational analysis methods established in the code may be
684 approved by submittal and validation of one of the following:

685 1. A product evaluation report based upon testing or
686 comparative or rational analysis, or a combination thereof, from
687 an approved product evaluation entity indicating that the
688 product or method or system of construction was ~~evaluated to be~~
689 in compliance with the intent of the Florida Building Code and
690 that the product or method or system of construction is, for the
691 purpose intended, at least equivalent to that required by the
692 Florida Building Code; or

693 2. A product evaluation report based upon testing or
694 comparative or rational analysis, or a combination thereof,
695 developed and signed and sealed by a professional engineer or
696 architect, licensed in this state, who certifies that the
697 product or method or system of construction is, for the purpose
698 intended, at least equivalent to that required by the Florida
699 Building Code.

700 Section 18. Subsections (3), (4), and (5) of section
701 553.909, Florida Statutes, are amended to read:

702 553.909 Setting requirements for appliances; exceptions.—

703 (3) Commercial or residential swimming ~~pool pumps or water~~
704 heaters manufactured on or after July 1, 2011, for installation
705 in this state must shall comply with the requirements of the
706 Florida Energy Efficiency Code for Building Construction ~~this~~
707 ~~subsection.~~

708 ~~(a) Natural gas pool heaters shall not be equipped with~~



342646

709 ~~constantly burning pilots.~~

710 ~~(b) Heat pump pool heaters shall have a coefficient of~~
711 ~~performance at low temperature of not less than 4.0.~~

712 ~~(c) The thermal efficiency of gas-fired pool heaters and~~
713 ~~oil-fired pool heaters shall not be less than 78 percent.~~

714 ~~(d) All pool heaters shall have a readily accessible on-off~~
715 ~~switch that is mounted outside the heater and that allows~~
716 ~~shutting off the heater without adjusting the thermostat~~
717 ~~setting.~~

718 ~~(4)(a) Residential swimming pool filtration pumps and pump~~
719 ~~motors manufactured and sold on or after July 1, 2011, for~~
720 ~~installation in this state must comply with the requirements of~~
721 ~~the Florida Energy Efficiency Code for Building Construction ~~in~~~~
722 ~~this subsection.~~

723 ~~(b) Residential filtration pool pump motors shall not be~~
724 ~~split phase, shaded pole, or capacitor start induction run~~
725 ~~types.~~

726 ~~(c) Residential filtration pool pumps and pool pump motors~~
727 ~~with a total horsepower of 1 HP or more shall have the~~
728 ~~capability of operating at two or more speeds with a low speed~~
729 ~~having a rotation rate that is no more than one-half of the~~
730 ~~motor's maximum rotation rate.~~

731 ~~(d) Residential filtration pool pump motor controls shall~~
732 ~~have the capability of operating the pool pump at a minimum of~~
733 ~~two speeds. The default circulation speed shall be the~~
734 ~~residential filtration speed, with a higher speed override~~
735 ~~capability being for a temporary period not to exceed one normal~~
736 ~~cycle or 24 hours, whichever is less; except that circulation~~
737 ~~speed for solar pool heating systems shall be permitted to run~~



342646

738 ~~at higher speeds during periods of usable solar heat gain.~~

739 (5) Portable electric spas manufactured and sold on or
740 after July 1, 2011, for installation in this state must comply
741 with the requirements of the Florida Energy Efficiency Code for
742 Building Construction ~~spa standby power shall not be greater~~
743 ~~than 5(V²/3) watts where V - the total volume, in gallons, when~~
744 ~~spas are measured in accordance with the spa industry test~~
745 ~~protocol.~~

746 Section 19. Paragraph (a) of subsection (2) of section
747 627.711, Florida Statutes, is amended to read:

748 627.711 Notice of premium discounts for hurricane loss
749 mitigation; uniform mitigation verification inspection form.-

750 (2) (a) The Financial Services Commission shall develop by
751 rule a uniform mitigation verification inspection form that
752 shall be used by all insurers when submitted by policyholders
753 for the purpose of factoring discounts for wind insurance. In
754 developing the form, the commission shall seek input from
755 insurance, construction, and building code representatives.
756 Further, the commission shall provide guidance as to the length
757 of time the inspection results are valid. An insurer shall
758 accept as valid a uniform mitigation verification form signed by
759 the following authorized mitigation inspectors:

760 1. A home inspector licensed under s. 468.8314 ~~who has~~
761 ~~completed at least 3 hours of hurricane mitigation training~~
762 ~~which includes hurricane mitigation techniques and compliance~~
763 ~~with the uniform mitigation verification form and completion of~~
764 ~~a proficiency exam. Thereafter, home inspectors licensed under~~
765 ~~s. 468.8314 must complete at least 2 hours of continuing~~
766 ~~education, as part of the existing licensure renewal~~



342646

767 ~~requirements each year, related to mitigation inspection and the~~
768 ~~uniform mitigation form;~~

769 2. A building code inspector certified under s. 468.607;

770 3. A general, building, or residential contractor licensed
771 under s. 489.111;

772 4. A professional engineer licensed under s. 471.015;

773 5. A professional architect licensed under s. 481.213; or

774 6. Any other individual or entity recognized by the insurer
775 as possessing the necessary qualifications to properly complete
776 a uniform mitigation verification form.

777 Section 20. Section 633.027, Florida Statutes, is amended
778 to read:

779 633.027 Buildings with light-frame truss-type construction;
780 notice requirements; enforcement.—

781 (1) As used in this section, the term "light-frame truss-
782 type construction" means a type of construction where the
783 primary structural elements are formed by a system of repetitive
784 wood or steel framing members, and includes:

785 (a) Open-web steel joist construction having a web member
786 that measures less than 2 1/2 inches in width; and

787 (b) Conventional light-frame wood and engineered lumber
788 having a web member that measures less than 2 inches by 8
789 inches, if used in roof or floor structural elements.

790 (2)~~(1)~~ The owner of a any commercial or industrial
791 structure, or any multiunit residential structure of three units
792 or more, that uses light-frame truss-type construction shall
793 identify ~~mark~~ the structure with a sign or symbol approved by
794 the State Fire Marshal in a manner sufficient to warn persons
795 conducting fire control and other emergency operations of the



342646

796 existence of light-frame truss-type construction in the
797 structure. The signs or symbols may be installed at the
798 principal entrances of locations where similarly designed
799 structures exist, in clear view of arriving emergency apparatus.

800 (3)(2) The State Fire Marshal shall adopt rules necessary
801 to implement the provisions of this section, including, but not
802 limited to:

803 (a) The dimensions and color of such sign or symbol.

804 (b) The time within which commercial, industrial, and
805 multiunit residential structures that use light-frame truss-type
806 construction must ~~shall~~ be identified ~~marked~~ as required by this
807 section.

808 (c) The location at ~~on~~ each commercial, industrial, and
809 multiunit residential structure that uses light-frame truss-type
810 construction where such sign or symbol must be posted.

811 (4)(3) The State Fire Marshal, and local fire officials in
812 accordance with s. 633.121, shall enforce the provisions of this
813 section. Any owner who fails to comply with the requirements of
814 this section is subject to penalties as provided in s. 633.161.

815 Section 21. Section 682.04, Florida Statutes, is amended to
816 read:

817 682.04 Appointment of arbitrators by court.—If an agreement
818 or provision for arbitration subject to this chapter ~~law~~
819 provides a method for the appointment of arbitrators or an
820 umpire, such ~~this~~ method must ~~shall~~ be followed. In the absence
821 thereof, or if the agreed method fails or for any reason cannot
822 be followed, or if an arbitrator or umpire who has been
823 appointed fails to act and his or her successor has not been
824 ~~duly~~ appointed, the court, on application of a party to such



342646

825 agreement or provision shall appoint one or more arbitrators or
826 an umpire. An arbitrator or umpire so appointed shall have like
827 powers as if named or provided for in the agreement or
828 provision. If an agreement or provision for arbitration requires
829 a party to follow an association or industry established
830 arbitration program where approved arbitrators are chosen from
831 within the program, either party may select one independent
832 arbitrator who has been deemed an arbitrator by the court.

833 Section 22. Section 682.11, Florida Statutes, is amended to
834 read:

835 682.11 Fees and expenses of arbitration.—Unless otherwise
836 provided in the agreement or provision for arbitration, the
837 arbitrators' and umpire's expenses and fees, together with other
838 expenses, not including counsel fees, incurred in the conduct of
839 the arbitration, shall be paid as provided in the award. If a
840 party selects an independent arbitrator pursuant to s. 682.04,
841 the independent arbitrators' expenses and fees shall be paid by
842 that party. If the party prevails, the independent arbitrators'
843 expenses and fees may be included in the award.

844 Section 23. This act shall take effect July 1, 2011.

845
846 ===== T I T L E A M E N D M E N T =====

847 And the title is amended as follows:

848 Delete everything before the enacting clause
849 and insert:

850 A bill to be entitled
851 An act relating to building construction and
852 inspection; amending s. 120.80, F.S.; exempting
853 certain rule proceedings relating to the Florida



342646

854 Building Code from certain provisions of ch. 120,
855 F.S.; amending s. 255.252, F.S.; conforming provisions
856 to changes made by the act; amending s. 255.253, F.S.;
857 redefining the term "sustainable building rating" to
858 include the International Green Construction Code;
859 amending ss. 255.257 and 255.2575, F.S.; requiring
860 that state agencies, local governments, and the court
861 system adopt a sustainable building rating system for
862 new and renovated buildings; amending s. 468.8316,
863 F.S.; revising the continuing education requirements
864 for licensed home inspectors; amending s. 468.8319,
865 F.S.; deleting an exemption for certain contractors
866 from the prohibition against performing repairs on a
867 home that has a home inspection report; deleting an
868 obsolete provision; amending s. 468.8323, F.S.;
869 clarifying a provision relating to the contents of a
870 home inspection report; amending s. 468.8324, F.S.;
871 providing alternative criteria for obtaining a home
872 inspector's license; amending s. 489.103, F.S.;
873 clarifying an exemption from construction contracting
874 regulation relating to Habitat for Humanity; amending
875 s. 489.105, F.S.; adding the term "glass and glazing
876 contractors" to the definition of the term
877 "contractor"; amending ss. 489.107 and 489.141, F.S.;
878 conforming cross-references; amending s. 514.028,
879 F.S.; revising the composition of the advisory review
880 board relating to public swimming pools and bathing
881 facilities; amending s. 553.73, F.S.; revising
882 requirements relating to the installation of



342646

883 mechanical equipment on a roof; amending s. 553.74,
884 F.S.; revising requirements for selecting a member of
885 the Florida Building Commission; amending s. 553.842,
886 F.S.; providing for the approval of certain windstorm
887 products; amending s. 553.909, F.S.; revising the
888 requirements for certain pool-related equipment;
889 amending s. 627.711, F.S.; revising requirements
890 relating to home inspectors conducting hurricane
891 mitigation inspections; amending s. 633.027, F.S.;
892 defining the term "light-frame truss-type
893 construction"; revising requirements relating to the
894 requirements for such construction; amending s.
895 682.04, F.S.; providing for the selection of an
896 arbitrator under certain circumstances; amending s.
897 682.11, F.S.; providing for the payment of an
898 arbitrator selected by a party; providing an effective
899 date.



871956

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/07/2011	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (342646) (with directory**
2 **amendment)**

3
4 Delete lines 149 - 163.

5
6 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

7 And the directory clause is amended as follows:

8 Delete line 146

9 and insert:

10 Section 9. Subsection (2) of section 468.8324,



740114

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/07/2011	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (342646) (with title**
2 **amendment)**

3
4 Delete lines 601 - 603

5 and insert:

6 Section 15. Subsections (1), (2), (3), (9), and (15) of
7 section 553.73, Florida Statutes, are amended to read:

8 553.73 Florida Building Code.—

9 (1) ~~(a)~~ The commission shall adopt, by rule ~~pursuant to ss.~~
10 ~~120.536(1) and 120.54~~, the Florida Building Code and a Florida
11 supplement to the International Code Council's set of codes
12 which contains or incorporates ~~shall contain or incorporate~~ by



740114

13 reference all laws and rules that ~~which~~ pertain to and govern
14 the design, construction, erection, alteration, modification,
15 repair, and demolition of public and private buildings,
16 structures, and facilities and enforcement of such laws and
17 rules, except as otherwise provided in this section.

