Tab 1	**CS/SB 426** by **TR, Boyd**; (Compare to CS/H 00267) State Preemption of Seaport Regulations

314294	A	S	RCS	CA, Boyd	Delete L.113 - 137:	03/25 09:25 AM

Tab 2	**SB 750** by **Gruters**; (Similar to CS/H 00337) Impact Fees

355484	D	S	RCS	CA, Gruters	Delete everything after	03/26 08:49 AM
399928	AA	S	RCS	CA, Garcia	Delete L.124 - 125.	03/26 08:49 AM

Tab 3	**CS/SB 804** by **CF, Harrell**; (Similar to CS/CS/H 00319) Substance Abuse Services

763484	A	S	RCS	CA, Harrell	Delete L.31 - 151:	03/24 02:21 PM

Tab 4	**SB 872** by **Rodrigues**; (Similar to CS/H 00665) Homeowners' Associations

Tab 5	**SB 998** by **Brodeur**; (Similar to CS/H 00823) Contractor Advertising

Tab 6	**SB 1212** by **Rodriguez (CO-INTRODUCERS) Hutson**; (Identical to H 00369) Construction Contracting Exemptions

Tab 7	**SB 1254** by **Bean**; (Compare to H 01519) Ad Valorem Assessments

Tab 8	**SB 1490** by **Pizzo**; (Similar to H 01005) Investments by Condominium Associations

159428	A	S	L	RCS	CA, Pizzo	Delete L.119 - 275:	03/25 09:02 AM

Tab 9	**CS/SB 1620** by **TR, Brandes**; (Similar to H 01289) Autonomous Vehicles

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bradley, Chair
Senator Garcia, Vice Chair

MEETING DATE: Wednesday, March 24, 2021
TIME: 8:30—11:00 a.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator Bradley, Chair; Senator Garcia, Vice Chair; Senators Baxley, Brodeur, Cruz, Hooper, Hutson, Polsky, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD L. TUCKER CIVIC CENTER 505 W. PENSACOLA STREET, TALLAHASSEE 32301		
1	**CS/SB 426** Transportation / Boyd (Compare CS/H 267)	State Preemption of Seaport Regulations; Prohibiting a local ballot initiative or referendum from restricting maritime commerce in the seaports of this state; providing that certain local initiatives or referendums relating to such restrictions are prohibited and void; prohibiting certain municipalities and municipal special districts from adopting specified restrictions or regulations on maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel; providing a directive to the Division of Law Revision, etc. TR 03/10/2021 Fav/CS CA 03/24/2021 Fav/CS RC	Fav/CS Yeas 5 Nays 3
2	**SB 750** Gruters (Similar CS/H 337)	Impact Fees; Specifying instances when a local government or special district may collect an impact fee; requiring local governments and special districts to credit against the collection of impact fees any contribution related to public facilities; providing annual limitations on impact fee rate increases; requiring school districts to report specified items regarding impact fees, etc. CA 03/24/2021 Fav/CS FT AP	Fav/CS Yeas 5 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 804** Children, Families, and Elder Affairs / Harrell (Similar CS/CS/H 319)	Substance Abuse Services; Providing criminal penalties for making certain false representations or omissions of material facts when applying for service provider licenses; requiring the Department of Children and Families to suspend a service provider's license under certain circumstances; expanding the applicability of certain exemptions for disqualification to applications for certification of a recovery residence or a recovery residence administrator, respectively; prohibiting certain dwellings used as recovery residences from being reclassified for purposes of enforcing the Florida Building Code, etc. CF 03/02/2021 Fav/CS CA 03/24/2021 Fav/CS RC	Fav/CS Yeas 8 Nays 0
4	**SB 872** Rodrigues (Similar H 665, Compare CS/H 867, CS/S 630)	Homeowners' Associations; Providing applicability for governing documents and amendments relating to leasing which are enacted after a specified date; providing an exception; providing applicability; specifying when a change of ownership does or does not occur for certain purposes, etc. RI 03/16/2021 Favorable CA 03/24/2021 Favorable RC	Favorable Yeas 8 Nays 0
5	**SB 998** Brodeur (Similar CS/H 823, Compare CS/H 1209, CS/S 1408)	Contractor Advertising; Providing that alarm system contractors are not required to state their certification and registration numbers in or on certain advertisements if the contractor maintains an Internet website that displays such information and the advertisement directs consumers to the website; authorizing a contractor to begin repairing certain fire alarm systems after filing an application for a required permit but before receiving the permit, etc. RI 03/16/2021 Favorable CA 03/24/2021 Favorable RC	Favorable Yeas 8 Nays 0
6	**SB 1212** Rodriguez (Identical H 369)	Construction Contracting Exemptions; Exempting a member of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida from certain construction contracting regulations when constructing specified structures, etc. RI 03/01/2021 Favorable CA 03/24/2021 Favorable RC	Favorable Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1254** Bean (Compare H 1519)	Ad Valorem Assessments; Adding exceptions to the definition of the term “change of ownership” for purposes of a certain homestead assessment limitation; providing that changes, additions, or improvements, including ancillary improvements, to nonhomestead residential property damaged or destroyed by misfortune or calamity must be assessed upon substantial completion; providing that certain changes, additions, or improvements must be reassessed at just value in subsequent years, etc. CA 03/24/2021 Favorable FT AP	Favorable Yeas 8 Nays 0
8	**SB 1490** Pizzo (Similar H 1005, Compare CS/H 615, CS/H 867, CS/CS/S 56, CS/S 630)	Investments by Condominium Associations; Requiring condominium associations to maintain a copy of their investment policy statement as an official record; requiring certain association boards to annually develop an investment policy statement and select an investment adviser who meets specified requirements; authorizing investment fees and commissions to be paid from invested reserve funds or operating funds; requiring investment advisers to act as association fiduciaries; specifying that certain votes are required to make specified investments; exempting registered investment advisers from certain provisions relating to contracts for products and services, etc. RI 03/16/2021 Favorable CA 03/24/2021 Fav/CS RC	Fav/CS Yeas 8 Nays 0
9	**CS/SB 1620** Transportation / Brandes (Similar H 1289)	Autonomous Vehicles; Defining the term “low-speed autonomous delivery vehicle”; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations, etc. TR 03/10/2021 Fav/CS CA 03/24/2021 Favorable RC	Favorable Yeas 8 Nays 0

Other Related Meeting Documents

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021
Meeting Date

CS/SB 426
Bill Number (if applicable)

314294
Amendment Barcode (if applicable)

Topic Preemption of Seaport Regulations

Name Michael Rubin

Job Title VP Government Affairs

Address 502 East Jefferson Street
Street

Phone 850-222-8028

Tallahassee FL 32301
City *State* *Zip*

Email mike.rubin@flaports.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Ports Council

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03/24/2021
Meeting Date

426
Bill Number (if applicable)

Topic State Preemption of Seaport Regulations

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Harbor Pilots Association & Marquesas, LLC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

March 24, 2021
Meeting Date

426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic State Preemption of Seaport Regulations

Name Josh Aubuchon

Job Title Attorney

Address 201 East Park Avenue, Suite 200B
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-583-2400

Email josh@dacfl.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Ports for Economic Independence

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21
Meeting Date

SB 426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic State Preemption of Seaport Regulatio

Name Holly Parker Curry

Job Title Florida Policy Manager

Address 1229 Mitchell Ave.
Street

Phone 850-567-3393

Tallahassee FL 3230
City *State* *Zip*

Email hparker@surfrider.c

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Surfrider Foundation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-24-21
Meeting Date

426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Seagrass Preemptions

Name Jessica Lewis

Job Title lobbyists

Address _____ Phone 910-617-2311
Street

_____ Email j.olivia.lewis@gmail.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Sierra Club

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021
Meeting Date

426
Bill Number (if applicable)

Topic State Preemption of Seaport Regulations
Amendment Barcode (if applicable)

Name Jonathan Webber

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Street

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Tallahassee — *City* | FL — *State* | 32303 — *Zip*

Email jwebber@fcvoters.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021 9:00am
Meeting Date

SB 426
Bill Number (if applicable)

Topic State Preemption of Seaport Regulations

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Legislative Affairs Director

Address 2300 Virginia Ave.
Street

Phone 772-708-3954

Fort Pierce FL 34982
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Email FogartyN@stlucieco.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing St. Lucie County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Ports Preemption

Name Ida V. Eskamani

Job Title

Address
Street

Phone

City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

SB 426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Seaports

Name Jane West

Job Title Policy + Planning Dir

Address 24 Cathedral Pl
Street

St Aug FL 32084
City *State* *Zip*

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Email jwest@1000fof.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

Late Rec'd form

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021
Meeting Date

SB 426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic State Preemption of Seaport Regulations

Name Joseph Salzverg

Job Title

Address 301 S. Bronough Street
Street

Tallahasse FL 32301
City *State* *Zip*

Phone 850-577-9090

Email joseph.salzverg@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Key West

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

Late Rec'd form

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

426
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Seaport Regulation

Name Travis Moore

Job Title

Address P.O. Box 2020
Street

St. Petersburg FL 33731
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Phone 727.421.6902

Email travis@moore-relations.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Defenders of Wildlife

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/CS/SB 426
INTRODUCER:	Community Affairs Committee; Transportation Committee; and Senator Boyd
SUBJECT:	State Preemption of Seaport Regulations
DATE:	March 24, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 426 prohibits a local ballot initiative or referendum from restricting maritime commerce in Florida's seaports. The prohibition applies, but is not limited, to restricting such commerce based on any of the following:

- Vessel type, size, number, or capacity
- Number, origin, nationality, embarkation, or disembarkation of passenger or crew or their entry into this state of any local jurisdiction.
- Source, type, loading, or unloading of cargo.
- Environmental or health records of a particular vessel or vessel line.

The bill prohibits and voids a local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy in a local ballot initiative or referendum in violation of the prohibition, adopted before, on, or after the effective date of the act.

A municipality or political subdivision thereof, or a special district other than one established for port management by special act of the Legislature, is prohibited from restricting maritime commerce in the seaports with respect to any federally authorized passenger cruise vessel based on any of the following:

- Vessel type, size, number, or capacity, except when the port is physically unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.

- Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.
- Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.
- Environmental or health records of a particular passenger cruise vessel or cruise line.

The bill prohibits and voids any conflicting provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum existing before, on, or after the effective date of the act.

The bill exempts municipalities that have been consolidated with a county (i.e., the City of Jacksonville) and municipal governments that are also a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) from the prohibitions and restrictions imposed by the bill.

The bill provides that the restrictions imposed by the bill do not otherwise limit the authority of a relevant governmental entity to manage seaport commerce as provided by Florida law, issue and enforce tariffs, and enter into contracts related to the port facilities.

The bill takes effect upon becoming law.

The fiscal impact to state and local governments and the private sector is indeterminate. See the "Fiscal Impact Statement" heading below.

II. Present Situation:

Regulation of Vessels and Maritime Commerce

Generally, federal law controls[1] the regulation of maritime commerce[2], navigation,[3] seaport security[4], the regulation of commercial vessels, shipping[5] and common carriers, vessel-related environmental and pollution standards,[6] disease and quarantine efforts,[7] and other aspects of admiralty law in and upon the navigable waters of the United States. The U.S. Supreme Court

[1] *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Where Congress has explicitly preempted state law in an area, federal law supplants all state regulation in that area. Even in the absence of express congressional intent to preempt state law, federal preemption is implied where (1) state law "actually conflicts with federal law" or (2) federal law so thoroughly occupies a legislative field "as to make reasonable the inference that Congress left no room for the States to supplement it."
[2] *United States v. Locke*, 529 U.S. 89, 103 (2000). ("The existence of the treaties and agreements on standards of shipping is of relevance, of course, for these agreements give force to the longstanding rule that the enactment of a uniform federal scheme displaces state law, and the treaties indicate Congress will have demanded national uniformity regarding maritime commerce.")
[3] *See* 33 U.S.C. §§ 1221 et seq. The Ports and Waterways Safety Act of 1972 (PWSA) authorizes the U.S. Coast Guard to establish vessel traffic service/separation schemes (VTSS) for ports, harbors, and other waters subject to congested vessel traffic. The VTSS apply to commercial ships, other than fishing vessels, weighing 300 gross tons (270 gross metric tons) or more. The Oil Pollution Act amended the PWSA to mandate that appropriate vessels must comply with the VTSS. The PWSA was amended by the Port and Tanker Safety Act (PTSA) of 1978 (Public Law 95-474). Under the PTSA, Congress found that increased supervision of vessel and port operations was necessary to reduce the possibility of vessel or cargo loss, or damage to life, property or the marine environment and ensure that the handling of dangerous articles and substances on the structures in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements. *NOAA, Ports and Waterways Safety Act,* PortsandWaterwaysSafetyAct.pdf (noaa.gov) (last visited March 3, 2021).
[4] For example, the Maritime Transportation Security Act of 2002 created a broad range of programs to improve the security conditions at the ports and along American waterways, such as identifying and tracking vessels, assessing security preparedness, and limiting access to sensitive areas.
[5] *See* Shipping Act of 1984. 46 U.S.C. §§ 40101(1), 40101(2). One purpose of the Act is to 'establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs.' A second purpose is to ensure that U.S.-flag ships are on a level playing field with foreign vessels.
[6] In 1973, the International Maritime Organization (IMO) adopted the International Convention for the Prevention of Pollution by Ships and subsequently modified it by Protocol in 1978. The Convention is widely known as MARPOL 73/78. Its objective is to limit ship-borne pollution by restricting operational pollution and reducing the possibility of accidental pollution. MARPOL specifies standards for stowing, handling, shipping, and transferring pollutant cargoes, as well as standards for discharge of ship-generated operational wastes. Acceptance of the convention by national government obliges them to make the requirements part of domestic law. USCG, *Office of Commercial Vessel Compliance*, https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Domestic-Compliance-Division/MARPOL/ (last visited Mar. 1, 2021).
[7] See John T. Oliver, *Legal and Policy Factors Governing the Imposition of Conditions on Access and Jurisdiction Over Foreign-Flag Vessels in U.S. Ports*, 5 S.C. J. Int'l. L. & Bus. 209, 2 (2009) footnotes 153 & 154. 42 U.S.C. § 267(a): "[The Surgeon General] shall from time to time select suitable sites for and establish such additional ... anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States." "It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations ...." U.S.C. § 268(b). Congress has provided statutory authority for controlling infectious diseases, including quarantining of suspect vessels and their crews and passengers. 42 U.S.C. §§ 264-272. The President regularly updates the list of communicable diseases subject to quarantine. Exec. Order No. 13,295, Apr. 4, 2003, 68 Fed. Reg. 17,255 (Apr. 9, 2003), reprinted in 42 U.S.C. § 264, as amended by Exec. Order No. 13,375, Apr. 1, 2005, 70 Fed. Reg. 17299 (Apr. 5, 2005). He has also delegated to the Secretary of Health and Human Services his authority to carry out duties under the statute.

has consistently determined that federal supremacy principles mandate preemption of efforts of state and local governments to impose conditions on port entry that federal laws already cover.[8]

The United State Coast Guard (USCG) regulates all commercial vessels, including cruise vessels, calling on U.S. ports, regardless of the vessel's county of origin, and inspect each foreign-flagged cruise vessel calling on a U.S. port at least twice a year to ensure compliance with certain treaties and U.S. regulations governing safety, security, and environmental protections.[9]

Federal law does allow a state to regulate its ports and waterways, so long as the regulation is based on the peculiarities of local waters that call for special precautionary measures.[10] For example, Title I of the Ports and Waterways Safety act does not preempt a state regulation directed to local circumstances and problems, such as water depth and narrowness, idiosyncratic to a peculiar port or waterway, if the USCG has not adopted regulations on the subject or determined that regulation is unnecessary or inappropriate.[11] A review of relevant case law suggests, however, that clear identification of the extent of a state's authority to regulate its ports and waterways is nonetheless elusive.