18 (a) ~~(b)~~ The technical portions of the Florida Accessibility
19 Code for Building Construction shall be contained ~~in their~~
20 ~~entirety~~ in the Florida Building Code supplement to the
21 International Accessibility Code. The civil rights portions and
22 the technical portions of the accessibility laws of this state
23 shall remain as currently provided by law. Any revision or
24 amendments to the Florida Accessibility Code for Building
25 Construction pursuant to part II shall be placed in the next
26 edition of the supplement ~~considered adopted by the commission~~
27 ~~as part of the Florida Building Code~~. Neither the commission nor
28 any local government shall revise or amend any standard of the
29 Florida Accessibility Code for Building Construction except as
30 provided for in part II.

31 (b) ~~(e)~~ The Florida Fire Prevention Code and the Life Safety
32 Code shall be referenced in the Florida Building Code, but shall
33 be adopted, modified, revised, or amended, interpreted, and
34 maintained by the Department of Financial Services by rule
35 ~~adopted pursuant to ss. 120.536(1) and 120.54~~. The Florida
36 Building Commission may not adopt a fire prevention or
37 lifesafety code, and nothing in the Florida Building Code shall
38 affect the statutory powers, duties, and responsibilities of any
39 fire official or the Department of Financial Services.

40 (c) ~~(d)~~ Conflicting requirements between the Florida
41 Building Code and the Florida Fire Prevention Code and Life



740114

42 Safety Code ~~of the state~~ established pursuant to ss. 633.022 and
43 633.025 shall be resolved by agreement between the commission
44 and the State Fire Marshal in favor of the requirement that
45 offers the greatest degree of lifesafety or alternatives that
46 ~~would~~ provide an equivalent degree of lifesafety and an
47 equivalent method of construction. If the commission and State
48 Fire Marshal are unable to agree on a resolution, the question
49 shall be referred to a mediator, mutually agreeable to both
50 parties, to resolve the conflict in favor of the provision that
51 offers the greatest lifesafety, or alternatives that ~~would~~
52 provide an equivalent degree of lifesafety and an equivalent
53 method of construction.

54 (d) ~~(e)~~ Subject to the provisions of this act,
55 responsibility for enforcement, interpretation, and regulation
56 of the Florida Building Code shall be vested in a specified
57 local board or agency, and the terms ~~words~~ "local government"
58 and "local governing body" as used in this part shall be
59 construed to refer exclusively to such local board or agency.

60 (2) The Florida Building Code and supplement must ~~shall~~
61 contain provisions or requirements for public and private
62 buildings, structures, and facilities relative to structural,
63 mechanical, electrical, plumbing, energy, and gas systems,
64 existing buildings, historical buildings, manufactured
65 buildings, elevators, coastal construction, lodging facilities,
66 food sales and food service facilities, health care facilities,
67 including assisted living facilities, adult day care facilities,
68 hospice residential and inpatient facilities and units, and
69 facilities for the control of radiation hazards, public or
70 private educational facilities, swimming pools, and correctional



740114

71 facilities and enforcement of and compliance with such
72 provisions or requirements. Further, the Florida Building Code
73 and supplement must provide for uniform implementation of ss.
74 515.25, 515.27, and 515.29 by including standards and criteria
75 for residential swimming pool barriers, pool covers, latching
76 devices, door and window exit alarms, and other equipment
77 required therein, which are consistent with the intent of s.
78 515.23, if such provisions are not otherwise covered in the
79 International Swimming Pool and Spa Code. Technical provisions
80 ~~to be~~ contained within the Florida Building Code are restricted
81 to requirements related to the types of materials used and
82 construction methods and standards employed in order to meet
83 criteria specified in the ~~Florida Building~~ code. Provisions
84 relating to the personnel, supervision or training of personnel,
85 or any other professional qualification requirements relating to
86 contractors or their workforce may not be included within the
87 Florida Building Code, and subsections (4), (6), (7), (8), and
88 (9) are not to be construed to allow the inclusion of such
89 provisions within the ~~Florida Building~~ code by amendment. This
90 restriction applies to both initial development and amendment of
91 the Florida Building Code and supplement.

92 (3) The commission shall use the International Codes
93 published by the International Code Council, the National
94 Electric Code (NFPA 70), or other nationally adopted model codes
95 and standards needed to supplant or apply the base code in
96 Florida ~~select from available national or international model~~
97 ~~building codes, or other available building codes and standards~~
98 ~~currently recognized by the laws of this state,~~ to form the
99 foundation for building code standards and the Florida Building



740114

100 Code and supplement. ~~The commission may modify the selected~~
101 ~~model codes and standards as needed to accommodate the specific~~
102 ~~needs of this state. Standards or criteria referenced by the~~
103 ~~selected model codes shall be similarly incorporated by~~
104 ~~reference. If a referenced standard or criterion requires~~
105 ~~amplification or modification to be appropriate for use in this~~
106 ~~state, only the amplification or modification shall be~~
107 ~~specifically set forth in the Florida Building Code. The Florida~~
108 Building Commission may approve technical amendments to the
109 code, subject to ~~the requirements of~~ subsections (8) and (9),
110 after the amendments have been subject to the following
111 conditions:

112 (a) The proposed amendment has been published on the
113 commission's website for a minimum of 45 days and all the
114 associated documentation has been made available to any
115 interested party before any consideration by a ~~any~~ technical
116 advisory committee;

117 (b) In order for a technical advisory committee to make a
118 favorable recommendation to the commission, the proposal must
119 receive a three-fourths vote of the members present at the
120 technical advisory committee meeting and at least half of the
121 regular members must be present in order to conduct a meeting;

122 (c) After technical advisory committee consideration and a
123 recommendation for approval of any proposed amendment, the
124 proposal must be published on the commission's website for at
125 least ~~not less than~~ 45 days before ~~any~~ consideration by the
126 commission; and

127 (d) A ~~Any~~ proposal may be modified by the commission based
128 on public testimony and evidence from a public hearing held in



740114

129 accordance with chapter 120.

130

131 The commission shall incorporate within sections of the Florida
132 Building Code provisions which address regional and local
133 concerns and variations. The commission shall make every effort
134 to minimize conflicts between the Florida Building Code, the
135 Florida Fire Prevention Code, and the Life Safety Code.

136 (9) (a) The commission may approve technical amendments to
137 the Florida Building Code once each year for statewide or
138 regional application upon a finding that the amendment:

139 1. Is needed in order to accommodate the specific needs of
140 this state.

141 2. Has a reasonable and substantial connection with the
142 health, safety, and welfare of the general public.

143 3. Strengthens or improves the Florida Building Code, or in
144 the case of innovation or new technology, will provide
145 equivalent or better products or methods or systems of
146 construction.

147 4. Does not discriminate against materials, products,
148 methods, or systems of construction of demonstrated
149 capabilities.

150 5. Does not degrade the effectiveness of the Florida
151 Building Code.

152

153 ~~Furthermore,~~ The Florida Building Commission may also approve
154 technical amendments to the code once every 3 years in order
155 ~~each year~~ to incorporate into the Florida Building Code its own
156 interpretations of the code which are embodied in its opinions,
157 final orders, declaratory statements, and interpretations of



740114

158 hearing officer panels under s. 553.775(3)(c), but ~~shall do so~~
159 only to the extent that the incorporation of interpretations is
160 needed to modify the foundation codes to accommodate the
161 specific needs of this state. Amendments approved under this
162 paragraph shall be adopted by rule ~~pursuant to ss. 120.536(1)~~
163 ~~and 120.54~~, after the amendments have been subjected to ~~the~~
164 ~~provisions of~~ subsection (3).

165 (b) A proposed amendment must ~~shall~~ include a fiscal impact
166 statement that ~~which~~ documents the costs and benefits of the
167 proposed amendment. Criteria for the fiscal impact statement
168 shall be established by rule by the commission and ~~shall~~ include
169 the impact to local government relative to enforcement, the
170 impact to property and building owners, and the impact as well
171 ~~as~~ to industry, relative to the cost of compliance. A proposed
172 amendment to the base code must also include specific
173 justifications for why this state is different from other areas
174 that have adopted the base code and why the proposed amendment
175 applies to this state and no other area or region where the base
176 code has been adopted.

177 (c) The commission may not approve a ~~any~~ proposed amendment
178 that does not accurately and completely address all requirements
179 for amendment which are set forth in this section. The
180 commission shall require all proposed amendments and information
181 submitted with proposed amendments to be reviewed by commission
182 staff or appropriate professional or organizational entities
183 involved in the enforcement of building codes in this state
184 where the amendment will apply before being considered ~~prior to~~
185 ~~consideration by~~ a ~~any~~ technical advisory committee. ~~These~~
186 ~~reviews shall be for sufficiency only and are not intended to be~~



740114

187 ~~qualitative in nature. Staff members shall reject any proposed~~
188 ~~amendment that fails to include a fiscal impact statement.~~
189 Proposed amendments rejected by members of the reviewing entity
190 ~~staff~~ may not be considered by the commission or any technical
191 advisory committee.

192 (d) Provisions of the Florida Building Code, including
193 those contained in referenced standards and criteria, relating
194 to wind resistance or the prevention of water intrusion may not
195 be amended pursuant to this subsection to diminish those
196 construction requirements; however, the commission may, subject
197 to conditions in this subsection, amend the provisions to
198 enhance ~~those~~ construction requirements.

199
200 ===== T I T L E A M E N D M E N T =====

201 And the title is amended as follows:

202 After line 881

203 insert:

204 requirements relating to the Florida Building Code;
205 providing for a supplement to the code; specifying
206 national codes to form the foundation for state
207 building standards and codes; revising how often the
208 Florida Building Commission may approve technical
209 amendments to the code; requiring proposed amendments
210 to base codes to provide justifications; requiring
211 professional or organizational entities to review
212 proposed amendments; revising



841826

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (342646)

Delete lines 760 - 768
and insert:

1. A home inspector licensed under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam. ~~Thereafter, home inspectors licensed under s. 468.8314 must complete at least 2 hours of continuing education, as part of the existing licensure renewal requirements each year,~~



841826

13 ~~related to mitigation inspection and the uniform mitigation~~
14 ~~form;~~



488002

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/07/2011	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (342646) (with title**
2 **amendment)**

3
4 Delete lines 777 - 814.

5
6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete lines 891 - 894

9 and insert:

10 mitigation inspections; amending s.



460854

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) is added to subsection (16) of section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.—

(16) FLORIDA BUILDING COMMISSION.—

(d) Rule proceedings relating to updates and modifications of the Florida Building Code pursuant to s. 553.73 are exempt from ss. 120.54(3) and 120.541(3).

Section 2. Subsections (3) and (4) of section 255.252,



460854

13 Florida Statutes, are amended to read:

14 255.252 Findings and intent.—

15 (3) In order for ~~that such~~ energy-efficiency and
16 sustainable materials considerations to become a function of
17 building design and a model for future application in the
18 private sector, it is ~~shall be~~ the policy of the state that
19 buildings constructed and financed by the state be designed and
20 constructed to comply with a sustainable building rating ~~the~~
21 ~~United States Green Building Council (USGBC) Leadership in~~
22 ~~Energy and Environmental Design (LEED) rating system, the Green~~
23 ~~Building Initiative's Green Globes rating system, the Florida~~
24 ~~Green Building Coalition standards, or a nationally recognized,~~
25 ~~high performance green building rating system as approved by the~~
26 ~~department.~~ It is further the policy of the state, if when
27 economically feasible, to retrofit existing state-owned
28 buildings in a manner that minimizes ~~which will minimize~~ the
29 consumption of energy used in the operation and maintenance of
30 such buildings.

31 (4) In addition to designing and constructing new buildings
32 to be energy-efficient, it is ~~shall be~~ the policy of the state
33 to operate and maintain state facilities in a manner that
34 minimizes ~~which will minimize~~ energy consumption and maximizes
35 ~~maximize~~ building sustainability, and to operate as well as
36 ~~ensure that~~ facilities leased by the state ~~are operated~~ so as to
37 minimize energy use. It is further the policy of the state that
38 the renovation of existing state facilities be in accordance
39 with a sustainable building rating ~~the United States Green~~
40 ~~Building Council (USGBC) Leadership in Energy and Environmental~~
41 ~~Design (LEED) rating system, the Green Building Initiative's~~



460854

42 ~~Green Globes rating system, the Florida Green Building Coalition~~
43 ~~standards, or a nationally recognized, high-performance green~~
44 ~~building rating system as approved by the department. State~~
45 agencies are encouraged to consider shared savings financing of
46 ~~such~~ energy-efficiency and conservation projects, using
47 contracts that ~~which~~ split the resulting savings for a specified
48 period of time between the state agency and the private firm or
49 cogeneration contracts and that ~~which~~ otherwise permit the state
50 to lower its net energy costs. Such energy contracts may be
51 funded from the operating budget.

52 Section 3. Subsection (7) of section 255.253, Florida
53 Statutes, is amended to read:

54 255.253 Definitions; ss. 255.251-255.258.—

55 (7) "Sustainable building rating" means a rating
56 established by the United States Green Building Council (USGBC)
57 Leadership in Energy and Environmental Design (LEED) rating
58 system, the International Green Construction Code (IGCC), the
59 Green Building Initiative's Green Globes rating system, the
60 Florida Green Building Coalition standards, or a nationally
61 recognized, high-performance green building rating system as
62 approved by the department.

63 Section 4. Subsection (4) of section 255.257, Florida
64 Statutes, is amended to read:

65 255.257 Energy management; buildings occupied by state
66 agencies.—

67 (4) ADOPTION OF STANDARDS.—

68 (a) All state agencies shall adopt a sustainable building
69 rating system ~~the United States Green Building Council (USGBC)~~
70 ~~Leadership in Energy and Environmental Design (LEED) rating~~



460854

71 ~~system, the Green Building Initiative's Green Globes rating~~
72 ~~system, the Florida Green Building Coalition standards, or a~~
73 ~~nationally recognized, high-performance green building rating~~
74 ~~system as approved by the department~~ for all new buildings and
75 renovations to existing buildings.

76 (b) No state agency shall enter into new leasing agreements
77 for office space that does not meet Energy Star building
78 standards, except when ~~determined by~~ the appropriate state
79 agency head determines that no other viable or cost-effective
80 alternative exists.

81 (c) All state agencies shall develop energy conservation
82 measures and guidelines for new and existing office space where
83 state agencies occupy more than 5,000 square feet. These
84 conservation measures shall focus on programs that may reduce
85 energy consumption and, when established, provide a net
86 reduction in occupancy costs.

87 Section 5. Subsection (2) of section 255.2575, Florida
88 Statutes, is amended to read:

89 255.2575 Energy-efficient and sustainable buildings.-

90 (2) All county, municipal, school district, water
91 management district, state university, community college, and
92 ~~Florida~~ state court buildings shall be constructed to comply
93 with a sustainable building rating system ~~meet the United States~~
94 ~~Green Building Council (USGBC) Leadership in Energy and~~
95 ~~Environmental Design (LEED) rating system, the Green Building~~
96 ~~Initiative's Green Globes rating system, the Florida Green~~
97 ~~Building Coalition standards, or a nationally recognized, high-~~
98 ~~performance green building rating system as approved by the~~
99 ~~Department of Management Services.~~ This section applies shall



460854

100 ~~apply~~ to all county, municipal, school district, water
101 management district, state university, community college, and
102 ~~Florida~~ state court buildings the architectural plans of which
103 are commenced after July 1, 2008.

104 Section 6. Subsection (1) of section 468.8316, Florida
105 Statutes, is amended to read:

106 468.8316 Continuing education.-

107 (1) The department may not renew a license until the
108 licensee submits proof satisfactory to the department that
109 during the 2 years before ~~prior to his or her~~ application for
110 renewal the licensee ~~has~~ completed at least 14 hours of
111 continuing education. Of the 14 hours, at least 2 hours must be
112 in hurricane mitigation training that includes hurricane
113 mitigation techniques and compliance with the uniform mitigation
114 verification inspection form developed under s. 627.711(2). The
115 department shall adopt rules establishing criteria for approving
116 continuing education providers and courses ~~course content shall~~
117 ~~be approved by the department by rule.~~

118 Section 7. Paragraph (f) of subsection (1) and subsection
119 (3) of section 468.8319, Florida Statutes, are amended to read
120 468.8319 Prohibitions; penalties.-

121 (1) A person may not:

122 (f) Perform or offer to perform any repairs to a home on
123 which the inspector or the inspector's company has prepared a
124 home inspection report. This paragraph does not apply to:
125 ~~1.~~ a home warranty company that is affiliated with or
126 retains a home inspector to perform repairs pursuant to a claim
127 made under a home warranty contract.

128 ~~2. A certified contractor who is classified in s.~~



460854

129 ~~489.105(3) as a Division I contractor. However, the department~~
130 ~~may adopt rules requiring that, if such contractor performs the~~
131 ~~home inspection and offers to perform the repairs, the contract~~
132 ~~for repairs provided to the homeowner discloses that he or she~~
133 ~~has the right to request competitive bids.~~

134 ~~(3) This section does not apply to unlicensed activity as~~
135 ~~described in paragraph (1)(a), paragraph (1)(b), or s. 455.228~~
136 ~~that occurs before July 1, 2011.~~

137 Section 8. Paragraph (b) of subsection (1) of section
138 468.8323, Florida Statutes, is amended to read:

139 468.8323 Home inspection report.—Upon completion of each
140 home inspection for compensation, the home inspector shall
141 provide a written report prepared for the client.

142 (1) The home inspector shall report:

143 (b) If not self-evident, a reason why the system or
144 component reported under paragraph (a) is significantly
145 deficient or near the end of its service life.

146 Section 9. Subsection (2) of section 468.8324, Florida
147 Statutes, are amended to read:

148 468.8324 Grandfather clause.—

149 ~~(2)~~ The department may investigate the validity of a home
150 inspection report submitted under paragraph (b) ~~(1)(b)~~ and, if
151 the applicant submits a false report, may take disciplinary
152 action against the applicant under s. 468.832(1)(e) or (g).

153 (2) A person who performs home inspection services may
154 qualify for licensure as a home inspector under this part if the
155 person submits an application to the department postmarked on or
156 before July 1, 2012, which shows that the applicant:

157 (a) Possesses certification as a one- and two-family



460854

158 dwelling inspector issued by the International Code Council or
159 the Southern Building Code Congress International;

160 (b) Has been certified as a one- and two-family dwelling
161 inspector by the Florida Building Code Administrators and
162 Inspectors Board under part XII of this chapter; or

163 (c) Possesses a Division I contractor license under part I
164 of chapter 489.

165 Section 10. Subsection (5) of section 481.329, Florida
166 Statutes, is amended to read:

167 481.329 Exceptions; exemptions from licensure.—

168 (5) Nothing in this part prohibits any person from engaging
169 in the practice of landscape design, as defined in s.
170 481.303(7), nor submitting such plans to government agencies for
171 approval. Persons providing landscape design services shall not
172 use the title, term, or designation "landscape architect,"
173 "landscape architectural," "landscape architecture," "L.A.,"
174 "landscape engineering," or any description tending to convey
175 the impression that she or he is a landscape architect unless
176 she or he is registered as provided in this part.

177 Section 11. Subsection (18) of section 489.103, Florida
178 Statutes, is amended to read:

179 489.103 Exemptions.—This part does not apply to:

180 (18) Any one-family, two-family, or three-family residence
181 constructed or created by Habitat for Humanity International,
182 Inc., or its local affiliates. Habitat for Humanity
183 International, Inc., or its local affiliates, must:

184 (a) Obtain all necessary building permits.

185 (b) Obtain all required building code inspections.

186 (c) Provide for supervision of all work by an individual



460854

187 with construction experience.

188 Section 12. Subsection (3) of section 489.105, Florida
189 Statutes, is amended to read

190 489.105 Definitions.—As used in this part:

191 (3) "Contractor" means the person who is qualified for, and
192 is shall only ~~be~~ responsible for, the project contracted for and
193 means, except as exempted in this part, the person who, for
194 compensation, undertakes to, submits a bid to, or does himself
195 or herself or by others construct, repair, alter, remodel, add
196 to, demolish, subtract from, or improve any building or
197 structure, including related improvements to real estate, for
198 others or for resale to others; and whose job scope is
199 substantially similar to the job scope described in one of the
200 subsequent paragraphs of this subsection. For the purposes of
201 regulation under this part, "demolish" applies only to
202 demolition of steel tanks over 50 feet in height; towers over 50
203 feet in height; other structures over 50 feet in height, other
204 than buildings or residences over three stories tall; and
205 buildings or residences over three stories tall. Contractors are
206 subdivided into two divisions, Division I, consisting of those
207 contractors defined in paragraphs (a)-(c), and Division II,
208 consisting of those contractors defined in paragraphs (d)-(r)
209 ~~(d)-(q)~~:

210 (a) "General contractor" means a contractor whose services
211 are unlimited as to the type of work which he or she may do, who
212 may contract for any activity requiring licensure under this
213 part, and who may perform any work requiring licensure under
214 this part, except as otherwise expressly provided in s. 489.113.

215 (b) "Building contractor" means a contractor whose services



460854

216 are limited to construction of commercial buildings and single-
217 dwelling or multiple-dwelling residential buildings, which
218 ~~commercial or residential buildings~~ do not exceed three stories
219 in height, and accessory use structures in connection therewith
220 or a contractor whose services are limited to remodeling,
221 repair, or improvement of any size building if the services do
222 not affect the structural members of the building.

223 (c) "Residential contractor" means a contractor whose
224 services are limited to construction, remodeling, repair, or
225 improvement of one-family, two-family, or three-family
226 residences not exceeding two habitable stories above no more
227 than one uninhabitable story and accessory use structures in
228 connection therewith.

229 (d) "Sheet metal contractor" means a contractor whose
230 services are unlimited in the sheet metal trade and who has the
231 experience, knowledge, and skill necessary for the manufacture,
232 fabrication, assembling, handling, erection, installation,
233 dismantling, conditioning, adjustment, insulation, alteration,
234 repair, servicing, or design, if ~~when~~ not prohibited by law, of
235 ferrous or nonferrous metal work of U.S. No. 10 gauge or its
236 equivalent or lighter gauge and of other materials, including,
237 but not limited to, fiberglass, used in lieu thereof and of air-
238 handling systems, including the setting of air-handling
239 equipment and reinforcement of same, the balancing of air-
240 handling systems, and any duct cleaning and equipment sanitizing
241 that ~~which~~ requires at least a partial disassembling of the
242 system.

243 (e) "Roofing contractor" means a contractor whose services
244 are unlimited in the roofing trade and who has the experience,



460854

245 knowledge, and skill to install, maintain, repair, alter,
246 extend, or design, if ~~when~~ not prohibited by law, and use
247 materials and items used in the installation, maintenance,
248 extension, and alteration of all kinds of roofing,
249 waterproofing, and coating, except when coating is not
250 represented to protect, repair, waterproof, stop leaks, or
251 extend the life of the roof. The scope of work of a roofing
252 contractor also includes required roof-deck attachments and any
253 repair or replacement of wood roof sheathing or fascia as needed
254 during roof repair or replacement.

255 (f) "Class A air-conditioning contractor" means a
256 contractor whose services are unlimited in the execution of
257 contracts requiring the experience, knowledge, and skill to
258 install, maintain, repair, fabricate, alter, extend, or design,
259 if ~~when~~ not prohibited by law, central air-conditioning,
260 refrigeration, heating, and ventilating systems, including duct
261 work in connection with a complete system if ~~only to the extent~~
262 such duct work is performed by the contractor as ~~is~~ necessary to
263 ~~make~~ complete an air-distribution system, boiler and unfired
264 pressure vessel systems, and all appurtenances, apparatus, or
265 equipment used in connection therewith, and any duct cleaning
266 and equipment sanitizing that ~~which~~ requires at least a partial
267 disassembling of the system; to install, maintain, repair,
268 fabricate, alter, extend, or design, if ~~when~~ not prohibited by
269 law, piping, insulation of pipes, vessels and ducts, pressure
270 and process piping, and pneumatic control piping; to replace,
271 disconnect, or reconnect power wiring on the load side of the
272 dedicated existing electrical disconnect switch; to install,
273 disconnect, and reconnect low voltage heating, ventilating, and



460854

274 air-conditioning control wiring; and to install a condensate
275 drain from an air-conditioning unit to an existing safe waste or
276 other approved disposal other than a direct connection to a
277 sanitary system. The scope of work for such contractor ~~shall~~
278 also includes ~~include~~ any excavation work incidental thereto,
279 but does ~~shall~~ not include any work such as liquefied petroleum
280 or natural gas fuel lines within buildings, except for
281 disconnecting or reconnecting changeouts of liquefied petroleum
282 or natural gas appliances within buildings; potable water lines
283 or connections thereto; sanitary sewer lines; swimming pool
284 piping and filters; or electrical power wiring.