As for county and municipal governments, even when a state has authority concurrent with federal law, sometimes counties and cities do not. As an example, federal law relating to marine sanitation devices and discharges, 33 U.S.C. §1322(f)(A) provides that "no State or political subdivision" may adopt and enforce a statute or regulation that is more stringent than those promulgated under that section, while 33 U.S.C. §1322(f)(B) provides that "a State" may adopt and enforce a statute or regulation with respect to the design, manufacture, installation, or use of any marine sanitation device on a houseboat.

Federal Preemption

With respect to interstate commerce, the U.S. Supreme Court has discussed the historical development of and the modern test for any challenge to a state's authority to regulate:

> Modern precedents rest upon two primary principles that mark the boundaries of a State's authority to regulate interstate commerce. First, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce. State laws that discriminate against interstate commerce face "a virtually *per se* rule of invalidity." State laws that "regulat[e] even-handedly to effectuate a legitimate local public interest…will be upheld unless the

[8] *See United States v. Locke*, 471 U.S. 84 (1985).
[9] U.S. House of Representatives, Subcommittee on Coast Guard and Maritime Transportation, *Hearing on "Commercial and Passenger Vessel Safety: Challenges and Opportunities, p. 4 (Nov. 9 2019),* available at https://www.congress.gov/116/meeting/house/110181/documents/HHRG-116-PW07-20191114-SD001.pdf (last visited March 3, 2021).
[10] Ports and Waterways Safety Act of 1972, 33 U.S.C. §1223(a) (2006). There is no pre-emption by operation of Title I of the Ports and Waterways Safety Act if the state regulation is directed to local circumstances and problems, such as water depth and narrowness, idiosyncratic to a particular port or waterway, and if the Coast Guard has not adopted regulations on the subject or determined that regulation is unnecessary or inappropriate.
[11] *See United State v. Locke*, 529 U.S. 89,109 (2000).

> burden imposed on such commerce *is clearly excessive in relation to the putative local benefits."* Although subject to exceptions and variations, these two principles guide the court in adjudicating cases challenging state laws under the Commerce Clause.[12]

State Preemption

Municipalities and counties derive broad home rule authority from the Florida Constitution and general law. Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.[13]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[14] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[15] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[16] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[17]

Florida Ports

Florida is home to 15 deep-water seaports, including: Port Canaveral, Port Citrus, Port Everglades, Port of Fernandina, Port of Fort Pierce, Port of Jacksonville, Port of Key West, Port Manatee, Port of Miami, Port of Palm Beach, Port of Panama City, Port of Pensacola, and Port of Port St. Joe, Port of St. Petersburg, and Port of Tampa.[18]

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[12] *See South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080, 2091 ((2018). Citations and internal quotation marks omitted. Emphasis added.

[13] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009). Historically, certain types of local action have been found to frustrate the purpose of state law, and, thus, conflict has resulted. Specifically, Florida jurisprudence makes clear that local action cannot 1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute; 2) provide for a more stringent penalty than that allowed by state statute; 3) prohibit behavior otherwise allowed by state legislation; 4) allow behavior otherwise prohibited by state statute; or 5) provide for a different method for doing a particular act than the method proscribed by state legislation. Generally, a local government can pass more stringent regulations than those provided for by statute. However, if the state legislation expressly forbids a stricter regulation or if the imposition of a stricter regulation frustrates the purpose of the statute, the local government must abstain. As an example of express prohibition, current law recognizes that the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the State Legislature may act, except among other items, "Any subject expressly preempted to state or county government by the constitution or by general law." Section 166.021(3)(c), F.S.

[14] See City of Hollywood v. Mulligan, 934 So. 2d 1238, 1243 (Fla. 2006); Phantom of Clearwater, Inc. v. Pinellas County, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in Phantom of Brevard, Inc. v. Brevard County, 3 So. 3d 309 (Fla. 2008).

[15] Mulligan, 934 So. 2d at 1243.

[16] Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010).

[17] See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami, 812 So.2d 504 (Fla. 3d DCA 2002).

[18] For a map of Florida's deep-water seaports which indicates the primary streams of commerce (i.e. cargo, cruise passenger, other, or a combination thereof) see DOT, *Seaport System*, https://www.fdot.gov/seaport/seamap.shtm (last visited March 5, 2021).

Approximately half of Florida's deep-water ports are organized as independent or dependent special districts created by special act,[19] and the remainder are organized within their respective municipal or county government. Four ports (Port of Key West, Port of St. Pete, Port of Panama City, Port of Pensacola) are departments, or an agency, of the respective municipalities. The Port of Key West is the only one of the four ports that currently offers cruise ship docking and related services.

According to the Florida Ports Council, Florida seaports generate nearly 900,000 direct and indirect jobs and contribute $117.6 billion in economic value to the state through cargo and cruise activities. Florida maritime activities account for approximately 13 percent of Florida's gross domestic product while contributing $4.2 billion in state and local taxes.[20] In 2018, approximately 110,268,130 tons of cargo and 16,835,986 passengers moved through Florida's seaports.[21]

State Law Relating to Seaports

Florida Seaport Transportation and Economic Development Program

In 1990, the Legislature created ch. 311, F.S., authorizing the Florida Seaport Transportation and Economic Development (FSTED) Program.[22] The program established a collaborative relationship between the Florida Department of Transportation (DOT) and the seaports and currently codifies an annual minimum of $25 million for a seaport grant program.[23] FSTED funds are to be used on approved projects on a 50-50 matching basis.[24] Funding grants under the FSTED program are limited to the following port facilities or port transportation projects:

- Transportation facilities within the jurisdiction of the port;
- The dredging or deepening of channels, turning basins, or harbors;
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with the foregoing;
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce;
- The acquisition of land to be used for port purposes;
- The acquisition, improvement, enlargement, or extension of existing port facilities;
- Environmental protection projects: which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites; or which result from the funding of eligible projects;

[19] *See* Florida Department of Economic Opportunity, *Special District Accountability Program*, available at http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited March 5, 20212).
[20] Florida Ports Council, *The Florida System of Seaports*, https://flaports.org/about/the-florida-system-of-seaports/ (last visited March 5, 2021).
[21] FDOT, *2018 Update of Tables and Figures*, p.4, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/seaport/pdfs/2018-update-of-tables-and-figures-florida-seaport-system-plan-717752830.pdf?sfvrsn=e1879b60_2 (last visited March 5, 2021).
[22] Chapter 90-136, Laws Of Fla.
[23] Sections 311.07 and 311.09, F.S.
[24] Section 311.07(3)(a), F.S.

- Transportation facilities which are not otherwise part of DOT's adopted Work Program.[25]
- Intermodal access projects;
- Construction or rehabilitation of port facilities, excluding any park or recreational facility, in ports listed in s. 311.09(1), F.S.,[26] with operating revenues of $5 million or less, provided that such project creates economic development opportunities, capital improvements, and positive financial returns to such ports; and
- Seaport master plan or strategic plan development updates, including the purchase of data to support such plans or other provisions of the Community Planning Act.[27]

The FSTED program is managed by the FSTED Council, which consists of the port director, or director's designee of the 15 deep-water ports, the Secretary of DOT or his or her designee, and the Executive Director of the Department of Economic Opportunity or his or her designee.[28] In order for a project to be eligible for consideration by the FSTED Council, a project must be consistent with the port's comprehensive master plan, which is incorporated as part of the approved local government comprehensive plan.

Community Planning Act

The Community Planning Act includes four primary references to deep-water ports:

Section 163.3177(6)(b), F.S., identifies different levels of transportation analysis that must be included in a local government's comprehensive plan transportation element based on the size and location of the local government and whether it is in the metropolitan planning area of a Metropolitan Planning Organization. At a minimum, traffic circulation issues related to ports must be addressed as well as plans for port facilities. Additionally, cities greater than 50,000 persons and counties greater than 75,000 persons must address "Plans for port . . . and related facilities coordinated with the general circulation and transportation element." Some or all of these requirements can be addressed in the port master plan.

Section 163.3177(6)(g)8., F.S., requires that the comprehensive plan's coastal management element "Direct the orderly development, maintenance, and use of ports to facilitate deep-water commercial navigation and other related activities." This requirement can be addressed in the port master plan.

Section 163.3178(2)(k), F.S., requires that port master plans be included in the local government's coastal management element and requires that port master plans identify existing port facilities and any proposed expansions. To the extent that they are applicable, port master plans must also address the following requirements:

- Provide a land use and inventory map of existing coastal uses;
- Analyze the environmental, socioeconomic, and fiscal impact of development;
- Analyze effects of existing drainage systems on estuarine water quality;
- Outline principles for hazard mitigation and protection of human life;

[25] FDOT's Work Program is adopted pursuant to s. 339.135, F.S.

[26] The ports listed in s. 311.09(1), F.S., are the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

[27] Part II of Ch. 163, F.S.

[28] Section 311.09(1), F.S.

- Outline principles for protecting existing beach and dune systems;
- Outline principles to eliminate inappropriate and unsafe development;
- Identify public access to shoreline areas and preservation of working waterfronts;
- Designate coastal high-hazard areas and mitigation criteria;
- Outline principles to assure that public facilities will be in place; and
- Mitigate the threat to human life and protect the coastal environment.

Section 163.3178(3), F.S., provides that certain eligible port expansions, projects, and facilities, both on the port and within three miles of the port, cannot be designated as Developments of Regional Impact if they are consistent with an in compliance port master plan.

Port Facility Financing

Section 315.03, F.S. authorizes any county, port district,[29] port authority,[30] municipality or certain governmental units created pursuant to the Florida Interlocal Cooperation Act[31] that includes at least one deep-water port to:

- Exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned, or constructed by the local government(s).
- Operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots.
- Lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such period or periods and subject to such conditions as the governing body shall determine to be in the best interests of the local government(s).

Vessel Movement and Related Fees

Section 313.22, F.S., authorizes ports to regulate vessel movements within its jurisdiction, whether involving public or private facilities or areas, by:

- Scheduling vessels for use of berths, anchorages, or other facilities at the port.
- Ordering and enforcing a vessel, at its own expense and risk, to vacate or change position at a berth, anchorage, or facility, whether public or private, in order to facilitate navigation, commerce, protection of other vessels or property, or dredging of channels or berths.
- Designating port facilities for the loading or discharging of vessels.
- Assigning berths at wharves for arriving vessels.

Ports are authorized to establish fees and compensation for these services when provided by the port.

[29] A "port district" is any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities. Section 315.02(1), F.S.

[30] A "port authority" is created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law. Section 315.02(2), F.S.

[31] Section 163.01(7)(d), F.S.

Harbor Safety

Ports, in agreement with the United States Coast Guard, state harbor pilots, and other ports in its operating port area, must adopt guidelines for:

- Minimum bottom clearance for each berth and channel,
- The movement of vessels, and
- Radio communications of vessel traffic for all commercial vessels entering and leaving its harbor channels.[32]

County Seaport Projects and Facilities

Section 125.012, F.S. confers broad authority to counties to provide for port improvements within their jurisdiction, including the ability to:

- Construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, repair, and operate any project[33], either within or without the territorial boundaries of the county.
- Subject to the jurisdiction of the United States and the State of Florida and the general laws of Florida relating to dredging and filling, to construct, establish, and improve harbors in the county and all navigable and nonnavigable waters connected therewith; to regulate and control all such waters; to construct and maintain such canals, slips, turning basins, and channels and upon such terms and conditions as may be required by the United States; and to enact, adopt, and establish by resolution rules and regulations for the complete exercise of jurisdiction and control over all such waters.
- To appoint shipping masters for ports or harbors under its control, to determine their qualifications, and to adopt rules and regulations prescribing their duties.
- To license stevedores as independent contractors for hire to handle stevedoring at and in the harbors and airports in the county, to fix the terms and conditions of such licenses, and to determine the fees to be charged for same.
- To make and enter into all contracts and agreements and to do and perform all acts and deeds necessary and incidental to the performance of its duties and the exercise of its powers.
- To fix, regulate, and collect rates and charges for the services and facilities furnished by any project under its control; to establish, limit, and control the use of any project as may be deemed necessary to ensure the proper operation of the project; to impose sanctions to promote and enforce compliances; to prescribe rules and regulations and impose penalties and sanctions to ensure the proper performance of the duties of any stevedore or of any shipping master and the enforcement of any rule or regulation which the county may adopt in the regulation of the ports, harbors, wharves, docks, airports, and other projects under its control.
- To fix the rates of wharfage, dockage, warehousing, storage, and port and terminal charges for the use of the port and harbor facilities located within or without the county and owned or operated by the county; and to fix and determine the rates, tolls, and other charges for the use of harbor and airport improvements and harbor and airport facilities located within or without

[32] Section 313.23, F.S.

[33] Section 125.011(2)(a), F.S., defines "project" as one or more of the following: "harbor, port, shipping, and airport facilities of all kinds and includes, but is not limited to, harbors, channels, turning basins, anchorage areas, jetties, breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers, slips, bulkheads, public landings, warehouses, terminals, refrigerating and cold storage plants, railroads and motor terminals for passengers and freight, rolling stock, car ferries, boats, conveyors and appliances of all kinds for the handling, storage, inspection and transportation of freight and the handling of passenger traffic, … and the loading and unloading and handling of passengers, mail, express and freight."

the county insofar as it may do so under the State Constitution and the Constitution and laws of the United States.

- To regulate the operation, docking, storing, and conduct of all watercraft of any kind plying or using the waterways within the county and of all aircraft of any kind operating over and within the county or utilizing any other area, field, location, or place within the county for air navigation purposes or for the repair, storage, or handling of aircraft within the county.
- To receive and accept, from any federal agency, grants for or in aid of the construction, improvement, or operation of any project and to receive and accept contributions from any source of either money, property, labor, or other things of value.
- To make any and all applications required by the Treasury Department and other departments or agencies of the United States Government as a condition precedent to the establishment within the county of a free port, foreign trade zone, or area for the reception from foreign countries of articles of commerce; to expedite and encourage foreign commerce and the handling, processing, and delivery thereof into foreign commerce free from the payment of custom duties and to enter into any agreements required by such departments or agencies in connection therewith; and to make like applications and agreements with respect to the establishment within the county of one or more bonded warehouses.
- To enter into any contract with the government of the United States or any agency thereof which may be necessary in order to procure assistance, appropriations, and aid for the deepening, widening, and extending of channels and turning basins, the building and construction of public mass transit facilities, airport and airport facilities, slips, wharves, breakwaters, jetties, bulkheads, and any and all other harbor and air navigation improvements and facilities.
- To make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of cost and revenues as it may deem necessary and to prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.
- To grant exclusive or nonexclusive franchises to persons, firms, or corporations for the operating of restaurants, cafeterias, bars, taxicabs, vending machines, and other concessions of a nonaeronautical nature in, on, and in connection with any project owned and operated by the county.
- To adopt and promulgate suitable rules, regulations, and directions for the operation and conduct of any project owned or operated by the county and for the use of any such project and any facility connected therewith by others.
- To enter into contracts with utility companies or others for the supplying by such utility companies or others of water, electricity, or telephone service to or in connection with any project.
- To own, maintain, operate, and control export trading companies, foreign sales corporations, and consulting services corporations as provided by the laws of the United States or this state; to enter into management contracts with such corporations or companies established for the purpose of providing or operating such facilities; to own, maintain, operate, and control cargo clearance centers and customs clearance facilities, and to enter into management contracts with corporations established for the purpose of providing or operating such facilities; to maintain the confidentiality of trade information and data pursuant to the patent or copyright laws of the United States, pursuant to the patent or copyright laws of foreign nations to the extent that same are enforced by the courts of the United States, and pursuant

to the trade secrets doctrine; and to authorize airport and port employees to serve as officers and directors of export trading companies, foreign sales corporations, customs and cargo clearance corporations, and consulting services corporations for the sale of services to others. Counties are authorized to expend any unobligated and available surplus funds from the authorized activities for the construction of capital facilities.