285 (g) "Class B air-conditioning contractor" means a
286 contractor whose services are limited to 25 tons of cooling and
287 500,000 Btu of heating in any one system in the execution of
288 contracts requiring the experience, knowledge, and skill to
289 install, maintain, repair, fabricate, alter, extend, or design,
290 if when not prohibited by law, central air-conditioning,
291 refrigeration, heating, and ventilating systems, including duct
292 work in connection with a complete system only to the extent
293 such duct work is performed by the contractor as ~~is~~ necessary to
294 ~~make~~ complete an air-distribution system being installed under
295 this classification, and any duct cleaning and equipment
296 sanitizing that ~~which~~ requires at least a partial disassembling
297 of the system; to install, maintain, repair, fabricate, alter,
298 extend, or design, if when not prohibited by law, piping and
299 insulation of pipes, vessels, and ducts; to replace, disconnect,
300 or reconnect power wiring on the load side of the dedicated
301 existing electrical disconnect switch; to install, disconnect,
302 and reconnect low voltage heating, ventilating, and air-



460854

303 conditioning control wiring; and to install a condensate drain
304 from an air-conditioning unit to an existing safe waste or other
305 approved disposal other than a direct connection to a sanitary
306 system. The scope of work for such contractor ~~shall~~ also
307 includes ~~include~~ any excavation work incidental thereto, but
308 does ~~shall~~ not include any work such as liquefied petroleum or
309 natural gas fuel lines within buildings, except for
310 disconnecting or reconnecting changeouts of liquefied petroleum
311 or natural gas appliances within buildings; potable water lines
312 or connections thereto; sanitary sewer lines; swimming pool
313 piping and filters; or electrical power wiring.

314 (h) "Class C air-conditioning contractor" means a
315 contractor whose business is limited to the servicing of air-
316 conditioning, heating, or refrigeration systems, including any
317 duct cleaning and equipment sanitizing that ~~which~~ requires at
318 least a partial disassembling of the system, and whose
319 certification or registration, issued pursuant to this part, was
320 valid on October 1, 1988. Only a ~~No~~ person who was ~~not~~
321 ~~previously~~ registered or certified as a Class C air-conditioning
322 contractor as of October 1, 1988, shall be so registered or
323 certified after October 1, 1988. However, the board shall
324 continue to license and regulate those Class C air-conditioning
325 contractors who held Class C licenses before ~~prior to~~ October 1,
326 1988.

327 (i) "Mechanical contractor" means a contractor whose
328 services are unlimited in the execution of contracts requiring
329 the experience, knowledge, and skill to install, maintain,
330 repair, fabricate, alter, extend, or design, if ~~when~~ not
331 prohibited by law, central air-conditioning, refrigeration,



460854

332 heating, and ventilating systems, including duct work in
333 connection with a complete system ~~if only to the extent~~ such
334 duct work is performed by the contractor as ~~is~~ necessary to ~~make~~
335 complete an air-distribution system, boiler and unfired pressure
336 vessel systems, lift station equipment and piping, and all
337 appurtenances, apparatus, or equipment used in connection
338 therewith, and any duct cleaning and equipment sanitizing that
339 ~~which~~ requires at least a partial disassembling of the system;
340 to install, maintain, repair, fabricate, alter, extend, or
341 design, if when not prohibited by law, piping, insulation of
342 pipes, vessels and ducts, pressure and process piping, pneumatic
343 control piping, gasoline tanks and pump installations and piping
344 for same, standpipes, air piping, vacuum line piping, oxygen
345 lines, nitrous oxide piping, ink and chemical lines, fuel
346 transmission lines, liquefied petroleum gas lines within
347 buildings, and natural gas fuel lines within buildings; to
348 replace, disconnect, or reconnect power wiring on the load side
349 of the dedicated existing electrical disconnect switch; to
350 install, disconnect, and reconnect low voltage heating,
351 ventilating, and air-conditioning control wiring; and to install
352 a condensate drain from an air-conditioning unit to an existing
353 safe waste or other approved disposal other than a direct
354 connection to a sanitary system. The scope of work for such
355 contractor ~~shall~~ also includes ~~include~~ any excavation work
356 incidental thereto, but does ~~shall~~ not include any work such as
357 potable water lines or connections thereto, sanitary sewer
358 lines, swimming pool piping and filters, or electrical power
359 wiring.

360 (j) "Commercial pool/spa contractor" means a contractor



460854

361 whose scope of work involves, but is not limited to, the
362 construction, repair, and servicing of any swimming pool, or hot
363 tub or spa, whether public, private, or otherwise, regardless of
364 use. The scope of work includes the installation, repair, or
365 replacement of existing equipment, any cleaning or equipment
366 sanitizing that ~~which~~ requires at least a partial disassembling,
367 excluding filter changes, and the installation of new pool/spa
368 equipment, interior finishes, the installation of package pool
369 heaters, the installation of all perimeter piping and filter
370 piping, and the construction of equipment rooms or housing for
371 pool/spa equipment, and also includes the scope of work of a
372 swimming pool/spa servicing contractor. The scope of such work
373 does not include direct connections to a sanitary sewer system
374 or to potable water lines. The installation, construction,
375 modification, or replacement of equipment permanently attached
376 to and associated with the pool or spa for the purpose of water
377 treatment or cleaning of the pool or spa requires licensure;
378 however, the usage of such equipment for the purposes of water
379 treatment or cleaning does ~~shall~~ not require licensure unless
380 the usage involves construction, modification, or replacement of
381 such equipment. Water treatment that does not require such
382 equipment does not require a license. In addition, a license is
383 ~~shall~~ not ~~be~~ required for the cleaning of the pool or spa in a
384 ~~any~~ way that does not affect the structural integrity of the
385 pool or spa or its associated equipment.

386 (k) "Residential pool/spa contractor" means a contractor
387 whose scope of work involves, but is not limited to, the
388 construction, repair, and servicing of a ~~any~~ residential
389 swimming pool, or hot tub or spa, regardless of use. The scope



460854

390 of work includes the installation, repair, or replacement of
391 existing equipment, any cleaning or equipment sanitizing that
392 ~~which~~ requires at least a partial disassembling, excluding
393 filter changes, and the installation of new pool/spa equipment,
394 interior finishes, the installation of package pool heaters, the
395 installation of all perimeter piping and filter piping, and the
396 construction of equipment rooms or housing for pool/spa
397 equipment, and also includes the scope of work of a swimming
398 pool/spa servicing contractor. The scope of such work does not
399 include direct connections to a sanitary sewer system or to
400 potable water lines. The installation, construction,
401 modification, or replacement of equipment permanently attached
402 to and associated with the pool or spa for the purpose of water
403 treatment or cleaning of the pool or spa requires licensure;
404 however, the usage of such equipment for the purposes of water
405 treatment or cleaning does ~~shall~~ not require licensure unless
406 the usage involves construction, modification, or replacement of
407 such equipment. Water treatment that does not require such
408 equipment does not require a license. In addition, a license is
409 ~~shall~~ not ~~be~~ required for the cleaning of the pool or spa in a
410 ~~any~~ way that does not affect the structural integrity of the
411 pool or spa or its associated equipment.

412 (1) "Swimming pool/spa servicing contractor" means a
413 contractor whose scope of work involves, but is not limited to,
414 the repair and servicing of a ~~any~~ swimming pool, or hot tub or
415 spa, whether public or private, or otherwise, regardless of use.
416 The scope of work includes the repair or replacement of existing
417 equipment, any cleaning or equipment sanitizing that ~~which~~
418 requires at least a partial disassembling, excluding filter



460854

419 changes, and the installation of new pool/spa equipment,
420 interior refinishing, the reinstallation or addition of pool
421 heaters, the repair or replacement of all perimeter piping and
422 filter piping, the repair of equipment rooms or housing for
423 pool/spa equipment, and the substantial or complete draining of
424 a swimming pool, or hot tub or spa, for the purpose of ~~any~~
425 repair or renovation. The scope of such work does not include
426 direct connections to a sanitary sewer system or to potable
427 water lines. The installation, construction, modification,
428 substantial or complete disassembly, or replacement of equipment
429 permanently attached to and associated with the pool or spa for
430 the purpose of water treatment or cleaning of the pool or spa
431 requires licensure; however, the usage of such equipment for the
432 purposes of water treatment or cleaning does ~~shall~~ not require
433 licensure unless the usage involves construction, modification,
434 substantial or complete disassembly, or replacement of such
435 equipment. Water treatment that does not require such equipment
436 does not require a license. In addition, a license is ~~shall~~ not
437 ~~be~~ required for the cleaning of the pool or spa in a any way
438 that does not affect the structural integrity of the pool or spa
439 or its associated equipment.

440 (m) "Plumbing contractor" means a contractor whose
441 contracting business consists of the execution of contracts
442 requiring the experience, financial means, knowledge, and skill
443 to install, maintain, repair, alter, extend, or, if ~~when~~ not
444 prohibited by law, design plumbing. A plumbing contractor may
445 install, maintain, repair, alter, extend, or, if ~~when~~ not
446 prohibited by law, design the following without obtaining an ~~any~~
447 additional local regulatory license, certificate, or



460854

448 registration: sanitary drainage or storm drainage facilities;
449 venting systems; public or private water supply systems; septic
450 tanks; drainage and supply wells; swimming pool piping;
451 irrigation systems; or solar heating water systems and all
452 appurtenances, apparatus, or equipment used in connection
453 therewith, including boilers and pressure process piping and
454 including the installation of water, natural gas, liquefied
455 petroleum gas and related venting, and storm and sanitary sewer
456 lines; and water and sewer plants and substations. The scope of
457 work of the plumbing contractor also includes the design, if
458 ~~when~~ not prohibited by law, and installation, maintenance,
459 repair, alteration, or extension of air-piping, vacuum line
460 piping, oxygen line piping, nitrous oxide piping, and all
461 related medical gas systems; fire line standpipes and fire
462 sprinklers if ~~to the extent~~ authorized by law; ink and chemical
463 lines; fuel oil and gasoline piping and tank and pump
464 installation, except bulk storage plants; and pneumatic control
465 piping systems, all in ~~such~~ a manner that complies ~~as to comply~~
466 with all plans, specifications, codes, laws, and regulations
467 applicable. The scope of work of the plumbing contractor applies
468 ~~shall apply~~ to private property and public property, including
469 ~~shall include~~ any excavation work incidental thereto, and
470 includes ~~shall include~~ the work of the specialty plumbing
471 contractor. Such contractor shall subcontract, with a qualified
472 contractor in the field concerned, all other work incidental to
473 the work but which is specified ~~herein~~ as being the work of a
474 trade other than that of a plumbing contractor. ~~Nothing in~~ This
475 definition does not ~~shall be construed to~~ limit the scope of
476 work of any specialty contractor certified pursuant to s.



460854

477 489.113(6), and does not. ~~Nothing in this definition shall be~~
478 ~~construed to~~ require certification or registration under this
479 part of any authorized employee of a public natural gas utility
480 or of a private natural gas utility regulated by the Public
481 Service Commission when disconnecting and reconnecting water
482 lines in the servicing or replacement of an existing water
483 heater.

484 (n) "Underground utility and excavation contractor" means a
485 contractor whose services are limited to the construction,
486 installation, and repair, on public or private property, whether
487 accomplished through open excavations or through other means,
488 including, but not limited to, directional drilling, auger
489 boring, jacking and boring, trenchless technologies, wet and dry
490 taps, grouting, and slip lining, of main sanitary sewer
491 collection systems, main water distribution systems, storm sewer
492 collection systems, and the continuation of utility lines from
493 the main systems to a point of termination up to and including
494 the meter location for the individual occupancy, sewer
495 collection systems at property line on residential or single-
496 occupancy commercial properties, or on multioccupancy properties
497 at manhole or wye lateral extended to an invert elevation as
498 engineered to accommodate future building sewers, water
499 distribution systems, or storm sewer collection systems at storm
500 sewer structures. However, an underground utility and excavation
501 contractor may install empty underground conduits in rights-of-
502 way, easements, platted rights-of-way in new site development,
503 and sleeves for parking lot crossings no smaller than 2 inches
504 in diameter if, ~~provided that~~ each conduit system installed is
505 designed by a licensed professional engineer or an authorized



460854

506 employee of a municipality, county, or public utility and ~~that~~
507 the installation of ~~any~~ such conduit does not include
508 installation of any conductor wiring or connection to an
509 energized electrical system. An underground utility and
510 excavation contractor may ~~shall~~ not install ~~any~~ piping that is
511 an integral part of a fire protection system as defined in s.
512 633.021 beginning at the point where the piping is used
513 exclusively for such system.

514 (o) "Solar contractor" means a contractor whose services
515 consist of the installation, alteration, repair, maintenance,
516 relocation, or replacement of solar panels for potable solar
517 water heating systems, swimming pool solar heating systems, and
518 photovoltaic systems and any appurtenances, apparatus, or
519 equipment used in connection therewith, whether public, private,
520 or otherwise, regardless of use. A contractor, certified or
521 registered pursuant to ~~the provisions of~~ this chapter, is not
522 required to become a certified or registered solar contractor or
523 to contract with a solar contractor in order to provide ~~any~~
524 services enumerated in this paragraph that are within the scope
525 of the services such contractors may render under this part.

526 (p) "Pollutant storage systems contractor" means a
527 contractor whose services are limited to, and who has the
528 experience, knowledge, and skill to install, maintain, repair,
529 alter, extend, or design, if ~~when~~ not prohibited by law, and use
530 materials and items used in the installation, maintenance,
531 extension, and alteration of, pollutant storage tanks. Any
532 person installing a pollutant storage tank shall perform such
533 installation in accordance with the standards adopted pursuant
534 to s. 376.303.



460854

535 (q) "Glass and glazing contractor" means a contractor whose
536 services are unlimited in the execution of contracts requiring
537 the experience, knowledge, and skill to install, attach,
538 maintain, repair, fabricate, alter, extend, or design, in
539 residential and commercial applications without any height
540 restrictions, all types of windows, glass, and mirrors, whether
541 fixed or movable; swinging or sliding glass doors attached to
542 existing walls, floors, columns, or other structural members of
543 the building; glass holding or supporting mullions or horizontal
544 bars; structurally anchored impact-resistant opening protection
545 attached to existing building walls, floors, columns, or other
546 structural members of the building; prefabricated glass, metal,
547 or plastic curtain walls; storefront frames or panels; shower
548 and tub enclosures; metal fascias; and caulking incidental to
549 such work and assembly.

550 (r)~~(q)~~ "Specialty contractor" means a contractor whose
551 scope of work and responsibility is limited to a particular
552 phase of construction established in a category adopted by board
553 rule and whose scope is limited to a subset of the activities
554 described in one of the paragraphs of this subsection.

555 Section 13. Paragraphs (b) and (c) of subsection (4) of
556 section 489.107, Florida Statutes, are amended to read:

557 489.107 Construction Industry Licensing Board.—

558 (4) The board shall be divided into two divisions, Division
559 I and Division II.

560 (b) Division II is comprised of the roofing contractor,
561 sheet metal contractor, air-conditioning contractor, mechanical
562 contractor, pool contractor, plumbing contractor, and
563 underground utility and excavation contractor members of the



460854

564 board; one of the members appointed pursuant to paragraph
565 (2) (j); and one of the members appointed pursuant to paragraph
566 (2) (k). Division II has jurisdiction over the regulation of
567 contractors defined in s. 489.105(3) (d)-(q) ~~489.105(3) (d)-(p)~~.

568 (c) Jurisdiction for the regulation of specialty
569 contractors defined in s. 489.105(3) (r) ~~489.105(3) (q)~~ shall lie
570 with the division having jurisdiction over the scope of work of
571 the specialty contractor as defined by board rule.

572 Section 14. Paragraph (g) of subsection (2) of section
573 489.141, Florida Statutes, is amended to read:

574 489.141 Conditions for recovery; eligibility.—

575 (2) A claimant is not qualified to make a claim for
576 recovery from the recovery fund, if:

577 (g) The claimant has contracted with a licensee to perform
578 a scope of work described in s. 489.105(3) (d)-(r) ~~489.105(3) (d)-~~
579 ~~(q)~~.

580 Section 15. Subsection (1) of section 514.028, Florida
581 Statutes, is amended to read:

582 514.028 Advisory review board.—

583 (1) The Governor shall appoint an advisory review board
584 which shall meet as necessary or at least quarterly, to
585 recommend agency action on variance request, rule and policy
586 development, and other technical review problems. The board
587 shall be comprised of ~~the following~~:

588 (a) A representative from the office of licensure and
589 certification of the department.

590 (b) A representative from the county health departments.

591 (c) Three representatives from the swimming pool
592 construction industry.



460854

593 (d) A representative ~~Two representatives~~ from the public
594 lodging industry.

595 (e) A representative from a county or local building
596 department.

597 Section 16. Subsection (3) of section 527.06, Florida
598 Statutes, is amended to read:

599 527.06 Rules.—

600 (3) (a) Rules in substantial conformity with the published
601 standards of the National Fire Protection Association (NFPA) are
602 ~~shall be~~ deemed to be in substantial conformity with the
603 generally accepted standards of safety concerning the same
604 subject matter.

605 (b) Notwithstanding any other law, the department or other
606 state agency may not require compliance with the minimum
607 separation distances of NFPA 58 for separation between a
608 liquefied petroleum gas tank and a building, adjoining property
609 line, other liquefied petroleum gas tank, or any source of
610 ignition, except in compliance with the minimum separation
611 distances of the 2011 edition of NFPA 58. This subsection shall
612 be deemed repealed upon the last effective date of rules
613 adopted, directly or as incorporated by reference, by the
614 department, the Florida Building Commission as part of the
615 Florida Building Code, and the Office of State Fire Marshal as
616 part of the Florida Fire Prevention Code of these minimum
617 separation distances as contained in the 2011 edition of NFPA 58
618 promulgated by the National Fire Protection Association.

619 Section 17. Subsection (11) of section 527.21, Florida
620 Statutes, is amended to read:

621 527.21 Definitions relating to Florida Propane Gas



460854

622 Education, Safety, and Research Act.—As used in ss. 527.20-
623 527.23, the term:

624 (11) "Propane" includes propane, butane, mixtures, and
625 liquefied petroleum gas as defined by ~~the~~ National Fire
626 Protection Association (NFPA) Standard 58, For The Storage and
627 ~~Handling of Liquefied Petroleum Gas Code Cases.~~

628 Section 18. Subsection (15) of section 553.73, Florida
629 Statutes, is amended to read:

630 553.73 Florida Building Code.—

631 (15) An agency or local government may not require that
632 existing mechanical equipment on the surface of a roof be
633 installed in compliance with ~~the requirements of~~ the Florida
634 Building Code until the equipment is required to be removed or
635 replaced, or the roof is replaced or recovered.

636 Section 19. Paragraph (v) of subsection (1) of section
637 553.74, Florida Statutes, is amended to read:

638 553.74 Florida Building Commission.—

639 (1) The Florida Building Commission is created and shall be
640 located within the Department of Community Affairs for
641 administrative purposes. Members shall be appointed by the
642 Governor subject to confirmation by the Senate. The commission
643 shall be composed of 25 members, consisting of the following:

644 (v) One member who is a representative of the green
645 building industry and who is a third-party commission agent, a
646 Florida board member of the United States Green Building Council
647 or Green Building Initiative, a professional who is accredited
648 under the International Green Construction Code (IGCC), or a
649 professional who is accredited under Leadership in Energy and
650 Environmental Design (LEED) ~~LEED-accredited professional.~~



460854

651
652 Any person serving on the commission under paragraph (c) or
653 paragraph (h) on October 1, 2003, and who has served less than
654 two full terms is eligible for reappointment to the commission
655 regardless of whether he or she meets the new qualification.

656 Section 20. Subsection (5) of section 553.842, Florida
657 Statutes, is amended to read:

658 553.842 Product evaluation and approval.—

659 (5) Statewide approval of products, methods, or systems of
660 construction may be achieved by one of the following methods.
661 One of these methods must be used by the commission to approve
662 the following categories of products: panel walls, exterior
663 doors, roofing, skylights, windows, shutters, and structural
664 components as established by the commission by rule. Products
665 advertised, sold, offered, provided, distributed, or marketed as
666 hurricane, windstorm, or impact protection from wind-borne
667 debris during a hurricane or windstorm must be approved in
668 accordance with s. 553.842 or s. 553.8425.

669 (a) Products for which the code establishes standardized
670 testing or comparative or rational analysis methods shall be
671 approved by submittal and validation of one of the following
672 reports or listings indicating that the product or method or
673 system of construction was ~~evaluated to be~~ in compliance with
674 the Florida Building Code and that the product or method or
675 system of construction is, for the purpose intended, at least
676 equivalent to that required by the Florida Building Code:

677 1. A certification mark or listing of an approved
678 certification agency, which may be used only for products for
679 which the code designates standardized testing;



460854

- 680 2. A test report from an approved testing laboratory;
- 681 3. A product evaluation report based upon testing or
- 682 comparative or rational analysis, or a combination thereof, from
- 683 an approved product evaluation entity; or
- 684 4. A product evaluation report based upon testing or
- 685 comparative or rational analysis, or a combination thereof,
- 686 developed and signed and sealed by a professional engineer or
- 687 architect, licensed in this state.

688

689 A product evaluation report or a certification mark or listing

690 of an approved certification agency which demonstrates that the

691 product or method or system of construction complies with the

692 Florida Building Code for the purpose intended is ~~shall be~~

693 equivalent to a test report and test procedure ~~as~~ referenced in

694 the Florida Building Code. An application for state approval of

695 a product under subparagraph 1. must be approved by the

696 department after the commission staff or a designee verifies

697 that the application and related documentation are complete.

698 This verification must be completed within 10 business days

699 after receipt of the application. Upon approval by the

700 department, the product shall be immediately added to the list

701 of state-approved products maintained under subsection (13).

702 Approvals by the department shall be reviewed and ratified by

703 the commission's program oversight committee except for a

704 showing of good cause that a review by the full commission is

705 necessary. The commission shall adopt rules providing means to

706 cure deficiencies identified within submittals for products

707 approved under this paragraph.

708 (b) Products, methods, or systems of construction for which



460854

709 there are no specific standardized testing or comparative or
710 rational analysis methods established in the code may be
711 approved by submittal and validation of one of the following:

712 1. A product evaluation report based upon testing or
713 comparative or rational analysis, or a combination thereof, from
714 an approved product evaluation entity indicating that the
715 product or method or system of construction was ~~evaluated to be~~
716 in compliance with the intent of the Florida Building Code and
717 that the product or method or system of construction is, for the
718 purpose intended, at least equivalent to that required by the
719 Florida Building Code; or

720 2. A product evaluation report based upon testing or
721 comparative or rational analysis, or a combination thereof,
722 developed and signed and sealed by a professional engineer or
723 architect, licensed in this state, who certifies that the
724 product or method or system of construction is, for the purpose
725 intended, at least equivalent to that required by the Florida
726 Building Code.

727 Section 21. Subsections (3), (4), and (5) of section
728 553.909, Florida Statutes, are amended to read:

729 553.909 Setting requirements for appliances; exceptions.—

730 (3) Commercial or residential swimming ~~pool pumps or water~~
731 heaters manufactured on or after July 1, 2011, for installation
732 in this state must shall comply with the requirements of the
733 Florida Energy Efficiency Code for Building Construction this
734 subsection.