Passenger Transportation Fees and For-hire Vehicles

Sections 316.85(6), and 627.748(17)(b), F.S., acknowledge the ability of a seaport to charge reasonable fees to for-hire vehicles for their use of the airport's or seaport's facilities as well as designate locations for staging, pickup, or other similar operations at the seaport.

Recent Developments in Key West

CS/SB 426 appears to be generated in part by three petition initiatives to amend the City of Key West (the City) charter. The three amendments:

- Limited the number of persons disembarking from cruise ships to a total of not more than 1,500 per day at any and all public and privately owned or leased property located within the municipal boundary of the City;
- Prohibited any cruise ship with a capacity of 1,300 or more persons from disembarking individuals at any and all public or privately owned or leased property located within the City.
- Prohibited any cruise ship with a capacity of 1,300 or more persons from disembarking individuals at any and all public or privately owned or leased property located within the City.

The proposed initiatives were placed on the November 3, 2020, general election ballot and, after some preliminary litigation which failed to remove the initiatives from the ballot, Key West voters approved the City charter amendments. Apparently due to COVID-19, no cruise ships are currently sailing into the Port of Key West.[34] According to the City's website, the Port of Key West currently has three docking facilities, the City-owned Mallory Square Dock, the privately-owned Pier B, and the Navy Mole Pier.[35] The cruise schedule link on the City's website shows no scheduled cruises until May of this year.[36]

III. Effect of Proposed Changes:

The bill sets out a number of "whereas" clauses and creates a new section of law relating to regulation of commerce in Florida seaports.

[34] The Center for Disease Control and Prevention issued a No Sail Order that expired on October 21, 2020, and subsequently announced a framework for conditional sailing, described as a phased resumption of cruise ship passenger operations, and "establishing requirements to mitigate the COVID-19 risk to passengers and crew, prevent the further spread of COVID-19 from cruise ships into U.S. communities, and protect public health and safety." The order may be viewed at https://www.cdc.gov/quarantine/pdf/CDC-Conditional-Sail-Order_10_30_2020-p.pdf (last visited March 3, 2021).
[35] *See* City of Key West, Florida, *Cruise Ships/Marine Services*, available at https://www.cityofkeywest-fl.gov/158/Cruise-Ships-Marine-Services (last visited March 3, 2021).
[36] *Id.* (Scroll down to find the link.)

Section 1 creates s. 311.25, F.S., prohibiting a local ballot initiative or referendum from restricting maritime commerce in Florida's seaports. The prohibition applies, but is not limited, to restricting such commerce based on any of the following:

- Vessel type, size, number, or capacity
- Number, origin, nationality, embarkation, or disembarkation of passenger or crew or their entry into this state of any local jurisdiction.
- Source, type, loading, or unloading of cargo.
- Environmental or health records of a particular vessel or vessel line.

The bill prohibits and voids any local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy in a local ballot initiative or referendum in violation of the prohibition, adopted before, on, or after the effective date of the act. This provision voids the recently enacted City of Key West charter amendments.

The bill prohibits a municipality or political subdivision thereof, or a special district other than one established for port management by special act of the Legislature, from restricting maritime commerce in the seaports with respect to any federally authorized passenger cruise vessel based on any of the following:

- Vessel type, size, number, or capacity, except when the port is physically unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.
- Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.
- Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.
- Environmental or health records of a particular passenger cruise vessel or cruise line.

The bill prohibits and voids any conflicting provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum existing before, on, or after the effective date of the act.

The bill exempts municipalities that have been consolidated with a county (i.e., the City of Jacksonville) and municipal governments that are also a county as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) from the prohibitions and restrictions imposed by the bill.

The bill provides that the restrictions imposed by the bill do not otherwise limit the authority of a relevant governmental entity to:

- Engage in any activity authorized under ch. 311, ch. 315, s. 313.22, or s. 313.23, F.S., including those surrounding the continued operation and development of the port and port facilities and the implementation of seaport security measures pursuant to ss. 311.12-311.124, F.S.
- Issue and enforce tariffs properly filed with the Federal Maritime Commission.
- Enter into leases, terminal agreements, or other contracts with tenants, customers, and other users of port facilities.

Because the Port of Key West is currently the only municipally-governed port offering cruise vessel docking and related services, the bill's prohibitions appear to apply only to the Port of Key West.

Section 2 directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in the act with the date the act becomes law.

Section 3 provides the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Given the current COVID-related environment and the Center for Disease Control and Prevention's (CDC) conditional sail order, the fiscal impact to the cruise industry is indeterminate.

C. Government Sector Impact:

Given the current COVID-related environment and the CDC's conditional sail order, the fiscal impact to state and local government is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 311.25 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on March 24, 2021:
The CS:

- Provides that any local policy regulating seaports in violation of the bill is expressly preempted to the state.
- Provides that a special district established for port management by special act of the Legislature is exempt from the bill's application and removes the reference to a special district within the boundaries of a single municipality.
- Provides that the regulations of a municipality or political subdivision thereof may not restrict maritime commerce "including, but not limited to," the regulations specified in the bill.
- Provides an exemption for municipalities that have been consolidated with a county (i.e., the city of Jacksonville) from the bill's application. The amendment preserves the original exemption for municipalities that are also counties as defined in s. 125.011(1), F.S. (i.e., Miami-Dade County).
- Provides that the restrictions imposed by the bill do not otherwise limit the authority of a relevant governmental entity to manage seaport commerce as provided by specified Florida statutes, issue and enforce tariffs, and enter into contracts related to the port facility operations.

CS by Transportation on March 10, 2021:
The CS**:**

- Prohibits a local ballot initiative or referendum from restricting maritime commerce in Florida's seaports based on specified criteria.
- Prohibits and voids a local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in a local ballot initiative or referendum in violation of the prohibition before, on, or after the effective date of the act.
- Prohibits a municipality or political subdivision thereof, or a special district within the boundaries of a single municipality from restricting maritime commerce in the seaports with respect to any federally authorized passenger cruise vessel based on specified criteria.

- Prohibits and voids any conflicting provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum existing before, on, or after the effective date of the act.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 113 - 137

and insert:

violation of paragraph (a) which was adopted before, on, or after the effective date of this act is prohibited, void, and expressly preempted to the state.

(2)(a) A municipality or political subdivision thereof, or a special district other than one established for port management by special act of the Legislature, may not restrict

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maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel, including, but not limited to, a restriction based on any of the following:

1. Vessel type, size, number, or capacity, except when the port, by virtue of the physical limitations of its docking, berthing, or navigational capabilities, is unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.

2. Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.

3. Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.

4. Environmental or health records of a particular passenger cruise vessel or cruise line.

(b) Any provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum which is in conflict with paragraph (a) and which existed before, on, or after the effective date of this act is prohibited, void, and expressly preempted to the state.

(c) This subsection does not apply to a municipality the government of which has been consolidated with that of a county or to a municipal government that is a county as defined in s. 125.011(1).

(d) Except as provided in paragraph (a), this subsection does not otherwise limit the authority of a subject municipality, political subdivision thereof, or special district to:

1. Engage in any activity authorized under this chapter,

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chapter 315, s. 313.22, or s. 313.23, including those surrounding the continued operation and development of the port and port facilities and the implementation of seaport security measures pursuant to ss. 311.12-311.124.

2. Issue and enforce tariffs properly filed with the Federal Maritime Commission.

3. Enter into leases, terminal agreements, or other contracts with tenants, customers, and other users of port facilities.

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

And the title is amended as follows:

Delete lines 6 - 92

and insert:

providing that such a local ballot initiative, referendum, or action adopted therein is prohibited, void, and expressly preempted to the state; prohibiting municipalities and certain special districts from restricting maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel; providing that certain actions relating to such restrictions are prohibited, void, and expressly preempted to the state; providing applicability; clarifying remaining authority of certain local entities; providing a directive to the Division of Law Revision; providing an effective date.

WHEREAS, maritime commerce between and among seaports, both

foreign and domestic, is the subject of extensive federal and state regulation designed to protect the marine environment and the health, safety, and welfare of the general public and those involved in conducting that commerce, and

WHEREAS, the economic impact of a seaport extends far beyond the boundaries of the local jurisdiction in which the port is located, materially contributing to the economies of multiple cities and counties within the region and to the economy of this state as a whole, and

WHEREAS, Florida seaports currently generate nearly 900,000 direct and indirect jobs and contribute $117.6 billion in economic value to this state through cargo and cruise activities, accounting for approximately 13 percent of this state's gross domestic product and $4.2 billion in state and local taxes, and

WHEREAS, because this state is a peninsula, much of this state is highly dependent upon the unimpeded flow of maritime commerce through its seaports, which is made even more critical when this state is threatened or impacted by natural disasters, such as tropical storms and hurricanes, and

WHEREAS, because of its geographic location, this state is a hub for global maritime commerce and is uniquely positioned to capture an even larger share of this commerce as global trade routes shift, and

WHEREAS, the international, national, statewide, and regional importance of Florida seaports has long been recognized in federal and state law with respect to the regulation, planning, and public financing of seaport operations and facilities, and

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WHEREAS, this state is widely known as the cruise capital of the world, and the cruise industry is vital to this state's economy, contributing more than $9 billion in direct spending on an annual basis and supporting 159,000 jobs with more than $8 billion in total wages and salaries before the current pandemic, and

WHEREAS, 8.3 million passengers boarded cruises from one of this state's five cruise ports in 2019, accounting for 60 percent of embarkations in the United States, generating 11 million passenger and crew onshore visits in both home port and transit port calls in this state, and

WHEREAS, allowing a ballot initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in the supply lines bringing goods into and out of this state and could reasonably be expected to suppress such commerce and potentially drive it out of the port and out of this state in search of a more consistent and predictable operating environment, thus disrupting this state's economy and threatening the public's health, safety, and welfare, and

WHEREAS, allowing a ballot initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in vessel traffic, frustrating the multiyear planning process for all Florida seaports and the assumptions and forecasts underlying federal and state financing of port improvement projects, and

WHEREAS, there are similar concerns regarding the capacity of a municipality and certain special districts to impose such

requirements on the maritime commerce conducted in a port, as the more limited geographic and political scope of a municipality and certain special districts may make such entity less sensitive to the negative impact of such requirements on neighboring municipalities and on the county, region, and state, and

WHEREAS, many local economies in this state depend heavily on tourism, on which the surrounding politics can be particularly complex at the municipal level, which significantly heightens concerns that surrounding municipalities and certain special districts may impose local requirements affecting passenger cruise vessels or cruise lines, and

WHEREAS, in light of these potential negative impacts, the permissible scope of local ballot initiatives or referendums and of the powers of a municipality and certain special districts must be appropriately limited, NOW, THEREFORE,

By the Committee on Transportation; and Senator Boyd

596-02654-21 2021426c1

A bill to be entitled

An act relating to state preemption of seaport regulations; creating s. 311.25, F.S.; prohibiting a local ballot initiative or referendum from restricting maritime commerce in the seaports of this state; providing that certain local initiatives or referendums relating to such restrictions are prohibited and void; prohibiting certain municipalities and municipal special districts from adopting specified restrictions or regulations on maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel; providing that certain local actions relating to such restrictions or regulations are prohibited and void; providing a directive to the Division of Law Revision; providing an effective date.

WHEREAS, maritime commerce between and among seaports, both foreign and domestic, is the subject of extensive federal and state regulation designed to protect the marine environment and the health, safety, and welfare of the general public and those involved in conducting that commerce, and

WHEREAS, the economic impact of a seaport extends far beyond the boundaries of the local jurisdiction in which the port is located, materially contributing to the economies of multiple cities and counties within the region and to the economy of this state as a whole, and

WHEREAS, Florida seaports currently generate nearly 900,000 direct and indirect jobs and contribute $117.6 billion in

economic value to this state through cargo and cruise activities, accounting for approximately 13 percent of this state's gross domestic product and $4.2 billion in state and local taxes, and

WHEREAS, because this state is a peninsula, much of this state is highly dependent upon the unimpeded flow of maritime commerce through its seaports, which is made even more critical when this state is threatened or impacted by natural disasters, such as tropical storms and hurricanes, and

WHEREAS, because of its geographic location, this state is a hub for global maritime commerce and is uniquely positioned to capture an even larger share of this commerce as global trade routes shift, and

WHEREAS, the international, national, statewide, and regional importance of Florida seaports has long been recognized in federal and state law with respect to the regulation, planning, and public financing of seaport operations and facilities, and

WHEREAS, this state is widely known as the cruise capital of the world, and the cruise industry is vital to this state's economy, contributing more than $9 billion in direct spending on an annual basis and supporting 159,000 jobs with more than $8 billion in total wages and salaries before the current pandemic, and

WHEREAS, 8.3 million passengers boarded cruises from one of this state's five cruise ports in 2019, accounting for 60 percent of embarkations in the United States, generating 11 million passenger and crew onshore visits in both home port and transit port calls in this state, and

WHEREAS, allowing a voter initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in the supply lines bringing goods into and out of this state and therefore could reasonably be expected to suppress such commerce and potentially drive it out of the port and out of this state in search of a more consistent and predictable operating environment, thus disrupting this state's economy and threatening the public's health, safety, and welfare, and

WHEREAS, allowing a voter initiative or referendum in each local seaport jurisdiction to impose its own requirements on the maritime commerce conducted in that port could result in abrupt changes in vessel traffic, frustrating the multiyear planning process for all Florida seaports and the assumptions and forecasts underlying federal and state financing of port improvement projects, and

WHEREAS, there are similar concerns regarding the capacity of a municipality or municipal special district to impose such requirements on the maritime commerce conducted in a port, as the more limited geographic and political scope of a municipality or municipal special district may make such entity less sensitive to the negative impact of such requirements on neighboring municipalities and on the county, region, and state, and

WHEREAS, many local economies in this state depend heavily on tourism, on which the surrounding politics can be particularly complex at a municipal level, significantly heightening the concern of municipalities and municipal special districts that place local requirements on passenger cruise

vessels or cruise lines, and

WHEREAS, in light of these potential negative impacts, the permissible scope of local voter initiatives or referendums and of the powers of a municipality or municipal special district must be appropriately limited, NOW, THEREFORE,

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

Section 1. Section 311.25, Florida Statutes, is created to read:

311.25 Regulation of commerce in Florida seaports.—

(1)(a) A local ballot initiative or referendum may not restrict maritime commerce in the seaports of this state, including, but not limited to, restricting such commerce based on any of the following:

1. Vessel type, size, number, or capacity.

2. Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.

3. Source, type, loading, or unloading of cargo.

4. Environmental or health records of a particular vessel or vessel line.

(b) Any local ballot initiative or referendum, or any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in a local ballot initiative or referendum, in violation of this subsection which was adopted before, on, or after the effective date of this act is prohibited and void.

(2)(a) Except for a municipality that is also a county as defined in s. 125.011(1), a municipality or political

subdivision thereof or a special district within the boundaries of a single municipality may not restrict maritime commerce in the seaports of this state with respect to any federally authorized passenger cruise vessel based on any of the following:

1. Vessel type, size, number, or capacity, except when the port is physically unable to accommodate a passenger cruise vessel pursuant to applicable federal or state laws or regulations.

2. Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.