735 ~~(a) Natural gas pool heaters shall not be equipped with~~
736 ~~constantly burning pilots.~~

737 ~~(b) Heat pump pool heaters shall have a coefficient of~~



460854

738 ~~performance at low temperature of not less than 4.0.~~

739 ~~(c) The thermal efficiency of gas-fired pool heaters and~~
740 ~~oil-fired pool heaters shall not be less than 78 percent.~~

741 ~~(d) All pool heaters shall have a readily accessible on-off~~
742 ~~switch that is mounted outside the heater and that allows~~
743 ~~shutting off the heater without adjusting the thermostat~~
744 ~~setting.~~

745 ~~(4)(a) Residential swimming pool filtration pumps and pump~~
746 ~~motors manufactured and sold on or after July 1, 2011, for~~
747 ~~installation in this state must comply with the requirements of~~
748 ~~the Florida Energy Efficiency Code for Building Construction in~~
749 ~~this subsection.~~

750 ~~(b) Residential filtration pool pump motors shall not be~~
751 ~~split-phase, shaded-pole, or capacitor start-induction run~~
752 ~~types.~~

753 ~~(c) Residential filtration pool pumps and pool pump motors~~
754 ~~with a total horsepower of 1 HP or more shall have the~~
755 ~~capability of operating at two or more speeds with a low speed~~
756 ~~having a rotation rate that is no more than one-half of the~~
757 ~~motor's maximum rotation rate.~~

758 ~~(d) Residential filtration pool pump motor controls shall~~
759 ~~have the capability of operating the pool pump at a minimum of~~
760 ~~two speeds. The default circulation speed shall be the~~
761 ~~residential filtration speed, with a higher speed override~~
762 ~~capability being for a temporary period not to exceed one normal~~
763 ~~cycle or 24 hours, whichever is less; except that circulation~~
764 ~~speed for solar pool heating systems shall be permitted to run~~
765 ~~at higher speeds during periods of usable solar heat gain.~~

766 ~~(5) Portable electric spas manufactured and sold on or~~



460854

767 after July 1, 2011, for installation in this state must comply
768 with the requirements of the Florida Energy Efficiency Code for
769 Building Construction ~~spa standby power shall not be greater~~
770 ~~than 5(V²/3) watts where V = the total volume, in gallons, when~~
771 ~~spas are measured in accordance with the spa industry test~~
772 ~~protocol.~~

773 Section 22. Paragraph (a) of subsection (2) of section
774 627.711, Florida Statutes, is amended to read:

775 627.711 Notice of premium discounts for hurricane loss
776 mitigation; uniform mitigation verification inspection form.—

777 (2) (a) The Financial Services Commission shall develop by
778 rule a uniform mitigation verification inspection form that
779 shall be used by all insurers when submitted by policyholders
780 for the purpose of factoring discounts for wind insurance. In
781 developing the form, the commission shall seek input from
782 insurance, construction, and building code representatives.
783 Further, the commission shall provide guidance as to the length
784 of time the inspection results are valid. An insurer shall
785 accept as valid a uniform mitigation verification form signed by
786 the following authorized mitigation inspectors:

787 1. A home inspector licensed under s. 468.8314 who has
788 completed at least 3 hours of hurricane mitigation training
789 approved by the Construction Industry Licensing Board which
790 includes hurricane mitigation techniques and compliance with the
791 uniform mitigation verification form and completion of a
792 proficiency exam. ~~Thereafter, home inspectors licensed under s.~~
793 ~~468.8314 must complete at least 2 hours of continuing education,~~
794 ~~as part of the existing licensure renewal requirements each~~
795 ~~year, related to mitigation inspection and the uniform~~



460854

796 ~~mitigation form;~~

797 2. A building code inspector certified under s. 468.607;

798 3. A general, building, or residential contractor licensed
799 under s. 489.111;

800 4. A professional engineer licensed under s. 471.015;

801 5. A professional architect licensed under s. 481.213; or

802 6. Any other individual or entity recognized by the insurer
803 as possessing the necessary qualifications to properly complete
804 a uniform mitigation verification form.

805 Section 23. This act shall take effect July 1, 2011.

806

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

808 And the title is amended as follows:

809 Delete everything before the enacting clause
810 and insert:

811 A bill to be entitled

812 An act relating to building construction and
813 inspection; amending s. 120.80, F.S.; exempting
814 certain rule proceedings relating to the Florida
815 Building Code from certain provisions of ch. 120,
816 F.S.; amending s. 255.252, F.S.; conforming provisions
817 to changes made by the act; amending s. 255.253, F.S.;
818 redefining the term "sustainable building rating" to
819 include the International Green Construction Code;
820 amending ss. 255.257 and 255.2575, F.S.; requiring
821 that state agencies, local governments, and the court
822 system adopt a sustainable building rating system for
823 new and renovated buildings; amending s. 468.8316,
824 F.S.; revising the continuing education requirements



460854

825 for licensed home inspectors; amending s. 468.8319,
826 F.S.; deleting an exemption for certain contractors
827 from the prohibition against performing repairs on a
828 home that has a home inspection report; deleting an
829 obsolete provision; amending s. 468.8323, F.S.;
830 clarifying a provision relating to the contents of a
831 home inspection report; amending s. 468.8324, F.S.;
832 providing alternative criteria for obtaining a home
833 inspector's license; amending s. 481.329, F.S.;
834 providing that nothing in part II of chapter 481 shall
835 preclude any person engaging in the business of
836 landscape design from submitting such plans to
837 government agencies for approval; amending s. 489.103,
838 F.S.; clarifying an exemption from construction
839 contracting regulation relating to Habitat for
840 Humanity; amending s. 489.105, F.S.; adding the term
841 "glass and glazing contractors" to the definition of
842 the term "contractor"; amending ss. 489.107 and
843 489.141, F.S.; conforming cross-references; amending
844 s. 514.028, F.S.; revising the composition of the
845 advisory review board relating to public swimming
846 pools and bathing facilities; amending s. 527.06,
847 F.S.; prohibiting the Department of Agriculture and
848 Consumer Services and other state agencies from
849 requiring compliance with certain national standards
850 for liquefied petroleum gas tanks unless the
851 department or agencies require compliance with a
852 specified edition of the national standards; providing
853 for repeal under certain circumstances; amending s.



460854

854 527.21, F.S.; revising the term "propane" for purposes
855 of the Florida Propane Gas Education, Safety, and
856 Research Act, to incorporate changes to certain
857 national standards in a reference thereto; amending s.
858 553.73, F.S.; revising requirements relating to the
859 installation of mechanical equipment on a roof;
860 amending s. 553.74, F.S.; revising requirements for
861 selecting a member of the Florida Building Commission;
862 amending s. 553.842, F.S.; providing for the approval
863 of certain windstorm products; amending s. 553.909,
864 F.S.; revising the requirements for certain pool-
865 related equipment; amending s. 627.711, F.S.; revising
866 requirements relating to home inspectors conducting
867 hurricane mitigation inspections; providing an
868 effective date.



299742

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2011	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (460854) (with title**
2 **amendment)**

3
4 Delete lines 628 - 630

5 and insert:

6 Section 18. Subsections (1), (2), (3), (9), and (15) of
7 section 553.73, Florida Statutes, are amended to read:

8 553.73 Florida Building Code.—

9 (1) ~~(a)~~ The commission shall adopt, by rule ~~pursuant to ss.~~
10 ~~120.536(1) and 120.54~~, the Florida Building Code and a Florida
11 supplement to the International Code Council's set of codes
12 which contains or incorporates ~~shall contain or incorporate~~ by



299742

13 reference all laws and rules that ~~which~~ pertain to and govern
14 the design, construction, erection, alteration, modification,
15 repair, and demolition of public and private buildings,
16 structures, and facilities and enforcement of such laws and
17 rules, except as otherwise provided in this section.

18 (a) ~~(b)~~ The technical portions of the Florida Accessibility
19 Code for Building Construction shall be contained ~~in their~~
20 ~~entirety~~ in the Florida Building Code supplement to the
21 International Accessibility Code. The civil rights portions and
22 the technical portions of the accessibility laws of this state
23 shall remain as currently provided by law. Any revision or
24 amendments to the Florida Accessibility Code for Building
25 Construction pursuant to part II shall be placed in the next
26 edition of the supplement ~~considered adopted by the commission~~
27 ~~as part of the Florida Building Code~~. Neither the commission nor
28 any local government shall revise or amend any standard of the
29 Florida Accessibility Code for Building Construction except as
30 provided for in part II.

31 (b) ~~(e)~~ The Florida Fire Prevention Code and the Life Safety
32 Code shall be referenced in the Florida Building Code, but shall
33 be adopted, modified, revised, or amended, interpreted, and
34 maintained by the Department of Financial Services by rule
35 ~~adopted pursuant to ss. 120.536(1) and 120.54~~. The Florida
36 Building Commission may not adopt a fire prevention or
37 lifesafety code, and nothing in the Florida Building Code shall
38 affect the statutory powers, duties, and responsibilities of any
39 fire official or the Department of Financial Services.

40 (c) ~~(d)~~ Conflicting requirements between the Florida
41 Building Code and the Florida Fire Prevention Code and Life



299742

42 Safety Code ~~of the state~~ established pursuant to ss. 633.022 and
43 633.025 shall be resolved by agreement between the commission
44 and the State Fire Marshal in favor of the requirement that
45 offers the greatest degree of lifesafety or alternatives that
46 ~~would~~ provide an equivalent degree of lifesafety and an
47 equivalent method of construction. If the commission and State
48 Fire Marshal are unable to agree on a resolution, the question
49 shall be referred to a mediator, mutually agreeable to both
50 parties, to resolve the conflict in favor of the provision that
51 offers the greatest lifesafety, or alternatives that ~~would~~
52 provide an equivalent degree of lifesafety and an equivalent
53 method of construction.

54 (d) ~~(e)~~ Subject to the provisions of this act,
55 responsibility for enforcement, interpretation, and regulation
56 of the Florida Building Code shall be vested in a specified
57 local board or agency, and the terms ~~words~~ "local government"
58 and "local governing body" as used in this part shall be
59 construed to refer exclusively to such local board or agency.

60 (2) The Florida Building Code and supplement must ~~shall~~
61 contain provisions or requirements for public and private
62 buildings, structures, and facilities relative to structural,
63 mechanical, electrical, plumbing, energy, and gas systems,
64 existing buildings, historical buildings, manufactured
65 buildings, elevators, coastal construction, lodging facilities,
66 food sales and food service facilities, health care facilities,
67 including assisted living facilities, adult day care facilities,
68 hospice residential and inpatient facilities and units, and
69 facilities for the control of radiation hazards, public or
70 private educational facilities, swimming pools, and correctional



299742

71 facilities and enforcement of and compliance with such
72 provisions or requirements. Further, the Florida Building Code
73 and supplement must provide for uniform implementation of ss.
74 515.25, 515.27, and 515.29 by including standards and criteria
75 for residential swimming pool barriers, pool covers, latching
76 devices, door and window exit alarms, and other equipment
77 required therein, which are consistent with the intent of s.
78 515.23. Technical provisions ~~to be~~ contained within the Florida
79 Building Code are restricted to requirements related to the
80 types of materials used and construction methods and standards
81 employed in order to meet criteria specified in the ~~Florida~~
82 ~~Building~~ code. Provisions relating to the personnel, supervision
83 or training of personnel, or any other professional
84 qualification requirements relating to contractors or their
85 workforce may not be included within the Florida Building Code,
86 and subsections (4), (6), (7), (8), and (9) are not to be
87 construed to allow the inclusion of such provisions within the
88 ~~Florida Building~~ code by amendment. This restriction applies to
89 both initial development and amendment of the Florida Building
90 Code and supplement.

91 (3) The commission shall use the International Codes
92 published by the International Code Council, the National
93 Electric Code (NFPA 70), or other nationally adopted model codes
94 and standards needed to supplant or apply the base code in
95 Florida ~~select from available national or international model~~
96 ~~building codes, or other available building codes and standards~~
97 ~~currently recognized by the laws of this state, to form the~~
98 foundation for building code standards and the Florida Building
99 Code and supplement. ~~The commission may modify the selected~~



299742

100 ~~model codes and standards as needed to accommodate the specific~~
101 ~~needs of this state. Standards or criteria referenced by the~~
102 ~~selected model codes shall be similarly incorporated by~~
103 ~~reference. If a referenced standard or criterion requires~~
104 ~~amplification or modification to be appropriate for use in this~~
105 ~~state, only the amplification or modification shall be~~
106 ~~specifically set forth in the Florida Building Code. The Florida~~
107 Building Commission may approve technical amendments to the
108 code, subject to ~~the requirements of~~ subsections (8) and (9),
109 after the amendments have been subject to the following
110 conditions:

111 (a) The proposed amendment has been published on the
112 commission's website for a minimum of 45 days and all the
113 associated documentation has been made available to any
114 interested party before any consideration by a ~~any~~ technical
115 advisory committee;

116 (b) In order for a technical advisory committee to make a
117 favorable recommendation to the commission, the proposal must
118 receive a three-fourths vote of the members present at the
119 technical advisory committee meeting and at least half of the
120 regular members must be present in order to conduct a meeting;

121 (c) After technical advisory committee consideration and a
122 recommendation for approval of any proposed amendment, the
123 proposal must be published on the commission's website for at
124 least ~~not less than~~ 45 days before ~~any~~ consideration by the
125 commission; and

126 (d) A ~~Any~~ proposal may be modified by the commission based
127 on public testimony and evidence from a public hearing held in
128 accordance with chapter 120.



299742

129
130 The commission shall incorporate within sections of the Florida
131 Building Code provisions which address regional and local
132 concerns and variations. The commission shall make every effort
133 to minimize conflicts between the Florida Building Code, the
134 Florida Fire Prevention Code, and the Life Safety Code.