3. Source, type, loading, or unloading of cargo related or incidental to its use as a passenger cruise vessel.

4. Environmental or health records of a particular passenger cruise vessel or cruise line.

(b) Any provision of a law, a charter, an ordinance, a resolution, a regulation, a policy, an initiative, or a referendum which is in conflict with this subsection and which existed before, on, or after the effective date of this act is prohibited and void.

Section 2. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

750
Bill Number (if applicable)

399928
Amendment Barcode (if applicable)

Topic Impact fees

Name David Cruz

Job Title Legislative Counsel

Address P.O. Box 1757
Street

Phone 701-2676

Tallahassee FL 32301
City *State* *Zip*

Email DCruz@flcities.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

SB 750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name Jane West

Job Title Policy & Planning Director

Address 24 Cathedral Place
Street

St. Augustine, FL 32084
City *State* *Zip*

Phone 904-671-4008

Email jwest@1000fof.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date	Bill Number (if applicable)
	750

Topic IMPACT FEES

Amendment Barcode (if applicable)

Name LOUIS ROTUNDO

Job Title

Address 302 Riverstone Creek Phone 407-699-9361
Street

Altamonte Springs FL 32714 Email LCR5002@AOL.COM
City State Zip

Speaking: ☐ For ☑ Against ☐ Information

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

Representing City of Altamonte Springs

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

03/24/2021
Meeting Date

750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name Warren Husband

Job Title

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee — *City* | FL — *State* | 32302 — *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-24-21
Meeting Date

SB 750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic IMPACT FEES

Name P. SCOTT MCCRACKEN

Job Title

Address 966 29th ST.
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Phone 772 360 5731

VERO BEACH FL 32960
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Email SAWHORSECONST@BELLSOUTH.NET

Speaking: ☒ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/21
Meeting Date

750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 750

Name Gary K. Hunter, Jr.

Job Title Attorney

Address 119 S. Monroe St. Suite 300
Street

Phone 850.222.7500

Tallahassee FL 32303
City *State* *Zip*

Email ghunter@hgslaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Association of Florida Community Developers, Inc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2020
Meeting Date

SB 750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name Bob McKee

Job Title Deputy Director of Public Policy

Address 100 S Monroe
Street

Phone (850) 922-300

Tallahassee — *City* | FL — *State* | 32301 — *Zip*

Email bmckee@flcounties.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-24-21
Meeting Date

SB 750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic IMPACT FEES

Name KARL HEBRANK

Job Title

Address 215 S. Monroe St #500
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone 561-1824

Email

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

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

Representing FLORIDA HOME BUILDERS, NUCA of Florida

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

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

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/24/2021
Meeting Date

750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name David Cruz

Job Title Legislative Counsel

Address PO Box 1757
Street

Phone (850)-701-3676

Tallahassee — *City* | FL — *State* | 32301 — *Zip*

Email dcruz@flcities.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida League of Cities, Inc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.24.21
Meeting Date

SB 750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name Wendy Dittmar

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Address 5613 Melville Rd.
Street
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Phone (772) 971-0190

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

750
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name Marco Pa-re-des

Job Title

Address 106 E College Ave
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Tallahassee FL 32301
City *State* *Zip*

Phone 850-354-7608

Email mparedes@sternsweaver.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Encore Capital Management, LLC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Late Rec'd form

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

750
Bill Number (if applicable)

399928
Amendment Barcode (if applicable)

Topic Impact Fees

Name Mario Bailey

Job Title Senior Government Affairs Advisor

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Tallahassee FL 32301
City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Town of Cutler Bay

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 750
INTRODUCER:	Community Affairs Committee and Senator Gruters
SUBJECT:	Impact Fees
DATE:	March 26, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Fav/CS**
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 750 makes several changes regarding impact fees imposed by local governments to fund local infrastructure to meet the demands of population growth.

The bill defines the terms "infrastructure" and "public facilities" to specify that impact fees may be utilized only for fixed capital expenditures or fixed capital outlays for major capital improvements.

In addition to local governments, the bill requires special districts to credit against the collection of impact fees any contribution related to public facilities. All credits against impact fee collections must be made regardless of any provision in local government or special district charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

The bill provides local governments, school districts, and special districts may only increase impact fees as follows:

- For an increase of not more than 25 percent, the increase must be implemented in two equal annual increments;
- For an increase of between 25 and 50 percent, the increase must be implemented in four equal annual increments;
- Impact fees may not be increased by more than 50 percent; and
- Impact fees may not be increased more than once every four years.

However, local governments, school districts, and special districts may bypass the prescribed impact fee increase limitations if a proposed increase complies with certain impact fee requirements in current law, including adherence to the rational nexus test.

Additionally, impact fees may not be increased retroactively for a previous or current fiscal or calendar year.

Finally, the bill revises a current affidavit requirement by providing that a local government, school district, or special district must submit with its annual financial report or its financial audit report an affidavit signed by its chief financial officer attesting that all impact fees were collected and expended in full compliance with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute.

The bill takes effect July 1, 2021.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

Local Government Impact Fees

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,[4] regulatory fees, and special assessments[5] to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to pay for the cost of capital facilities made necessary by such growth.[6] Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

---

[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.
[4] Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, *available at* http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf (last visited Feb. 12, 2020). Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.
[5] *Id.* Special assessments are typically used to construct and maintain capital facilities or to fund certain services.
[6] *See supra* note 4 at p. 13.

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum, meet the following criteria:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees must be limited to the actual costs.
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.
- The impact fee must be reasonably connected to, or have a rational nexus with the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with the increased impact generated by the new residential or commercial construction.

The amount of the impact fee must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction.[7] Meeting this criterion requires the local government ordinance or resolution imposing the impact fee to earmark the funds collected for acquiring the new capital facilities necessary to benefit the new residents.

Some local governments impose impact fees specifically for local school facilities.[8] School districts have authority to impose ad valorem taxes within the district for school purposes[9] but

[7] See s. 163.31801(3)(f)-(i), F.S. (Under long-standing court decisions, impact fees must have a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project. This is known as the dual rational nexus test. See St. Johns County v. Northeast Florida Builders Association, Inc., 583 So. 2d 635, 637 (Fla. 1991) (citing Hollywood, Inc. v. Broward County, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), rev. den. 440 So. 2d 352 (Fla. 1983)).

[8] *See, e.g.*, Miami-Dade County Code of Ordinances ch. 33K, *Educational Facilities Impact Fee Ordinance* and Orange County Code of Ordinances ch. 23, art. V, *School Impact Fees.*

[9] FLA. CONST. art. VII, s. 9(a), and art. IX, s. 4(b); *See* s. 1011.71, F.S.

are not general purpose governments with home rule power[10] and are not expressly authorized to impose impact fees.[11] Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into an account segregated for funding those improvements.[12]

Section 163.31801(4), F.S., provides that a local government must credit against the collection of an education-based impact fee any contribution for public education facilities on a dollar-for-dollar basis.

Section 163.31801(5), F.S., provides that if a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under concurrency, developments of regional impact, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.

Financial Reporting

Counties, district school boards, municipalities with revenues or total expenditures and expenses exceeding $250,000, and special districts with revenues or total expenditures and expenses exceeding $100,000 must have an annual financial audit prepared either by the Auditor General or an independent certified public accountant.[13] Municipalities with revenues or total expenditures and expenses between $100,000 and $250,000, and special districts with revenues or total expenditures and expenses between $50,000 and $100,000, must have a financial audit prepared every three years.[14] Municipalities with revenues or total expenditures and expenses less than $100,000 and special districts with revenues or total expenditures and expenses of less than $50,000 are not required to have their financial statements audited.[15] All local governmental entities are required to file an annual financial report with the Department of Financial Services no later than nine months from the end of the entity's fiscal year.[16]

The financial audit report of a county, municipality, special district, or district school board filed with the Auditor General must include an affidavit signed by the chief financial officer[17] of the

[10] *See* FLA. CONST. art. VIII, ss. 1(f)-(g) and 2
[11] Section 163.31801(2), F.S.
[12] In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. *See* Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(c). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues must be deposited. *See* Orange County Code of Ordinances, s. 23-142.
[13] Section 218.39(1), F.S.
[14] Section 218.39(1), F.S.
[15] Section 218.39(1), F.S.
[16] Section 218.39(1), F.S.
[17] The term "chief financial officer" for a local government is not defined in statute. For counties, the county commission may designate a county budget officer, typically either the county comptroller or the clerk of the circuit court. Section 129.025, F.S. The finances of a municipality are under the authority of the governing body, which may designate a municipal budget officer. Section 166.241, F.S. Special district boards are responsible for district financial management. Section 189.016(3), F.S. District school boards are responsible to manage and oversee district finances. Section 1001.42(12), F.S.

reporting entity that the local governmental entity or district school board has complied with the requirements of the impact fee statute.[18]

III. Effect of Proposed Changes:

Definitions

The bill defines "infrastructure" as a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities with a life expectancy of at least 5 years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. For the independent special fire control districts, the term includes "new facilities" as stated in the independent special fire control district statute.[19] The bill also defines "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities, and expressly includes emergency medical, fire, and law enforcement facilities.

Impact Fee Credits

In addition to local governments, the bill requires special districts to credit against the collection of impact fees any contribution related to public facilities. All credits against impact fee collections must be made regardless of any provision in a local government's or special district's charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

Impact Fee Increases

The bill provides limitations on impact fee increases imposed by a local government, school district, or special district. An impact fee may increase only pursuant to a plan for the imposition, collection, and use of the increased impact fees that complies with the provisions of this bill. An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

Additionally, the bill limits impact fee increases as follows:

- An impact fee increase of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted;
- If the increase in rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal annual installments;
- No impact fee increase may exceed 50 percent of the current impact fee rate; and
- An impact fee may not be increased more than once year four years.

The bill provides an exception to these four specific requirements if a local government, school district, or special district increases an impact fee rate by first establishing the need for the increase in full compliance with the criteria set forth in s. 163.31801(3), F.S., including adherence to the rational nexus test.

[18] Section 163.31801(6), F.S.
[19] Section 191.009(4), F.S.

Financial Statement Audits

The bill provides that a local government, school district, or special district must submit with its annual financial report or its financial audit report an affidavit signed by its CFO attesting that all impact fees were collected and expended in full compliance with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute: acquiring, constructing, or improving the specific infrastructure needs.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2020-2021, is forecast at $2.2 million.[20]

The mandate provisions may apply because the bill imposes limitations on a county and municipality's ability to increase impact fees. However, the bill provides an exception to the limitations if the county or municipality can demonstrate the proposed impact fee increase complies with certain statutory impact fee provisions, including adherence to the rational nexus test. If the impact of the limitations in the bill is determined to exceed $2.2 million in the aggregate, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[20] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited March 10, 2021). Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf (last visited March 10, 2021).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will have a negative indeterminate fiscal impact to local governments and school districts.

B. Private Sector Impact:

Private developers may avoid large future increases in local government impact fees with the impact fee increase limitations in the bill.

C. Government Sector Impact:

Local governments seeking to increase impact fees will be limited in the amount of such increase annually. However, the bill provides an exception to the limitation where a local government may increase impact fees beyond the bill's limitations if the local government can establish the need for the increase in full compliance with certain statutory impact fee provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.31801, F.S.

IX. Additional Information:

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

CS by Community Affairs on March 24, 2021:
The committee substitute:

- Removes the provision that impact fees may only be collected if the local government has planned or funded capital improvements.
- Removes the provision that local governments may not increase impact fees by more than 3 percent annually and instead institutes an alternative impact fee increase limitation scheme.

- Provides that an impact fee increase must be pursuant to a plan for the imposition, collection, and use of such fees.
- Provides an exception to the impact fee increase limitations if a proposed impact fee increase complies with certain statutory impact fee provisions, including adherence to the rational nexus test.
- Modifies the affidavit provision to remove the requirement that the local government's chief financial officer annually attest that impact fees collected were in full compliance with s. 163.31801, F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2021	.	
	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (3) through (11) of section 163.31801, Florida Statutes, are redesignated as subsections (4) through (12), respectively, a new subsection (3) is added to that section, and present subsections (3) through (6) and (11) of that section are amended, to read:

163.31801 Impact fees; short title; intent; minimum

355484

requirements; audits; challenges.—

(3) For purposes of this section, the term:

(a) "Infrastructure" means a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of at least 5 years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. For independent special fire control and rescue districts, the term "infrastructure" includes new facilities as defined in s. 191.009(4).

(b) "Public facilities" has the same meaning as in s. 163.3164 and includes emergency medical, fire, and law enforcement facilities.

(4) ~~(3)~~ At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district that adopts, collects, and administers an impact fee by resolution must ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must satisfy all of the following conditions~~:

(a) Ensure that the calculation of the impact fee is ~~must be~~ based on the most recent and localized data.

(b) ~~The local government must~~ Provide for accounting and reporting of impact fee collections and expenditures and~~. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity must~~ account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) Limit administrative charges for the collection of impact fees ~~must be limited~~ to actual costs.

(d) ~~The local government must~~ Provide notice at least ~~not less than~~ 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A local government ~~county or municipality~~ is not required to wait 90 days to decrease, suspend, or eliminate an impact fee. Unless the result is to reduce the total mitigation costs or impact fees imposed on an applicant, new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of ~~an ordinance or resolution imposing~~ a new or increased impact fee.

(e) Ensure that collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

(f) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(h) ~~The local government must~~ Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Ensure that revenues generated by the impact fee are ~~may~~ not ~~be~~ used, in whole or in part, to pay existing debt or

for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(5) ~~(4)~~ Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public ~~education~~ facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any ~~education-based~~ impact fees on a dollar-for-dollar basis at fair market value.

(6) ~~(5)~~ A local government, school district, or special district may increase an impact fee only as provided in this subsection.

(a) An impact fee may be increased only pursuant to a plan for the imposition, collection, and use of the increased impact fees which complies with this section.

(b) An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.

(c) An increase to a current impact fee rate which exceeds 25 percent but is not more than 50 percent of the current rate must be implemented in four equal installments beginning with the date the increased fee is adopted.

(d) An impact fee increase may not exceed 50 percent of the


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current impact fee rate.

(e) An impact fee may not be increased more than once every 4 years.

(f) An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

(g) Notwithstanding paragraphs (b), (c), (d), or (e), a local government, school district, or special district may increase an impact fee rate by establishing the need for such increase in full compliance with the requirements of subsection (4).

(h) If ~~a local government~~ an impact fee is increased ~~increases its impact fee rates~~, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.

(i) This subsection shall operate retroactively to January 1, 2021 ~~prospectively and not retrospectively~~.

(7)~~(6)~~ A local government, school district, or special district must submit with its annual financial report under s. 218.32 or its financial audit report under s. 218.39 an affidavit signed by its chief financial officer attesting that all impact fees were collected and expended by the local government, school district, or special district, or were collected and expended on its behalf, in full compliance with this section. The affidavit must also attest that the local government, school district, or special district complied with the spending period provision in the local ordinance or

resolution, and that funds expended from each impact fee account were used only to acquire, construct, or improve specific infrastructure needs as defined in this section ~~Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section~~.

(12) ~~(11)~~ In addition to the items that must be reported in the annual financial reports under s. 218.32, a local government, school district ~~county, municipality~~, or special district must report all of the following information ~~data~~ on all impact fees charged:

(a) The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.

(b) The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.

(c) The amount assessed for each purpose and for each type of dwelling.

(d) The total amount of impact fees charged by type of dwelling.

(e) Each exception and waiver provided for construction or development of housing that is affordable.

Section 2. This act shall take effect upon becoming a law.

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========== 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 impact fees; amending s. 163.31801, F.S.; defining the terms "infrastructure" and "public facilities"; requiring local governments and special districts to credit against the collection of impact fees any contribution related to public facilities; providing limitations on impact fee increases; providing for retroactive operation; requiring specified entities to submit an affidavit attesting that impact fees were appropriately collected and expended; requiring school districts to report specified information regarding impact fees; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2021	.	
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	.	
	.	