135 (9) (a) The commission may approve technical amendments to
136 the Florida Building Code once each year for statewide or
137 regional application upon a finding that the amendment:

138 1. Is needed in order to accommodate the specific needs of
139 this state.

140 2. Has a reasonable and substantial connection with the
141 health, safety, and welfare of the general public.

142 3. Strengthens or improves the Florida Building Code, or in
143 the case of innovation or new technology, will provide
144 equivalent or better products or methods or systems of
145 construction.

146 4. Does not discriminate against materials, products,
147 methods, or systems of construction of demonstrated
148 capabilities.

149 5. Does not degrade the effectiveness of the Florida
150 Building Code.

151
152 ~~Furthermore,~~ The Florida Building Commission may also approve
153 technical amendments to the code once every 3 years in order
154 ~~each year~~ to incorporate into the Florida Building Code its own
155 interpretations of the code which are embodied in its opinions,
156 final orders, declaratory statements, and interpretations of
157 hearing officer panels under s. 553.775(3)(c), but ~~shall do so~~



299742

158 only to the extent that the incorporation of interpretations is
159 needed to modify the foundation codes to accommodate the
160 specific needs of this state. Amendments approved under this
161 paragraph shall be adopted by rule ~~pursuant to ss. 120.536(1)~~
162 ~~and 120.54~~, after the amendments have been subjected to ~~the~~
163 ~~provisions of~~ subsection (3).

164 (b) A proposed amendment must ~~shall~~ include a fiscal impact
165 statement that ~~which~~ documents the costs and benefits of the
166 proposed amendment. Criteria for the fiscal impact statement
167 shall be established by rule by the commission and ~~shall~~ include
168 the impact to local government relative to enforcement, the
169 impact to property and building owners, and the impact as well
170 ~~as~~ to industry, relative to the cost of compliance. A proposed
171 amendment to the base code must also include specific
172 justifications for why this state is different from other areas
173 that have adopted the base code and why the proposed amendment
174 applies to this state and no other area or region where the base
175 code has been adopted.

176 (c) The commission may not approve a ~~any~~ proposed amendment
177 that does not accurately and completely address all requirements
178 for amendment which are set forth in this section. The
179 commission shall require all proposed amendments and information
180 submitted with proposed amendments to be reviewed by commission
181 staff prior to consideration by any technical advisory
182 committee. These reviews shall be for sufficiency only and are
183 not intended to be qualitative in nature. Staff members shall
184 reject any proposed amendment that fails to include a fiscal
185 impact statement. Proposed amendments rejected by members of the
186 staff may not be considered by the commission or any technical



299742

187 advisory committee.

188 (d) Provisions of the Florida Building Code, including those
189 contained in referenced standards and criteria, relating to wind
190 resistance or the prevention of water intrusion may not be
191 amended pursuant to this subsection to diminish those
192 construction requirements; however, the commission may, subject
193 to conditions in this subsection, amend the provisions to
194 enhance ~~those~~ construction requirements.

195
196 ===== T I T L E A M E N D M E N T =====

197 And the title is amended as follows:

198 Between lines 858 and 859

199 insert:

200 Florida Building Code; providing for a supplement to
201 the code; specifying national codes to form the
202 foundation for state building standards and codes;
203 revising how often the Florida Building Commission may
204 approve technical amendments to the code; requiring
205 proposed amendments to base codes to provide
206 justifications; revising requirements relating to the



858798

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2011	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (460854) (with title**
2 **amendment)**

3
4 Between lines 11 and 12
5 insert:

6 Section 2. Paragraph (a) of subsection (11) of section
7 161.053, Florida Statutes, is amended to read:

8 161.053 Coastal construction and excavation; regulation on
9 county basis.—

10 (11) (a) The coastal construction control requirements
11 defined in subsection (1) and the requirements of the erosion
12 projections in subsection (5) do not apply to any modification,



13 maintenance, or repair of any existing structure within the
14 limits of the existing foundation which does not require,
15 involve, or include any additions to, or repair or modification
16 of, the existing foundation of that structure. Specifically
17 excluded from this exemption are seawalls or other rigid coastal
18 or shore protection structures and any additions or enclosures
19 added, constructed, or installed below the first dwelling floor
20 or lowest deck of the existing structure. The Florida Building
21 Commission may not adopt any rule having the effect of limiting
22 any exceptions or exemptions contained within this subsection.

23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete line 816

27 and insert:

28 F.S.; amending s. 161.053, F.S.; prohibiting the
29 Florida Building Commission from adopting rules that
30 limit any exceptions or exemptions provided in
31 subsection (11)(a) of this section; amending s.
32 255.252, F.S.; conforming provisions

33



253746

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (460854)

Delete line 181
and insert:
constructed or rehabilitated by Habitat for Humanity
International,

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 Community Affairs Committee

BILL: SB 830

INTRODUCER: Senator Thrasher

SUBJECT: Labor and Employment

DATE: February 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Pre-meeting
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill prohibits employee organizations from deducting dues, uniform assessments, fines, penalties, or special assessments from public employee wages. The bill allows for a pro rata refund for moneys paid by a public or private employee to a union for political contributions and expenditures. It also prohibits labor organizations from requiring an authorization to spend funds for political contributions and expenditures as a condition to membership.

This bill substantially amends the following sections of the Florida Statutes: 110.114, 112.171, 447.303, and 447.507.

The bill creates section 447.18 of the Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a “right to work” state. Article I, section 6 of the Florida Constitution reads:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.¹ Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.²

Certain restrictions may be placed on a union's ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.³ In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions' judicially created duty of fair representation and nonunion members' First Amendment rights.⁴ The Supreme Court has held that a local government's restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.⁵ In a more recent case, the Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.⁶ The Court held that the state was under no obligation to aid unions in their political activities, and the state's decision not to do so was not abridgement of unions' free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state's support.⁷

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935⁸ and the Federal Labor Management Relations Act of 1947⁹ constitute a comprehensive scheme of regulations guaranteeing to employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. When conduct falls within the scope of the NLRA, the preemption doctrine applies and the state statutes are usually inoperative, unless the National Labor Relations Board has declined jurisdiction or has ceded jurisdiction to a state labor-relations board, or unless the conduct involves an area that the states are permitted to regulate despite the existence of the NLRA.¹⁰ However, when the subject matter of a labor relations dispute or regulatory issue

¹ See *Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff'd* 723 F.2d 918 (11th Cir. 1983).

² *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd.*, 840 So. 2d 1103 (Fla. 1st DCA 2003).

³ *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass'n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff'd on other grounds*, 375 U.S. 96 (1963); *AFSCME Local 3032 v. Delaney*, 458 So. 2d 372 (Fla. 1st DCA 1984).

⁴ *Comm'ns Workers of Am. v. Beck*, 487 U.S. 735 (1988).

⁵ *Charlotte v. Local 660, Int'l Assoc. of Firefighters*, 426 U.S. 283 (1976).

⁶ *Ysursa v. Pocatello Education Assoc.*, 129 S.Ct. 1093 (2009).

⁷ *Id.*

⁸ 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

⁹ 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

¹⁰ Am. Jur. 2d, Labor and Labor Relations § 516.

touches overriding state or local interests, and in the absence of compelling congressional direction, state laws are not preempted by the National Labor Relations Act.¹¹ Other federal labor-relations statutes that can preempt state action include the Labor-Management Reporting and Disclosure Act¹² and the Railway Labor Act.

Florida Statutes

Under the Florida Statutes, employees have the right to form, join, or assist labor unions or labor organizations, or to refrain from such activity.¹³ The rights given by these provisions belong to the individual employee and not to the union.¹⁴ The regulation of labor unions is the responsibility of the Department of Business and Professional Regulation.¹⁵

Part II of chapter 447, F.S., governs labor organizations for public employees, and the Public Employees Relations Commission regulates collective bargaining in Florida. Part II of chapter 447, F.S., has two basic purposes:

- to encourage cooperation between government and its employees and
- to protect the public from the interruption of government services resulting from strikes by government employees.

Under current law, any employee organization which has been certified as a bargaining agent¹⁶ has the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.¹⁷ However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. The deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked by a court due to a violation on the prohibition on strikes, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.¹⁸

“Employee organization” or “organization” means any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees

¹¹ 34 Fla. Jur 2d Labor and Labor Relations § 8.

¹² 29 U.S.C. §§ 401 to 531.

¹³ Section 447.03, F.S.

¹⁴ *Miami Laundry Co. v. Laundry, Linen, Dry Cleaning Drivers, Salesmen & Helpers, Local Union No. 935*, 41 So. 2d 305 (Fla. 1949).

¹⁵ Section 447.02(3), F.S.

¹⁶ Section 447.203, F.S. (“Bargaining agent” means the employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit or its representative.) For more information about this process and Florida Labor Law in general, see PUBLIC EMPLOYEES RELATIONS COMMISSION, A PRACTICAL HANDBOOK ON FLORIDA’S PUBLIC EMPLOYMENT COLLECTIVE BARGAINING LAW (2004) available at <http://perc.myflorida.com/pubs/pubs.aspx> (last visited March 03, 2011).

¹⁷ Section 447.303, F.S.

¹⁸ Section 447.303, F.S.

concerning any matters relating to their employment relationship with a public employer.¹⁹ An employee organization is a type of labor organization.²⁰

Counties, municipalities, and special districts as well as state departments, agencies, bureaus, commissions, and officers are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as is authorized and requested by such employee or employees and for such purpose as is authorized and requested by such persons and pay such sums so deducted as directed by such persons.²¹

Political Contributions

For purposes of campaign financing:

A “contribution” is defined as:

- A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.
- A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combination of these groups.
- The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.²²

An “expenditure” means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. There is an exception for internal newsletters.²³

III. Effect of Proposed Changes:

Section 1 amends s. 110.114, F.S., to prohibit state employee wage deductions for the dues, uniform assessments, penalties, or special assessments of an employee organization. It further prohibits deductions for purposes of political activity, including contributions to a candidate, political party, political committee, committee of continuous existence,²⁴ electioneering

¹⁹ Section 447.203(11), F.S.

²⁰ Section 447.02, F.S.

²¹ Section 110.114 and 112.171, F.S.

²² Section 106.011, F.S.

²³ Section 106.011, F.S.

²⁴ Section 106.011, F.S. defines “committee of continuous existence” to mean any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04, F.S.

communications organization, or organization exempt from taxation under 501(c)(4)²⁵ or s. 527²⁶ of the Internal Revenue Code. The bill deletes the explicit authorization allowing “employee organizations” that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

Section 2 amends s. 112.171, F.S., to provide the same prohibitions in section 1 but for county, municipal, and special district employees.

Section 3 creates s. 447.18, F.S., to state that unless an employee has executed a written authorization, the employee is entitled to a pro rata refund of any money the employee paid to the union that was spent on political contributions or expenditures (see present situation section for the definitions of “contributions” or “expenditures”).²⁷ The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied with a detailed account, provided by the labor organization, of all political contributions and expenditures made by the labor organization in the preceding 24 months. The employee may revoke the authorization at any time. If an employee revokes the authorization, the pro rata refund of the employee for such fiscal year shall be in the same proportion as the proportion of the fiscal year for which the authorization was not in effect. A labor organization may not require an employee to provide the authorization for political contributions and expenditures as a condition of membership in the labor organization.

Section 4 amends s. 447.303, F.S., to prohibit public employers from deducting or collecting money from their employees for an employee organization.

The bill deletes language that:

- Authorizes a bargaining agent to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.
- Allows the employee to revoke authorization for employer deduction with 30 days’ written notice.
- Specifies that reasonable costs to the employer of deductions are a proper subject of collective bargaining.
- Specifies procedures regarding the deduction and revocation process.
- Prohibits the public employer from any involvement in the collection of fines, penalties, or special assessments.

Section 5 amends s. 447.507, F.S., deleting references to deductions or check-offs by employee organizations with respect to penalties for violation of the strike prohibition.

Section 6 states that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

²⁵ 26 U.S.C. § 501(c)(4) (Relating to Civic Leagues, Social Welfare Organizations, and Local Associations of Employees).

²⁶ 26 U.S.C. § 527 (Relating to tax exempt political organizations).

²⁷ Section 106.011, F.S.

Section 7 provides an effective date.