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

Senate Amendment to Amendment (355484)

Delete lines 124 - 125.

By Senator Gruters

23-01020-21 2021750__

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; defining the terms "infrastructure" and "public facilities"; specifying instances when a local government or special district may collect an impact fee; requiring local governments and special districts to credit against the collection of impact fees any contribution related to public facilities; providing annual limitations on impact fee rate increases; requiring school districts to report specified items regarding impact fees; requiring specified entities to file an affidavit attesting that impact fees were appropriately collected and expended; providing an effective date.

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

Section 1. Present subsections (3) through (11) of section 163.31801, Florida Statutes, are redesignated as subsections (4) through (12), respectively, a new subsection (3) and subsection (13) are added to that section, and present subsections (3), (4), (5), and (11) are amended, to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(3) For purposes of this section, the term:

(a) "Infrastructure" means a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy

23-01020-21 2021750__

of at least 5 years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. For independent special fire control and rescue districts, the term "infrastructure" includes new facilities as defined in s. 191.009(4).

(b) "Public facilities" has the same meaning as in s. 163.3164 and includes emergency medical, fire, and law enforcement facilities.

(4)~~(3)~~ At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district that adopts, collects, and administers an impact fee by resolution must ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must satisfy all of the following conditions~~:

(a) Ensure that the calculation of the impact fee is ~~must be~~ based on the most recent and localized data.

(b) ~~The local government must~~ Provide for accounting and reporting of impact fee collections and expenditures and~~. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity must~~ account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) Limit administrative charges for the collection of impact fees ~~must be limited~~ to actual costs.

(d) ~~The local government must~~ Provide notice at least ~~not less than~~ 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A local government ~~county or municipality~~ is not required to wait 90

days to decrease, suspend, or eliminate an impact fee. Unless the result is to reduce the total mitigation costs or impact fees imposed on an applicant, new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of ~~an ordinance or resolution imposing~~ a new or increased impact fee.

(e) Ensure that collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee. A local government may collect the impact fee only if it has planned or funded capital improvements within the applicable impact fee assessment district at the time that the fee must be paid.

(f) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(h) ~~The local government must~~ Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Ensure that revenues generated by the impact fee are ~~may~~ not ~~be~~ used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the

increased impact generated by the new residential or nonresidential construction.

(5)~~(4)~~ Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public ~~education~~ facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any ~~education-based~~ impact fees on a dollar-for-dollar basis at fair market value.

(6)~~(5)~~ Each local government, school district, and special district must limit all increases to current impact fee rates to no more than 3 percent annually. A local government may not retroactively increase impact fees for a previous or current fiscal or calendar year. If a local government or special district increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. This subsection shall operate prospectively and not retrospectively.

(12)~~(11)~~ In addition to the items that must be reported in the annual financial reports under s. 218.32, a local government, school district ~~county, municipality~~, or special district must report all of the following information ~~data~~ on all impact fees charged:

(a) The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.

(b) The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.

(c) The amount assessed for each purpose and for each type of dwelling.

(d) The total amount of impact fees charged by type of dwelling.

(e) Each exception and waiver provided for construction or development of housing that is affordable.

(13) A local government, school district, or special district must submit an affidavit to the department signed by the chief financial officer of the local government, school district, or special district attesting that all impact fees were collected and expended by the local government, school district, or special district, or were collected and expended on behalf of the local government, school district, or special district in full compliance with this section. The affidavit shall also attest that the local government, school district, or special district complied with this section and the spending period provision in the local ordinance or resolution, and that funds expended from each impact fee account were used only to acquire, construct, or improve the specific infrastructure needs as defined in this section.

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

Duplicate

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 24, 2021
Meeting Date

804
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Substance Abuse Services

Name Eric Prutsman

Job Title

Address P.O. Box 10448
Street

Phone 8502102525

Tallahassee FL 32302
City *State* *Zip*

Email eric@teamjb.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Marshals & Inspectors Association / Florida Fire Chiefs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

SB 1254
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Loren Levy

Job Title General Counsel, Property Appraisers' Ass'n of Florida

Address 1828 Riggins Rd
Street

Phone 850-219-0220

Tallahassee FL 32308
City *State* *Zip*

Email llevy@levylawtax.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Property Appraisers' Ass'n of Fla.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/CS/SB 804
INTRODUCER:	Community Affairs Committee; Children, Families, and Elder Affairs Committee; and Senator Harrell
SUBJECT:	Substance Abuse Services
DATE:	March 24, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 804 makes several changes to provisions governing the licensure and regulation of substance abuse treatment programs, including recovery residences.

The bill makes it a third degree felony to falsify information, or to withhold material facts, on an application for licensure as a substance abuse service provider.

The bill authorizes the Department of Children and Families (DCF) to suspend a service provider's license for failing to pay, within 60 days of a date set by the DCF, administrative fines and accrued interest related to disciplinary action taken against the service provider. The bill also mandates that a service provider pay fines and accrued interest resulting from violations of patient referral prohibitions within 60 days of a date specified by the DCF. If a service provider fails to remit payment within 60 days, the bill requires the DCF to immediately suspend the service provider's license.

The bill also broadens the eligibility for exemption from employment disqualification for certain prior criminal offenses to specified employees of an applicant recovery residence and to applicant recovery residence administrators.

The bill prohibits certain classes of dwellings that are used as recovery residences from having their occupancy category changed or being reclassified for the purpose of enforcement of the

Florida Building Code and fro the Florida Fire Prevention Code's requirement for installation of fire sprinklers.

The DCF's Office of Administrative Services estimates there will be an indeterminate negative fiscal impact to both private substance abuse service providers and state government.

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

II. Present Situation:

Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.[6] The most common SUD diagnoses in the United States are related to the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.[7]

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[1] The World Health Organization, *Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse; (last visited February 27, 2021); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited February 21, 2021).
[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited February 21, 2021).
[3] The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited February 21, 2021).
[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited February 21, 2021).
[5] *Id*.
[6] The SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf (last visited February 21, 2021).
[7] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited February 21, 2021).

Substance Abuse Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[8] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[9] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[10] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[11] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[12]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[13] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[14] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[15]

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.[16] The DCF provides treatment for SUD through a community-based provider system offering detoxification, treatment, and recovery support for individuals affected by substance misuse, abuse, or dependence.[17]

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[18]

[8] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.
[13] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[14] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited February 21, 2021) (hereinafter cited as "Fundamentals of the Marchman Act").
[15] *Id*.
[16] *See* chs. 394 and 397, F.S.
[17] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml (last visited February 21, 2021).
[18] *Id*.

- **Treatment Services:** Treatment services[19] include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support.[20]
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[21]

Licensure of Substance Abuse Service Providers

The DCF regulates substance use disorder treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,[22] intervention,[23] and clinical treatment services.[24]

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[25] "Clinical treatment services" include, but are not limited to, the following licensable service components:

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.
- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.[26]

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[19] *Id*. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.
[20] *Id*.
[21] *Id*.
[22] Section 397.311(26)(c), F.S. "Prevention" is defined as "a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles". *See also,* The DCF, *Substance Abuse: Prevention,* https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml (last visited February 21, 2021). Substance abuse prevention is achieved through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.
[23] Section 397.311(26)(b), F.S. "Intervention" is defined as "structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems."
[24] Section 397.311(26), F.S.
[25] Section 397.311(26)(a), F.S.
[26] *Id*.

Florida does not license recovery residences; instead, in 2015 the Legislature enacted sections 397.487–397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[27]

Application for Licensure

Individuals applying for licensure as substance abuse service providers must submit applications on specified forms provided, and in accordance with rules adopted, by the DCF.[28] Applications must include, at a minimum:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the department of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances. Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license.
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.
- Proof of the ability to provide services in accordance with the DCF rules.
- Any other information that the DCF finds necessary to determine the applicant's ability to carry out its duties under this chapter and applicable rules.[29]

Adverse Action - Applicant or Licensee

Section 397.401, F.S., prohibits any person or agency from acting as a substance abuse service provider unless the person or agency is licensed or exempt from licensure. Based on a licensure inspection or resulting from a complaint, a provider may be cited for violations of licensure standards and a fine may be imposed.[30] Fines are levied based on the severity and prevalence of the violation and range in amounts per day, per violation, up to a maximum of $500.[31]

Section 397.415(1)(d), F.S., allows the DCF to deny, suspend, or revoke the license of a service provider or suspend or revoke the license as to the operation of any service component or

[27] Chapter 2015-100, L.O.F.
[28] Section 397.403(1), F.S.
[29] *Id*.
[30] Section 397.415(1)(a)1., F.S.
[31] Section 397.415(1)(a)2.-3., F.S.

location identified on the license for false representation of a material fact in the license application or omission of any material fact from the application.

Substance Abuse Treatment Employee Background Screening and Exemptions

Certain individuals affiliated with substance abuse treatment providers must undergo background screening prior to receiving a license. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services and peer specialists who have direct contact with individuals receiving services to undergo a level 2 background screening.[32]

Individuals applying for licensure must provide, at a minimum, the following:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the DCF of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances. Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license.
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.[33]

In lieu of requiring the applicant to submit the information, the DCF is required to accept proof of accreditation by an accrediting organization with requirements comparable to Florida licensure regulations, or through another nationally recognized certification process which the DCF finds acceptable, and which meets the minimum licensure requirements of ch. 397, F.S.[34]

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.[35] These residences offer no formal treatment (though they

[32] Section 435.04, F.S., provides standards and necessary criteria for level 2 background screening.
[33] Section 397.403(1)(a)-(g), F.S.
[34] Section 397.403(2), F.S.
[35] The SAMSHA, *Recovery Housing: Best Practices and Suggested Guidelines*, p. 2, available at https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf (last visited February 22, 2021).

may mandate or strongly encourage attendance at 12-step groups) and are, in some cases, self-funded through resident fees.[36]

A recovery residence is defined as "a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."[37]

Oxford House Model

Multiple studies have found that individuals in recovery benefit from residing in a recovery residence. For example, individuals in recovery residing in an Oxford House (OH), a specific type of recovery residence, had significantly lower rates of substance use, significantly higher income, and significantly lower incarceration rates than those individuals who participate in usual group care.[38]

OH is a non-profit organization that rents out single-family homes for individuals recovering from addiction.[39] The OH model is a recovery residence of six to fifteen residents that is democratically run, self-supporting, and drug-free.[40] Each OH recovery residence operates pursuant to a charter issued by the OH organization. Three or more OHs within a 100-mile radius make up one OH chapter. A representative from each house meets with the others on a monthly basis to exchange information, seek resolution of problems in a particular house, and express that chapter's vote on larger issues within the OH organization. The OH Board of Directors solely determines whether to grant or revoke an OH's charter and exercises authority over the policies and officers of the OH.[41] In 1988, Congress passed the Anti-Drug Abuse Act, which, among other provisions, recognized OH as a model for recovery residences and required states to

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[36] The Society for Community Research and Action, *Statement on Recovery Residences: The Role of Recovery Residences in Promoting Long-term Addiction Recovery*, available at https://www.scra27.org/what-we-do/policy/policy-position-statements/statement-recovery-residences-addiction/ (last visited February 22, 2021).

[37] Section 397.311(37), F.S.

[38] An Illinois study found that those in the OHs had lower substance use (31.3% vs. 64.8%), higher monthly income ($989.40 vs. $440.00), and diminished incarceration rates (3% vs. 9%). OH participants, by month 24, earned roughly $550 more per month than participants in the usual-care group. In a single year, the income difference for the entire OH sample corresponds to approximately $494,000 in additional production. In 2002, the state of Illinois spent an average of $23,812 per year to incarcerate each drug offender. The lower rate of incarceration among OH versus usual-care participants at 24 months (3% vs. 9%) corresponds to an annual saving of roughly $119,000 for Illinois. Together, the productivity and incarceration benefits yield an estimated $613,000 in savings per year, or an average of $8,173 per OH member. L. Jason, B. Olson, J., Ferrari, and A. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery*, 96 Am. J. of Pub. Health 10, (2006), at 1727-1729, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586125/ (last visited February 21, 2021).

[39] Oxford House, *Oxford House Residential Leases and the Landlord Relationship: The Legal and Policy Reasons Underlying Oxford House Group Leases*, available at https://oxfordhouse.org/userfiles/file/landlords.php#:~:text=Oxford%20House%2C%20Inc.%2C%20a,Montgomery%20County%2C%20Maryland%20in%201975 (last visited February 22, 2021).

[40] Oxford House, *The Purpose and Structure of Oxford House,* available at http://www.oxfordhouse.org/userfiles/file/purpose_and_structure.php (last visited February 22, 2021).

[41] *Id*.

establish a recurring loan fund to support groups wishing to establish recovery residences like OH.[42]

A cost-benefit analysis regarding residing in Oxford Houses found variation in cost and benefits compared to other residences. The result suggests that the additional costs associated with OH treatment, roughly $3,000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and substance use as well as increases in earning from employment.[43] Additionally, another study found that residents of a recovery residence were more likely to report abstaining from substance use at a higher rate, including 19 percent of residents sampled had been abstinent from drugs and alcohol for six months upon entering an OH; that proportion increased to 39 percent after six months of residency, and by 18 months 42 percent of the residents studied had achieved complete abstinence.[44]

Voluntary Certification of Recovery Residences in Florida

Florida utilizes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[45] Under the voluntary certification program, the DCF has approved two credentialing entities to design the certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board certifies recovery residence administrators.[46]

Patient Referrals

While certification is voluntary, Florida law incentivizes certification. Since 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.[47] There are certain exceptions that allow referrals to or from uncertified recovery residences, including:

- A licensed service provider under contract with a behavioral health managing entity.

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[42] Oxford House, History and Accomplishments, available at http://www.oxfordhouse.org/userfiles/file/oxford_house_history.php (last visited February 22, 2021). *See also* The Anti-Drug Abuse Act, P.L. 100-690, s. 1916A (1988). This mandate was subsequently changed to a permissive provision in 1990 and codified in 42 U.S.C. § 300x-25.

[43] "While treatment costs were roughly $3,000 higher for the OH group, benefits differed substantially between groups. Relative to usual care, OH enrollees exhibited a mean net benefit of $29,022 per person. The result suggests that the additional costs associated with OH treatment, roughly $3000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and drug and alcohol use as well as increases in earning from employment… even under the most conservative assumption, we find a statistically significant and economically meaningful net benefit to OH of $17,800 per enrollee over two years." A. Lo Sasso, E. Byro, L. Jason, J. Ferrari, and B. Olson, *Benefits and Costs Associated with Mutual-Help Community-Based Recovery Homes: The Oxford House Model*, 35 Evaluation and Program Planning (1), (2012) at p. 7, available at http://europepmc.org/backend/ptpmcrender.fcgi?accid=PMC3596872&blobtype=pdf (last visited February 22, 2021).

[44] D. Polcin, R. Korcha, J. Bond, and G. Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcome*, 38 J. Substance Abuse Treatment 356-365 (2010) available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2860009/ (last visited February 22, 2021).

[45] Sections 397.487–397.4872, F.S.

[46] The DCF, *Recovery Residence Administrators and Recovery Residences*, available at https://www.myflfamilies.com/service-programs/samh/recovery-residence/ (last visited February 22, 2021).

[47] Section 397.4873(1), F.S.

- Referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral.
- Referrals made before July 1, 2018, by a licensed service provider to that licensed service provider's wholly owned subsidiary.
- Referrals to, or accepted referrals from, a recovery residence with no direct or indirect financial or other referral relationship with the licensed service provider, and that is democratically operated by its residents pursuant to a charter from an entity recognized or sanctioned by Congress, and where the residence or any resident of the residence does not receive a benefit, directly or indirectly, for the referral.[48]

The DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.[49] As of February 15, 2021, there were 391 certified recovery residences in Florida.[50]

Background Screening

Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees and ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[51] and may include criminal records checks through local law enforcement agencies.[52] A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[53]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[54] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.[55]

[48] Section 397.4873(2)(a)-(d), F.S.
[49] Section 397.4872(2), F.S.
[50] The Florida Association of Recovery Residences, *Certified Recovery Residences established by s. 397.487, F.S.*, available at https://www.myflfamilies.com/service-programs/samh/recovery-residence/docs/FARR%20Certified%20Recovery%20Residences.pdf (last visited February 23, 2021).
[51] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at https://www.nsopw.gov/ (last visited February 23, 2021).
[52] Section 435.03, F.S.
[53] Section 435.04, F.S.
[54] Section 435.05(1)(a), F.S.
[55] Section 435.04(1)(a), F.S.

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.[56] Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.[57] For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.[58] For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.[59] The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[60]

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 offenses enumerated in s. 435.04(2), F.S., or similar law of another jurisdiction.[61]

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the head of the appropriate agency (in the case of substance abuse treatment, the Secretary of the DCF) to exempt applicants from disqualification under certain circumstances.[62]

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,[63] career offender,[64] or sexual offender (unless not required to register)[65] cannot ever be exempted from disqualification.[66]

Additionally, individuals employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain felony offenses may be exempted from disqualification from employment, without waiting for three years.[67] These crimes include certain offenses related to:

- Prostitution;

[56] Section 435.05(1)(b)-(c), F.S.
[57] *Id*.
[58] Section 435.05(1)(b), F.S.
[59] Section 435.05(1)(c), F.S.
[60] Section 435.05(1)(d), F.S.
[61] *See* s. 435.04(2), F.S., for a full list.
[62] *See* s. 435.07(1), F.S.
[63] Pursuant to s. 775.261, F.S.
[64] Pursuant to s. 775.261, F.S.
[65] Pursuant to s. 943.0435, F.S.
[66] Section 435.07(4)(b), F.S.
[67] Section 435.07(2), F.S.

- Third degree burglary of a structure or conveyance;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking);
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia; and
- Any related criminal attempt, solicitation, or conspiracy.[68]

To seek exemption from disqualification, an employee of a substance use service provider must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification, and the DCF must grant or deny the application within 60 days of the receipt of a completed application.[69]

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[70] Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.[71] This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion. This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals. Evidence that may support an exemption includes, but is not limited to:

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.[72]

After the DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review

[68] *Id*.
[69] Section 397.4073(1)(f), F.S.
[70] Section 435.07(3)(a), F.S.
[71] The DCF, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification*, at p. 1, (Aug. 1, 2010), available at https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf (last visited February 23, 2021) (hereinafter, "The DCF Operating Procedure").
[72] *Id*. at p. 3-4.

of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.[73] These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.[74]

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted. The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.[75]

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.[76] After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.[77]

If the DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.[78] However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.[79] If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request.[80] It must also inform the denied applicant of the availability of an administrative review pursuant to ch. 120, F.S.[81]

Background Screening and Exemptions from Disqualification for Recovery Residences

Sections 397.487 and 397.4871, F.S., require level 2 background screening for all recovery residence owners, directors and chief financial officers, and for administrators seeking certification. The DCF may exempt an individual from the disqualifying offenses of a level 2 background screening if the individual meets certain criteria and the recovery residence attests

[73] *Id*. at p. 5.
[74] *Id*.
[75] *Id*.
[76] *Id*.
[77] *Id.* at 5.
[78] *Id*. at 6.
[79] *Id*.
[80] *Id*.
[81] All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived. *See* The DCF Operating Procedure at p. 6.

that it is in the best interest of the program.[82] Since 2016, the DCF has granted 16 exemptions and denied four exemption requests, one of which was granted after an administrative appeal.[83] Additionally, the background screening requirements of these sections are duplicative of the requirements in ch. 435, F.S.

Florida Building Code

The Florida Building Code (the Building Code) establishes 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 and to the enforcement of these requirements and allows effective and reasonable protection of public safety, health, and general welfare at the most reasonable cost to the consumer.[84] The Legislature has vested in local governments the authority to inspect and enforce the provisions of the Building Code to protect public health and safety.[85] Each local government and each legally constituted enforcement district[86] with statutory authority is required to regulate building construction, and each state agency must enforce the Building Code on all public or private buildings, structures, and facilities, unless such responsibility is statutorily delegated to another unit of government.[87]

Florida Fire Prevention Code

Section 633.202, F.S., authorizes the State Fire Marshall to adopt by rule the Florida Fire Prevention Code (the Fire Code) which must contain all fire safety laws and rules that govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of fire safety laws and rules.[88] The State Fire Marshal must adopt both the current edition of the National Fire Protection Association's Standard 1, Fire Prevention Code and the current edition of the Life Safety Code, NFPA 101, by reference and may modify the selected codes and standards as needed to accommodate the specific needs of the state.[89] Section 633.208, F.S., establishes minimum fire safety standards for residential buildings.

Section 633.208(8)(a), F.S., provides that the provisions of the Life Safety Code, as contained in the Fire Code, do not apply to one-family and two-family dwellings. While local governments may adopt fire sprinkler requirements for one-family and two-family dwellings, the Legislature intends that economic consequences of the fire sprinkler mandate on homeowners be studied before the enactment of such a requirement.[90] Any local government that desires to adopt a fire

[82] Section 397.4872, F.S.
[83] E-mail correspondence with John Paul Fiore, Legislative Specialist, Department of Children and Families, dated March 1, 2021 (on file with the Senate Children, Families, and Elder Affairs committee).
[84] Section 553.72(1), F.S.
[85] Section 553.72(2), F.S.
[86] Section 553.80(2)(a), F.S., provides that any two or more counties or municipalities, or any combination thereof, may, in accordance with the provisions of ch. 163, F.S., governing interlocal agreements, form an enforcement district for the purpose of enforcing and administering the provisions of the Building Code. Each district so formed shall be registered on forms to be provided for that purpose.
[87] Section 553.80(1), F.S.
[88] Section 633.202(1), F.S.
[89] Section 633.202(2), F.S.
[90] Section 633.208(8)(a), F.S.

sprinkler requirement on one-family or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one-family or two-family dwellings or any proposed residential subdivision.[91] The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property.[92]

III. Effect of Proposed Changes:

The bill amends s. 397.403, F.S., relating to substance abuse service provider license applications, criminalizing the withholding or misrepresentation of pertinent information from an application to the DCF for licensure as a substance abuse service provider. Specifically, the bill provides that any applicant who willingly and knowingly makes a false representation of, or omits, any material fact from an application for licensure commits a third degree felony.[93]

The bill amends s. 397.415, F.S., relating to denial, suspension, and revocation of, and other remedial actions against, substance abuse provider licenses, requiring the DCF to immediately suspend the license of a substance abuse service provider in instances where the DCF issues a final order directing the provider to pay an administrative fine by a specified date and the provider fails to remit payment, plus any applicable interest, within 60 days of that date.

The bill amends ss. 397.487 and 397.4871, F.S., relating to the voluntary certification of recovery residences and recovery residence administrators, creating an alternative path to certification for recovery residences and their administrators which would otherwise be ineligible due to an owner, director, or chief financial officer of the residence, or a recovery residence administrator, being disqualified upon a level 2 background screening. Under the bill, if the DCF determines that an owner, director, or chief financial officer of a recovery residence, or a recovery residence administrator, has met the requirements for an exemption from disqualification applicable to service provider personnel under s. 435.07, F.S., or s. 397.4073, F.S., as described above, the residence or administrator will not automatically be deemed ineligible for certification.

The bill amends s. 397.4873, F.S., relating to referrals between providers and recovery residences. Under the bill, in instances where a provider violates the patient referral prohibition and the DCF issues a final order imposing an administrative fine as a result, the provider must pay the fine plus interest at the rate established in s. 55.03, F.S.[94] for each day beyond the date specified by the final order. If the provider fails to remit payment, plus any applicable interest, within 60 days of the date established by the final order, the DCF must immediately suspend the provider's license.

The bill amends s. 553.80, F.S., relating to enforcement of the Florida Building Code, providing that any single-family or two-family dwelling that is converted into a certified recovery residence, or that is a recovery residence and has a charter recognized by Congress, does not

[91] *Id*.
[92] *Id*.
[93] A third degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not to exceed $5,000. Sections 775.082 and 775.083, F.S
[94] Section 55.03, F.S., provides guidelines to be used by the Chief Financial Officer in setting rates of interest payable on judgments or decrees for each calendar quarter.

have a change of occupancy for purposes of enforcing the Florida Building Code solely on the basis of its conversion to use as a recovery residence. This exception would apply to recovery residences such as the Oxford House.

The bill amends s. 633.208, F.S., relating to minimum fire safety standards, providing that a single- or two-family dwelling that is a certified recovery residence may not be reclassified for the purposes of enforcing the Florida Fire Prevention Code solely due to such use. This exception would apply to recovery residences such as the Oxford House.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DCF anticipates that there may be an indeterminate negative fiscal impact to licensed substance abuse service providers contracting with managing entities, as these providers

will be subject to administrative fines of up to $1,000 per occurrence for violations of the patient referral provisions of s. 397.4873, F.S.[95]

C. Government Sector Impact:

The DCF anticipates that there may be an indeterminate positive impact on state government through collection of administrative fines levied upon licensed substance abuse service providers contracting with managing entities. A small, indeterminate expenditure may be required in order to modify the DCF's web-based licensing system to account for changes made by the bill. The DCF also predicts that there will be an indeterminate cost associated with administrative appeals hearings if local service providers appeal license suspensions.[96]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.403, 397.415, 397.487, 397.4871, 397.4873, 553.80, and 633.208.

IX. Additional Information:

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

CS/CS by Community Affairs on March 24, 2021:
The Committee Substitute:

- Removes "intentionally" from the bill's provision punishing the willful, knowing, and intentional misrepresentation or omission of material fact from an application for licensure as a substance abuse service provider;
- Removes the provision that would allow a behavioral health managing entity's licensed service provider to make or accept a referral from a recovery residence that is not certified by a credentialing organization and managed by a certified recovery residence administrator;
- Makes a technical change to the provision pertaining to the conversion of a single-family or two-family dwelling into a certified recovery residence, as it relates to the Florida Building Code.
- Amends the provision relating to the installation of fire sprinklers in single- or two-family dwellings certified as recovery residences.

[95] The DCF, *Agency Analysis of SB 804*, at p. 7 (January 25, 2021) (on file with the Senate Children, Families, and Elder Affairs Committee).
[96] *Id*.

CS by Children, Families, and Elder Affairs on March 2, 2021:
The Committee Substitute:

- Eliminates the provision of the bill permitting a credentialing agency to determine if specified employees of an applicant recovery residence or applicant recovery residence administrator meet the criteria for exemption from employment disqualification for certain prior criminal offenses.
- Broadens the eligibility for exemption from employment disqualification pursuant to s. 435.07 and 397.4073, F.S., to include owners, directors, and chief financial officers of an applicant recovery residence and applicant recovery residence administrators.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 31 - 151

and insert:

(5) An applicant who willfully and knowingly makes a false representation of material fact in a license application or who willfully and knowingly omits any material fact from a license application commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Paragraph (a) of subsection (1) of section

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397.415, Florida Statutes, is amended to read:

397.415 Denial, suspension, and revocation; other remedies.—

(1) If the department determines that an applicant or licensed service provider or licensed service component thereof is not in compliance with all statutory and regulatory requirements, the department may deny, suspend, revoke, or impose reasonable restrictions or penalties on the license or any portion of the license. In such case:

(a) The department may:

1. Impose an administrative fine for a violation that is designated as a class I, class II, class III, or class IV violation pursuant to s. 397.411.

2. Impose an administrative fine for a violation that is not designated as a class I, class II, class III, or class IV violation pursuant to s. 397.411. Unless otherwise specified by law, the amount of the fine may not exceed $500 for each violation. Unclassified violations may include:

a. Violating any term or condition of a license.

b. Violating any provision of this chapter or applicable rules.

c. Providing services beyond the scope of the license.

d. Violating a moratorium imposed pursuant to this section.

3. Establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this chapter and applicable rules, unless the amount or aggregate limitation of the fine is prescribed by statute. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the department and not

subject to further appeal, the violator shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the department for payment of the fine. If a violator does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the violator's license.

Section 3. Subsection (6) of section 397.487, Florida Statutes, is amended to read:

397.487 Voluntary certification of recovery residences.—

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under s. 408.809 and chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809(4) or s. 435.04(2) unless the department has issued an exemption under s. 435.07. Exemptions from disqualification applicable to service provider personnel pursuant to s. 397.4073 or s. 435.07 shall apply to this subsection. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

Section 4. Subsection (5) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(5) All applicants are subject to level 2 background

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screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809 or s. 435.04(2) unless the department has issued an exemption under s. 435.07. Exemptions from disqualification applicable to service provider personnel pursuant to s. 397.4073 or s. 435.07 shall apply to this subsection. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant's eligibility based on the results of his or her background screening.

Section 5. Subsection (6) of section 397.4873, Florida Statutes, is amended to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(6) ~~After June 30, 2019,~~ A licensed service provider that violates ~~violating~~ this section is ~~shall be~~ subject to an administrative fine of $1,000 per occurrence. If such fine is imposed by final order of the department and is not subject to further appeal, the service provider shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the department for payment of the fine. If the service provider does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the service provider's license. Repeat violations of this section may subject a provider to license suspension or revocation pursuant to s. 397.415.

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Section 6. Subsection (9) is added to section 553.80, Florida Statutes, to read:

553.80 Enforcement.—

(9) A single-family or two-family dwelling that is converted into a certified recovery residence, as defined in s. 397.311, or a recovery residence, as defined in s. 397.311, that has a charter from an entity recognized or sanctioned by Congress does not have a change of occupancy as defined in the Florida Building Code solely due to such conversion.

Section 7. Subsection (11) is added to section 633.208, Florida Statutes, to read:

633.208 Minimum firesafety standards.—

(11) Notwithstanding subsection (8), a single-family or two-family dwelling that is a certified recovery residence, as defined in s. 397.311, or that is a recovery residence, as defined in s. 397.311, that has a charter from an entity recognized or sanctioned by Congress may not be reclassified for purposes of enforcing the Florida Fire Prevention Code solely due to such use.

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

And the title is amended as follows:

Delete lines 14 - 23

and insert:

397.4873, F.S.; revising civil penalties; requiring the department to suspend a service provider's license under certain circumstances; amending s. 553.80, F.S.; specifying that certain dwellings converted to recovery residences do not have a change of occupancy

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under the Florida Building Code due to such conversion; amending s. 633.208, F.S.; prohibiting the reclassification of certain dwellings certified as recovery residences for purposes of enforcing the Florida Fire Prevention Code; providing an effective

By the Committee on Children, Families, and Elder Affairs; and Senator Harrell

586-02350-21 2021804c1

A bill to be entitled

An act relating to substance abuse services; amending s. 397.403, F.S.; providing criminal penalties for making certain false representations or omissions of material facts when applying for service provider licenses; amending s. 397.415, F.S.; requiring the Department of Children and Families to suspend a service provider's license under certain circumstances; amending ss. 397.487 and 397.4871, F.S.; expanding the applicability of certain exemptions for disqualification to applications for certification of a recovery residence or a recovery residence administrator, respectively; amending s. 397.4873, F.S.; revising applicability; revising civil penalties; requiring the department to suspend a service provider's license under certain circumstances; amending s. 553.80, F.S.; prohibiting certain dwellings used as recovery residences from being reclassified for purposes of enforcing the Florida Building Code; amending s. 633.208, F.S.; prohibiting a property owner from being required to install fire sprinklers in a residential property under certain circumstances; providing an effective date.

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

Section 1. Subsection (5) is added to section 397.403, Florida Statutes, to read:

586-02350-21 2021804c1

397.403 License application.—

(5) An applicant who willfully, knowingly, and intentionally makes a false representation of material fact in a license application or who willfully, knowingly, and intentionally omits any material fact from a license application commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Paragraph (a) of subsection (1) of section 397.415, Florida Statutes, is amended to read:

397.415 Denial, suspension, and revocation; other remedies.—

(1) If the department determines that an applicant or licensed service provider or licensed service component thereof is not in compliance with all statutory and regulatory requirements, the department may deny, suspend, revoke, or impose reasonable restrictions or penalties on the license or any portion of the license. In such case:

(a) The department may:

1. Impose an administrative fine for a violation that is designated as a class I, class II, class III, or class IV violation pursuant to s. 397.411.

2. Impose an administrative fine for a violation that is not designated as a class I, class II, class III, or class IV violation pursuant to s. 397.411. Unless otherwise specified by law, the amount of the fine may not exceed $500 for each violation. Unclassified violations may include:

a. Violating any term or condition of a license.

b. Violating any provision of this chapter or applicable rules.

c. Providing services beyond the scope of the license.

d. Violating a moratorium imposed pursuant to this section.

3. Establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this chapter and applicable rules, unless the amount or aggregate limitation of the fine is prescribed by statute. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the department and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the department for payment of the fine. If a violator does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the violator's license.

Section 3. Subsection (6) of section 397.487, Florida Statutes, is amended to read:

397.487 Voluntary certification of recovery residences.—

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under s. 408.809 and chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809(4) or s. 435.04(2) unless the department has issued an exemption under s. 435.07. Exemptions from disqualification applicable to service providers pursuant to s. 435.07 or s. 397.4073 shall apply to this subsection. In

accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

Section 4. Subsection (5) of section 397.4871, Florida Statutes, is amended to read:

397.4871 Recovery residence administrator certification.—

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809 or s. 435.04(2) unless the department has issued an exemption under s. 435.07. Exemptions from disqualification applicable to service providers pursuant to s. 435.07 or s. 397.4073 shall apply to this subsection. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant's eligibility based on the results of his or her background screening.

Section 5. Paragraph (a) of subsection (2) and subsection (6) of section 397.4873, Florida Statutes, are amended to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(2) Subsection (1) does not apply to:

~~(a) A licensed service provider under contract with a managing entity as defined in s. 394.9082.~~

(6) ~~After June 30, 2019,~~ A licensed service provider that violates ~~violating~~ this section is ~~shall be~~ subject to an administrative fine of $1,000 per occurrence. If such fine is

imposed by final order of the department and is not subject to further appeal, the service provider shall pay the fine plus interest at the rate specified in s. 55.03 for each day beyond the date set by the department for payment of the fine. If the service provider does not pay the fine plus any applicable interest within 60 days after the date set by the department, the department shall immediately suspend the service provider's license. Repeat violations of this section may subject a provider to license suspension or revocation pursuant to s. 397.415.

Section 6. Subsection (9) is added to section 553.80, Florida Statutes, to read:

553.80 Enforcement.—

(9) A single-family or two-family dwelling that is a certified recovery residence, as defined in s. 397.311, or that is a recovery residence, as defined in s. 397.311, that has a charter from an entity recognized or sanctioned by Congress may not be reclassified for purposes of enforcing the Florida Building Code solely due to such use.

Section 7. Subsection (10) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(10) Notwithstanding subsection (8), a property owner may not be required to install fire sprinklers in any residential property based upon:

(a) The use of such property as a rental property or any change in or reclassification of the property's primary use to a rental property;

(b) The use of such property as a certified recovery

residence, as defined in s. 397.311, or any change in or reclassification of the property's primary use to a certified recovery residence; or

(c) The use of such property as a recovery residence, as defined in s. 397.311, if the recovery residence has a charter from an entity recognized or sanctioned by Congress.

Section 8. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 872
INTRODUCER:	Senator Rodrigues
SUBJECT:	Homeowners' Associations
DATE:	March 18, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Paglialonga	Ryon	CA	**Favorable**
3.			RC	

I. Summary:

SB 872 provides that any governing document or an amendment to a governing document of a homeowners' association enacted after July 1, 2021 prohibiting rentals or regulating rental rights applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment or who consents, individually or through a representative, to the governing document or amendment.

However, the bill permits an association to prohibit or regulate rentals for less than six months or to prohibit rentals more than three times in a calendar year. The association may apply the prohibition or regulation to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consent to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from these provisions.

Under the bill, a change of ownership affecting rental rights does not occur when a parcel owner conveys the parcel to an affiliated entity or when a beneficial ownership of the parcel does not change. The term "affiliated entity" is defined by the bill to mean an entity which controls, is controlled by, is under common control with the parcel owner, or becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners' association a document certifying that the exception applies and, if requested by the association, any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

The bill takes effect on July 1, 2021.

II. Present Situation:

Condominium

A condominium is a "form of ownership of real property created under ch. 718, F.S."[1] Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.[2] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[3] A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.[4] A declaration is similar to a constitution in that it:

> [S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[5]

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.[6] Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."[7] The board of administrators is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.[8] In litigation, an association's board of directors is in charge of directing attorney actions.[9]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominiums.[10]

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[1] Section 718.103(11), F.S.
[2] *See* s. 718.103, F.S.
[3] *Id.*
[4] Section 718.104(2), F.S.
[5] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[6] Section 718.303(3), F.S.
[7] Section 718.103(4), F.S.
[8] Section 718.103(2), F.S.
[9] Section 718.103(30), F.S.
[10] *See* s. 718.501, F.S. *See infra*, the *Present Situation* for the proposed revisions to the division's authority set forth in s. 718.501, F.S.

Rental Rights

Homeowners' associations may amend their governing documents. Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents. If a copy of the proposed amendment is provided to the members before they vote on the amendment, and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.[11]

A written notice must also be sent to certain mortgage holders or assignees to obtain consent or joinder for the proposed amendment.[12]

Current law does not prevent a homeowners' association from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision were adopted by an association, the restriction would apply to all parcel owners regardless of when they obtained title to their property or whether they voted against the restriction. This differs from current law relating to rental restrictions in condominiums. In a condominium, any restriction in the governing documents that prohibits the rental of units, alters the duration of the rental term, or specifies or limits the number of times a unit owner may rent a unit only applies to unit owners who consent to the amendment or acquire title to the unit after the restrictions' effective date.[13]

III. Effect of Proposed Changes:

The bill creates s. 720.306(1)(h), F.S., to provide that any governing document or amendment to a governing document of a homeowners' association enacted after July 1, 2021, prohibiting rentals or regulating rental rights applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment or who consents, individually or through a representative, to the governing document or amendment.

However, the bill permits an association to prohibit or regulate rentals for less than six months or to prohibit rentals more than three times in a calendar year. The association may apply the prohibition or regulation to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consent to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from these provisions.[14]

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[11] *See* s. 720.306(1)(b), F.S. The consent of mortgage holder and assignees is required for any mortgage recorded before July 1, 2013.

[12] *See* s. 720.306(1)(d), F.S. Any mortgage recorded after July 1, 2013, only requires the consent of a mortgage holder if the amendment adversely affects the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affects the rights and interests of the mortgagees.

[13] *See* s. 718.110(13), F.S.

[14] Section 720.303(1), F.S., provides that an association with 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner.

Under the bill, a change of ownership affecting rental rights does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership[15] of the parcel does not change.

The term "affiliated entity" is defined by the bill to mean an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners' association a document certifying that the exception applies, if requested by the association, and any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[15] A beneficial interest is defined as "[a] right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property." BLACK'S LAW DICTIONARY, 11th ed. 2019, *available* on Westlaw.com (last visited Mar. 12, 2021).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 720.306 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Rodrigues

27-00764A-21 2021872__

A bill to be entitled

An act relating to homeowners' associations; amending s. 720.306, F.S.; providing applicability for governing documents and amendments relating to leasing which are enacted after a specified date; providing an exception; providing applicability; specifying when a change of ownership does or does not occur for certain purposes; defining the term "affiliated entity"; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (1) of section 720.306, Florida Statutes, to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(h)1. Except as otherwise provided in this paragraph, any governing document, or amendment to a governing document, that is enacted after July 1, 2021, and that prohibits or regulates leasing applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rentals for a term of less than 6 months and to prohibit rentals more than three times in a calendar year, and such amendments shall

27-00764A-21 2021872__

apply to all parcel owners.

3. This paragraph does not affect the amendment restrictions for associations of 15 or fewer parcel owners under s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change. For purposes of this subparagraph, the term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish to the association a document certifying that this paragraph applies and provide any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate, as requested by the association.

5. For purposes of this paragraph, a change of ownership does occur when, with respect to a parcel owner that is a business entity, each person that owned an interest in the entity at the time of the enactment of the amendment or rule conveys its interest in the business entity to an unaffiliated party.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 998
INTRODUCER:	Senator Brodeur
SUBJECT:	Contractor Advertising
DATE:	March 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.			RC	

I. Summary:

SB 998 revises s. 489.521, F.S., relating to alarm system contractor license numbers on advertisements. Under the bill, if an alarm system contractor maintains an Internet website that displays a contractor's registration or certification number, and a contractor's advertisement directs consumers to the information on the contractor's Internet website, the contractor's license number does not need to be stated in advertisements placed by the contractor that appear in a printed publication, in a flyer, a billboard, or an Internet website, or in a broadcast advertisement.

The bill amends the fire alarm permit application procedure in s. 553.7921, F.S., to eliminate the requirement that a contractor filing a Uniform Fire Alarm Permit Application receive a fire alarm permit before repairing an existing, previously permitted alarm system. Under the bill, if the local enforcement agency requires a fire alarm permit for repair of an existing, previously permitted alarm system, a contractor may begin the repair work after filing the required Uniform Fire Alarm Permit Application, before receiving the fire alarm permit.

Under the bill, a fire alarm repaired by a contractor before receipt of the required fire alarm permit may not be considered compliant until the required permit has been issued and the local enforcement agency has approved the repair.

The bill has no impact on state government.

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

II. Present Situation:

Electrical and Alarm System Contracting

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.[1] The Electrical Contractors' Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.[2]

An electrical contractor is a person whose business includes the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, and appliances, and any related part, which generates, transmits, or uses electrical energy, in compliance with applicable plans, specifications, codes, laws, and regulations.[3] The term "electrical contractor" also includes any person, firm, or corporation that engages in the business of electrical contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.[4]

An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.[5] The term "alarm system contractor" also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract, or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.[6] An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an "alarm system contractor I;" the practice area of an "alarm system contractor II" is identical except that it does not include fire alarm systems.[7]

The terms "registered alarm system contractor," and "registered electrical contractor" mean those contractors who have registered with the DBPR and met competency requirements for their trade category in the particular jurisdiction for which the registration is issued. Registered contractors may contract only in the jurisdiction for which the registration is issued.[8]

The term "certification" means the act by a contractor obtaining or holding a geographically unlimited certificate of competency from the DBPR.[9] When an alarm system contractor is certified, the contractor possesses a certificate of competency, with some limitations as to the

[1] *See* s. 489.501, F.S.
[2] Section 489.507, F.S.
[3] *See* s. 489.505(12), F.S.
[4] *Id*.
[5] *See* s. 489.505(2), F.S.
[6] *Id.*
[7] *Id.*
[8] *See* ss. 489.505(16), (21), and (22), F.S.
[9] *See* ss. 489.505(4), (5), and (6), F.S.

scope of work that may be undertaken, without any mandatory licensure requirement.[10] The term "certified electrical contractor" means an electrical contractor who possesses a certificate of competency.

To be certified a person must be 18 years of age, pass the certification examination, be of good moral character, and meet the eligibility requirements of s. 489.511(1)(b)3., F.S.[11]

Unless an exemption applies, the term "contracting" means engaging in business as a contractor or performing electrical or alarm work for compensation and includes, but is not limited to, performance of the work that may be performed by electrical or alarm system contractors.[12] The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.[13]

The term "specialty contractor" means a contractor whose scope of practice is limited to a specific category of electrical or alarm system contracting, such as residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs.[14]

Section 489.514, F.S., requires the ECLB to certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee;[15] and
- Evidence that he or she qualifies for the certification in a trade category based on:
  - Having a valid registered local license;
  - Passing an approved written examination;
  - Having a minimum of five years' contracting experience in the applicable trade category (with an active license and excluding probationary periods);

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[10] *See* s. 489.505(7), F.S., which describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is an acronym for "root mean square," a statistical term defined as the square root of mean square, or effective voltage. *See* http://www.learningaboutelectronics.com/Articles/RMS-voltage-and-current-explained.php#:~:text=RMS%20Voltage%20and%20Current-%20Explained.%20RMS,%20or%20root,power%20dissipation,%20in%20circuit,%20as%20this%20AC%20voltage. (last visited Mar. 11, 2021).

[11] Section 489.511(1(b)3., F.S., provides experience requirements for certification.

[12] *See* s. 489.505(9), F.S.; *see also*, ss. 489.505(2) and (12), F.S., for the various services that may be performed, and ss. 489.503(1) through (24), F.S., for the persons and types of work that are exempted from the term "contracting."

[13] *See* s. 489.505(9), F.S.

[14] *See* s. 489.505(19), F.S.

[15] The ECLB has established a $200 fee for applications for registered contractor certification. *See* s. 489.109, F.S., and Fla. Admin. Code R. ch. 61G6-8.

- Never having had a contractor's license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of $500; and
- Meeting all required insurance and financial responsibility requirements.[16]

Mandatory Disclosure of Contractor Registration or Certification Numbers

Under s. 489.521(7), F.S., each registered or certified contractor must state the appropriate registration or certification number on each building permit application and each issued and recorded building permit. All city and county building departments must require, as a condition for building permit issuance, that the contractor applying for the permit verify his or her registration or certification as an electrical or alarm system contractor in the state.[17]

A contractor's registration or certification number must also be stated in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor; however, the term "advertisement" does not include business stationery or promotional novelties such as balloons, pencils, trinkets, or articles of clothing.[18]

The ECLB must assess a fine of not less than $100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing.[19] In addition, a person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree.[20]

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.[21] The building code must be applied, administered, and enforced uniformly and consistently throughout the state.[22] The building code is adopted, updated, interpreted, and maintained by the Florida Building Commission (commission), which is housed within the DBPR, but is enforced by authorized state and local government agencies.[23] The commission adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.[24]

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[16] *See* s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers' compensation insurance or an acceptable exemption issued by the DBPR, public liability and property damage insurance in amounts determined by the ECLB, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.
[17] *See* s. 553.521(7)(a), F.S.
[18] *See* s. 553.521(7)(b), F.S.
[19] *Id*.
[20] As to a misdemeanor of the second degree, s. 775.082, F.S., provides such offense is punishable by a term of imprisonment not to exceed 60 days, and s. 775.083, F.S. provides such offense is punishable by a fine not to exceed $500.
[21] *See* s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act." *See* s. 552.70, F.S. The Florida Building Code, 7th Edition, available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Mar 11, 2021).
[22] *See* s. 553.72(1), F.S.
[23] *See* s. 553.72(3), F.S.
[24] *See* s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the

Violations of the building code are enforced by the appropriate enforcing agency or local government pursuant to s. 553.79, F.S., relating to required permits, and s. 553.80, F.S., relating to enforcement of the building code. Persons authorized under s. 553.80, F.S, may enforce the building code by seeking injunctive relief from any court to address noncompliance with the building code.[25]

Fire Alarm Permit Applications to Local Enforcement Agencies

As required by s. 553.7921, F.S., a uniform fire alarm permit application with specified supporting documentation must be filed before installing or replacing a fire alarm, or repairing an existing alarm system, if the local enforcement authority requires a plan review before conducting these activities. The uniform fire alarm permit application must be accompanied by specified supporting documentation, must be signed by the owner or an authorized representative, and the contractor or the contractor's agent, and may be filed electronically or by facsimile.[26]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 489.521, F.S., relating to the inclusion of the registration or certification number for each registered or certified alarm system contractor on all offers of services, business proposal, or advertisement used by a contractor, regardless of medium.