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:

Impairment of Contracts: This bill provides for a refund for certain employee dues, assessments, fines, or penalties unless the employee has executed a written authorization. The written authorization must be executed by the employee separately for each fiscal year. The bill also allows employees to revoke their authorization at any time. As a result, impairment of contract claims may arise.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.²⁸ “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”²⁹ If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.³⁰ The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- whether the law was enacted to deal with a broad, generalized economic or social problem;
- whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- whether the law effects a temporary alteration of the contractual relationships of those within its scope, or whether it works a severe, permanent, and immediate change in those relationships, irrevocably and retroactively.³¹

²⁸ U.S. Const. Art. I, § 10; Art. I, s. 10, Fla. Const.

²⁹ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

³⁰ *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So 2d 681 (Fla. 1980); *Yellow Cab C. v. Dade County*, 412 So 2d 395 (Fla. 3rd DCA 1982). See also *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983) (construing the federal constitutional provision). An important public purpose would be a purpose protecting the public’s health, safety, or welfare. See *Khoury v. Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981).

³¹ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So 2d 774 (Fla. 1979).

To the extent that there are existing contracts that:

- do not include a written authorization as required by the bill;
- extend beyond a given fiscal year; or
- are not revocable by the employee at any time

The bill may raise impairment of contracts issues. A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the act.

For other constitutional issues, see the present situation section.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Employee organizations are likely to have more difficulty collecting dues, fees, assessments and penalties from public employees. Labor organizations are likely to have more difficulty collecting funds from employees for political purposes.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If an employee can get a pro rata refund with a written authorization (because it is freely revocable) or without one, the written authorization itself appears to have little effect, other than assisting the employee to make an informed decision regarding whether they want their moneys used for political purposes.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



600578

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/08/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 87 - 104

and insert:

447.18 Written authorization required to expend certain employee dues, assessments, fines, or penalties.-

(1) A labor organization may not use dues, uniform assessments, fines, penalties, or special assessments paid by an employee to make contributions or expenditures, as defined in s. 106.011, without the express written authorization of the employee. The written authorization must be executed by the employee separately for each fiscal year of the labor



13 organization and shall be accompanied with a detailed account,
14 provided by the labor organization, of all contributions and
15 expenditures made by the labor organization in the preceding 24
16 months. The labor organization shall estimate its expected
17 contributions and expenditures for the fiscal year and shall
18 reduce the amount collected during the fiscal year from each
19 employee that has not executed a written authorization. If the
20 actual contributions and expenditures of the labor organization
21 exceed its estimated contributions and expenditures, the labor
22 organization shall provide a refund at the end of the fiscal
23 year to each employee that has not executed a written
24 authorization.

25 (2) The employee may revoke the authorization described in
26 subsection (1) at any time. If an employee revokes the
27 authorization, the employee shall be entitled to a pro rata
28 reduction of such dues, uniform assessments, fines, penalties,
29 or special assessments for the remainder of the fiscal year of
30 the labor organization. The amount of the reduction shall be
31 based upon the proportion of the contributions and expenditures,
32 as defined in s. 106.011, in relation to the total annual
33 contributions and expenditures of the labor organization for the
34 preceding fiscal year.

35
36 ===== T I T L E A M E N D M E N T =====

37 And the title is amended as follows:

38 Delete lines 13 - 18

39 and insert:

40 creating s. 447.18, F.S.; prohibiting labor
41 organizations from collecting dues, assessments,



600578

42 fines, or penalties without written authorization;
43 providing for a refund to employees that have not
44 given a written authorization in certain situations;
45 requiring that the labor organization



960236

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/08/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 180

and insert:

Section 7. This act shall take effect July 1, 2011 and apply to all collective bargaining agreements entered into after that date.

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

And the title is amended as follows:

Delete line 31

and insert:



960236

13
14

effective date and applying prospectively to
collective bargaining agreements.

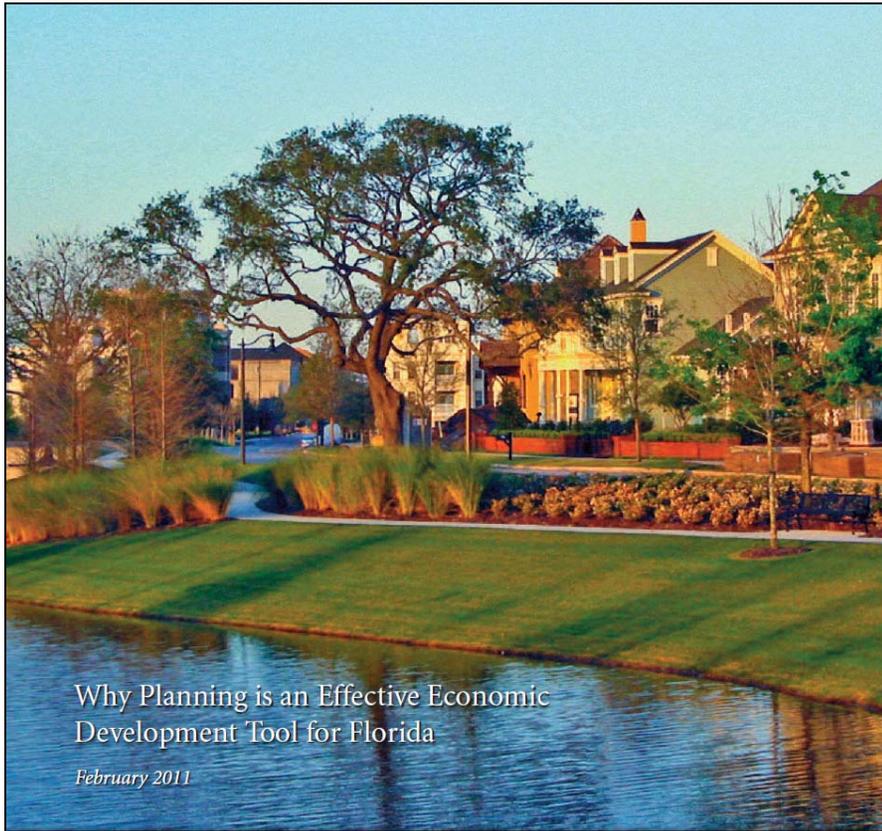
Planning for Quality Growth and Economic Prosperity for Florida's Future

Presentation to the Senate Committee on Community
Affairs

February 21, 2011

Janet Bowman, Director of Legislative Policy &
Strategies

The Nature Conservancy



Why Planning is an Effective Economic
Development Tool for Florida

February 2011



SAVING SPECIAL PLACES • FIGHTING SPRAWL • BUILDING BETTER COMMUNITIES • 1000FRIENDSOFFLORIDA.ORG

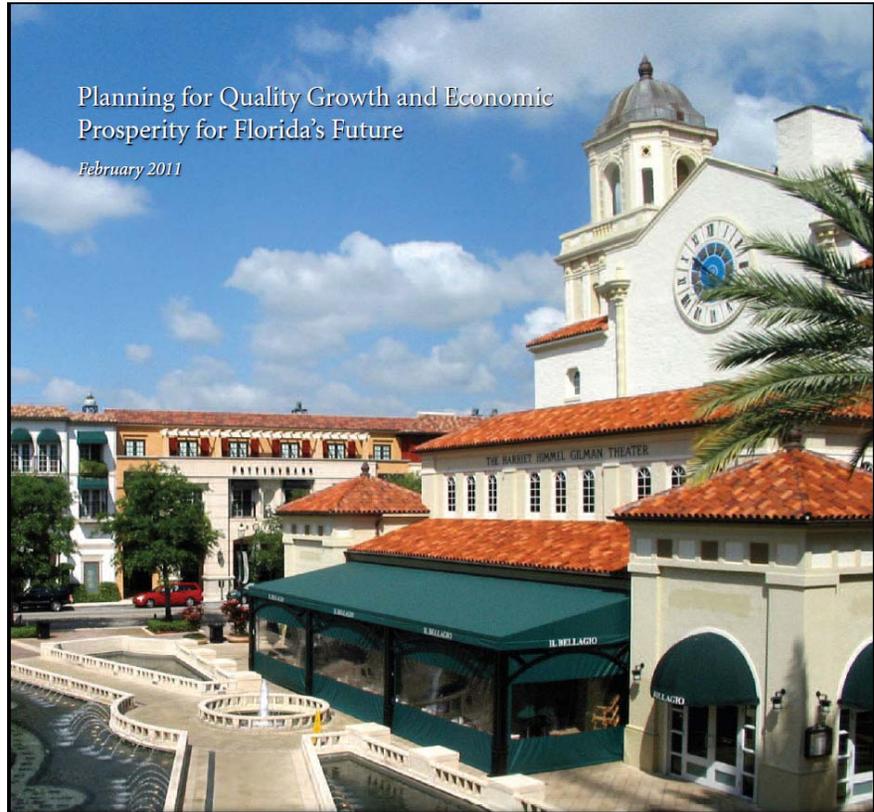


Audubon OF FLORIDA

CLEAN WATER ACTION
FLORIDA

The Nature
Conservancy
Protecting nature. Preserving life.

Tropical Audubon Society



Planning for Quality Growth and Economic
Prosperity for Florida's Future

February 2011



SAVING SPECIAL PLACES • FIGHTING SPRAWL • BUILDING BETTER COMMUNITIES • 1000FRIENDSOFFLORIDA.ORG



Audubon OF FLORIDA

CLEAN WATER ACTION
FLORIDA

The Nature
Conservancy
Protecting nature. Preserving life.

Tropical Audubon Society



Florida's Environment an Important Economic Asset

- Agriculture, tourism and development all depend on a clean environment.
- Protecting natural resources is key to ensure the prosperity and quality of life we all seek.

Comprehensive Planning as an Economic Development Tool

- Innovative planning opens new market opportunities to stimulate the economy and create new jobs.
- Cost-efficient planning reduces taxpayer infrastructure costs.
- A statewide system of planning provides certainty for all stakeholders.

Important Questions for Growth Management Reform—Role of the State

- What role should the state play in the review, analysis and amendment of local comprehensive plans?
- How can the state nurture future economic growth in Florida and steer land development toward the most beneficial locations?
- How can state planning better protect essential resources, ecosystems, and ecosystem services, and prevent local decisions from harming those resources important to the state as a whole?

Important Questions for Growth Management Reform—Saving costs and improving process.

- How can the state encourage cost-efficient land development and infrastructure to improve the quality of life without requiring taxpayer subsidies?
- How can the transactional costs and approval times for land development be lowered for developers, landowners and others to stimulate economic recovery?
- How can opportunities for citizens to participate in their local planning process be improved?

RECOMMENDATIONS

Protect Significant Statewide Interests

- Place increased emphasis on protecting major ecosystems, significant geographic areas, viable wildlife corridors and water quality and supply and reduce hazard risks.
- Task the state land planning agency with greater focus on identified state resource areas including Aquatic Preserves, Areas of Critical Concern, the Everglades, the Wekiva Basin, viable wildlife corridors, river corridors and springsheds and publicly owned lands.
- Protect military investment in Florida by ensuring that development adjacent to military lands does not harm its ability to fulfill its mission.

Save Taxpayer Dollars

- Ensure new development covers the cost of infrastructure and services.
- Reduce/eliminate state reviews within recognized urban development boundaries, infill and growth corridors.
- Waive DRI, need and transportation concurrency within these areas.
- Incentivize cost-efficient compact development.

Streamline the State Planning Process

- Maintain an independent state planning agency with appropriate economic development promotion.
- Focus state planning role on the edge of developed areas.
- Create a vision-based state plan.
- Recognize limits of “one size fits all” – tailor controls with stakeholders.

Streamline the State Planning Process

- Link state transportation investments to state plan focused on dense urban land areas.
- Identify appropriate hubs and corridors for industrial and rural development.
- Enhance role of independent state planning agency in technical and grant assistance.

Targeted Infrastructure Investment

- Link state transportation investment decisions to priorities in the state comprehensive plan and within dense urban land areas.
- Identify appropriate hubs and corridors for industrial development and appropriate and compatible rural development to ensure more efficient use of state infrastructure dollars and safeguard sensitive natural areas.
- Enhance the role of an independent state planning agency in providing technical and grant assistance to incentive local planning initiatives.

Summary

- Lessen state oversight within developed areas to streamline the planning process but place increased emphasis on protecting significant water and natural resources outside of urban development boundaries.
- Emphasize savings for taxpayers through efficient infrastructure planning.
- Coordinate state investments through a vision-based state plan.
- Maintain an independent state planning function.
- Focus on significant statewide issues, especially natural systems.



Questions