Under the bill, if a contractor maintains an Internet website that displays the contractor's registration or certification number, and an advertisement placed by an alarm system contractor directs consumers to the information on the contractor's Internet website, the required registration or certification number does not need to be stated in:

- An advertisement appearing in a printed publication;
- An advertisement appearing on a flyer, a billboard, or an Internet website; or
- A broadcast advertisement placed by an alarm system contractor.

Section 2 of the bill amends the fire alarm permit application procedure in s. 553.7921, F.S., by eliminating a requirement that a contractor file a Uniform Fire Alarm Permit Application and receive the fire alarm permit before repairing an existing, previously permitted alarm system.

Under the bill, if the local enforcement agency requires a fire alarm permit for repair of an existing, previously permitted alarm system, a contractor may begin the repair work after filing the required Uniform Fire Alarm Permit Application, before receiving the fire alarm permit. The bill provides a fire alarm repaired by a contractor before receipt of the fire alarm permit may not be considered compliant until the required permit has been issued and the local enforcement agency has approved the repair.[27]

International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

[25] *See* s. 553.83, F.S.

[26] *See* s. 553.7921, F.S., which sets forth the Uniform Fire Alarm Permit Application.

[27] The DBPR notes this section of the bill is a local permit enforcement issue and does not impact Florida Building Code requirements or the Florida Building Commission. *See* Department of Business and Professional Regulation, *Agency Bill Analysis for SB 998* at 5 (Feb. 24, 2021) (on file with the Senate Committee on Regulated Industries).

Section 3 of the bill provides the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DBPR, alarm system contractors working nationwide have found it onerous to list all of their state license numbers in their national print, radio, and TV advertising.[28]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

[28] *See* Department of Business and Professional Regulation, *Agency Bill Analysis for SB 998* at 5 (Feb. 24, 2021) (on file with the Senate Committee on Regulated Industries).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections the following sections 489.521 and 553.7921, F.S.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Brodeur

9-00858C-21 2021998__

A bill to be entitled

An act relating to contractor advertising; amending s. 489.521, F.S.; providing that alarm system contractors are not required to state their certification and registration numbers in or on certain advertisements if the contractor maintains an Internet website that displays such information and the advertisement directs consumers to the website; amending s. 553.7921, F.S.; authorizing a contractor to begin repairing certain fire alarm systems after filing an application for a required permit but before receiving the permit; prohibiting such repaired fire alarm systems from being considered compliant until certain requirements are met; providing an effective date.

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

Section 1. Subsection (7) of section 489.521, Florida Statutes, is amended to read:

489.521 Business organizations; qualifying agents.—

(7)~~(a)~~ Each registered or certified contractor shall:

(a) Affix the number of his or her registration or certification to each application for a building permit and to each building permit issued and recorded. Each city or county building department shall require, as a precondition for the issuance of a building permit, that the contractor applying for the permit provide verification giving the number of his or her registration or certification under this part.

(b) State his or her ~~the~~ registration or certification

9-00858C-21 2021998__

number ~~of a contractor shall be stated~~ in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor.

1. This paragraph does not apply to an advertisement appearing in a printed publication; an advertisement appearing on a flyer, a billboard, or an Internet website; or a broadcast advertisement placed by an alarm system contractor if the contractor maintains an Internet website that displays the contractor's registration or certification number and the advertisement directs consumers to the information on the contractor's Internet website.

2. As used in this paragraph ~~For the purposes of this part~~, the term "advertisement" does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or articles of clothing.

3. The board shall assess a fine of not less than $100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing. In addition, any person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (1) of section 553.7921, Florida Statutes, is amended to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1)(a) A contractor must file a Uniform Fire Alarm Permit

Application as provided in subsection (2) with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm if the local enforcement agency requires a plan review for the installation or replacement.

(b) If the local enforcement agency requires a fire alarm permit for repair of an existing alarm system that was previously permitted by the local enforcement agency, a contractor may begin the repair work after filing a Uniform Fire Alarm Permit Application as provided in subsection (2). A fire alarm repaired pursuant to this paragraph may not be considered compliant until the required permit has been issued and the local enforcement agency has approved the repair~~; or~~

~~(b) Repairing an existing alarm system that was previously permitted by the local enforcement agency if the local enforcement agency requires a fire alarm permit for the repair~~.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 1212
INTRODUCER:	Senators Rodriguez and Hutson
SUBJECT:	Construction Contracting Exemptions
DATE:	March 23, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.			RC	

I. Summary:

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

The bill has no impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Regulation of Construction Activities; Exemptions

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

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

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

[1] *See* s. 489.101, F.S.

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

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

Construction Contracting

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

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

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

[3] *See* s. 489.103, F.S., for additional exemptions.
[4] *See* s. 489.107, F.S.
[5] Section 489.105(3), F.S.
[6] Section 489.507, F.S.

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

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

A "specialty contractor" is a contractor whose scope of practice is limited to:
- A particular construction category adopted by board rule; and
- A subset of the trade categories for contractors listed in s. 489.105(3)(a) through (p), F.S., such as roofing, air-conditioning, plumbing, etc.[10]

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

Certification and Registration of Contractors

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

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

Fee for Certification and Registration

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

[7] *See* ss. 489.551-489.558, F.S.
[8] *See* ss. 489.113 and 489.516, F.S., respectively.
[9] Section 455.227(2), F.S.
[10] Section 489.105(3)(q), F.S.
[11] *See* Fla. Admin. Code R. 61G4-15.032 and 61G4-15.040 (2021).
[12] *See* Fla. Admin. Code R. 61G4-15.032 (2021).
[13] Sections 489.105(8) and 489.113(1), F.S.
[14] Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed $200. [15] The initial application fee and the renewal fee is $50 for an application to certify or register a business.[16]

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

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

Subcontractors

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

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

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

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

Section 489.117(4)(d), F.S., commonly referred to as the "Jim Walter" exemption, was enacted in 1993[23] and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses[24] without obtaining a local license. The person must be under the supervision of a certified or registered general, building, or residential contractor, and the work may not be work that requires licensure in the areas of roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or

[15] Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.
[16] *Id*.
[17] *Id*.
[18] Section 489.109(3), F.S.
[19] Section 489.113(3), F.S. Various exceptions for general, building, residential, and solar contractors are set forth in s. 489.113(3)(a) through (g), F.S.
[20] *See* Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting.
[21] *See* Part III of ch. 489, F.S., relating to Septic Tank Contracting.
[22] Section 489.113(2), F.S.
[23] *See* ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.
[24] The term "townhouses" was added to the exemption in 2003. *See* ch. 2003-257, s. 5, Laws of Fla.

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

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

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

The Florida Building Code

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

The Seminole Tribe of Florida

The Seminole Tribe became a federally recognized Native American tribe in 1957.[33] There are six Seminole Tribe reservations in the state, located in Big Cypress, Brighton, Ft. Pierce, Hollywood, Immokalee, and Tampa. As explained on the tribal website:

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[25] Section 489.117(4)(d), F.S.
[26] *See Florida Home Builders Ass'n v. St. Johns County*, 914 So.2d 1035 (Fla. 5th DCA 2005).
[27] *Id.* at 1037
[28] *See* Op. Att'y. Gen. Fla. 2001-25 (2001), available at http://www.myfloridalegal.com/ago.nsf/opinions/4c31d4cae5f162bf85256a1e00532dac (last visited Feb. 23, 2021).
[29] *See* s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act." *See* s. 552.70, F.S. The Florida Building Code, 7th Edition, available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Feb. 23, 2021).
[30] *See* s. 553.72(1), F.S.
[31] *See* s. 553.72(3), F.S.
[32] S. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.
[33] *See* Timeline, available at https://www.semtribe.com/stof/history/timeline (last visited Feb. 23, 2021).

> "Chickee" is the word Seminoles use for "house." The first Seminoles to live in North Florida are known to have constructed log cabin-type homes, some two stories tall, with sleeping quarters upstairs. The chickee style of architecture - palmetto thatch over a cypress log frame - was born during the early 1800s when Seminole Indians, pursued by U.S. troops, needed fast, disposable shelter while on the run. Though indigenous peoples in other parts of North and South America have developed similar dwellings, it is generally agreed that the Seminole Indian technique and product are far superior.
>
> So popular, efficient and functional is the chickee that such Seminole architecture can be seen all over South Florida. The chickee structure should last about ten years and needs to be re-thatched every five years. Several Seminole Tribal members make a living building custom chickees for both commercial and private interests.

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

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

The Miccosukee Tribe of Indians of Florida

The Miccosukee Tribe was originally part of the Creek Nation.[35] Its members migrated to Florida before it became a state.[36] The Miccosukee Tribe became a federally recognized Native American tribe in 1962.[37]

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

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

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[34] Seminole Tribe of Florida, *Frequently Asked Questions*, https://www.semtribe.com/stof/helpful-linksmain/helpful-links (last visited on Feb. 23, 2021).
[35] *See* https://tribe.miccosukee.com/ (last visited Feb. 23, 2021).
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] Email from J. Bennett, In-House General Counsel for Miccosukee Tribe of Indians of Florida, to staff (Feb. 23, 2021) (on file with the Senate Committee on Regulated Industries).
[40] *Id*.

Definition and Exemption in Building Code for Certain Chickees

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

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

Construction Contracting Issues related to Chickees

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

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

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[41] Section 553.73(10)(i), F.S.
[42] *Id.*
[43] *See* Declaratory Statement in the Matter of Plaza Beach Motel, Inc., Case No. 2018-012 (Fla. Building Comm'n) (filed Apr. 20, 2018), at pp. 3-4, available at https://www.doah.state.fl.us/flaid/dpr/2018/dpr_0_04242018_020723.pdf (last visited Feb. 23, 2021) and Declaratory Statement in the Matter of Broward County Board of Rules and Appeals, Case No. 2013-031 (Fla. Building Comm'n) (filed Dec. 17, 2013), at pp. 2-3, available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_12302013_040040.pdf (last visited Feb. 23, 2021).
[44] *See* Ernie Tiger, *Chickees Provided Early Housing*, available at https://www.semtribe.com/stof/culture/chickee (last visited Feb. 23, 2021).
[45] *Id*.
[46] *See* Final Order in re: Petition for Declaratory Statement of City of Port St. Lucie Building Dep't, Case No. 2013-08017, (Fla. DBPR DS 2013-091) (filed Dec. 26, 2013), available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_01072014_023857.pdf (last visited Feb. 23, 2021).
[47] *See* Bulletin #2017-001, issued by Sarasota County Building Official (Feb. 7, 2017), available at (https://www.scgov.net/Home/ShowDocument?id=33926 last visited Feb. 23, 2021); Chickee Structures Notice, issued by Charlotte County (Apr. 17, 2020), available at https://www.charlottecountyfl.gov/departments/community-development/notices/chickee-structures.stml (last visited Feb. 23, 2021); Article by Sara Matthis, *City Addresses Rash of Unpermitted Tiki Huts*, Keys Weekly, available at https://keysweekly.com/42/city-addresses-rash-of-unpermitted-tiki-huts/ (last visited Feb. 23, 2021); Miami-Dade County, File Contractor Complaints, Chickee Construction Only Allowed by Licensed Contractors, available at https://www.miamidade.gov/building/contractor-complaints.asp (last visited

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

III. Effect of Proposed Changes:

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

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

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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

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

B. Private Sector Impact:

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 489.103 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Rodriguez

39-01675-21 20211212__

A bill to be entitled

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

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

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

489.103 Exemptions.—This part does not apply to:

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

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

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

FLORIDA
Executive
Director
Leon M. Biegalski

Please Respond to:
Office of the General Counsel
Property Tax Oversight Legal Section
Post Office Box 6668
Tallahassee, Florida 32314-6668
steve.keller@floridarevenue.com

Advisory Memorandum

From: Steve Keller, Chief Assistant General Counsel, Property Tax Oversight Legal Section
To: Loree French, Esq., Legal Counsel to the Duval County Property Appraiser
Date: February 20, 2018
Subject: Section 193.155(4) and Changes, Additions, or Improvements to Homestead Property

This memorandum will respond to your email inquiry dated December 5, 2017. In your email you request an advisement on the subject of the assessment increase limitation under Section 193.155 and changes, additions, or improvements to homestead property,

You indicate the property appraiser has a question concerning Section 193.155(4)(b), F.S., and how it should be applied to the replacement of docks, and some other extra features, such as screened enclosures, destroyed during the hurricane.

The Department's Informational Bulletin PTA 2006-12, summarizing the statutory amendment, refers to "buildings" that exceed 1,500 square feet but does not mention how to address improvements that are not attached to a building.

Issue for Advisement

You inquire whether the Department has any advisory opinion on how to assess the value of a replacement dock or other extra feature that is not attached to a building. If there is none, you ask if the Department has an opinion on how a dock newly constructed following a hurricane should be assessed. You ask whether the property appraiser should simply remove the value of the old dock and replace it with the value of the new dock.

Summary of Advisement

The current Section 193.155(4)(b), F.S. as amended in 2006 provides that there is no change, addition or improvement to be assessed at just value if the replacement does not exceed 110 percent of the square footage of the homestead property before the damage or destruction, or if the homestead property as improved does not exceed 1,500 square feet. These threshholds apply as follows: if the property was under 1500 square feet and the replacement property pushed the square feet over 1500 then the excess over 1500 square feet is assessed at just value; if the

property was over 1500 square feet to start with then the excess over 110 percent of the pre damage square footage is assessed at just value.

When in 2006 the statute was changed to a square footage of the homestead property, by discarding value as a criterion the legislation had a fiscal impact which indicates more property would qualify for reduced tax treatment. [1] When the legislature narrowed what is included in increases to assessed value in 2006, there is no indication that boat dock square footage is included in the overall square footage. This is true in the 2005 legislation also.

The legislative history of the 2006 legislation and previous legislative enactments and proposals makes plain that the 2006 legislation does not include extra features, such as docks, that are not attached to the house and would not be considered a part of the referenced square footage. The legislation was directed at houses.

Under the previous statute any replacement that did not exceed 125 percent of the just value of the damaged or destroyed portion of the homestead was not a change, addition or improvement that should be assessed at just value following substantial completion. That criterion applied to any replaced structure regardless of whether the replaced structure was attached to a building or standing separately on the property. See Section 193.155(4), F.S. (2005).

A replacement or new dock would be assessed at just value under Section 193.155(4)(a), F.S.

A description of assessment at just value is as follows. The just value of the parcel would be reduced by the just value attributable to the destroyed or removed property and the assessed value of the parcel would be reduced by the assessed value attributable to the destroyed or removed property. [2] Then the just value attributable to the replacement property would be added to the just value and to the assessed value of the parcel.

Included below is an example of such assessment at just value.

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[1] The fiscal analysis suggests the bill would reduce revenues: "the bill reduces local revenues by $3.8 million on an annualized basis." See House of Representatives, Staff Analysis of HB7109, Finance & Tax Committee (h7109d.FC.doc 4/21/2006). This suggests the bill was intended to allow more rebuilding without assessment at just value than before the amendment. The bill allowed rebuilding to exceed 125 percent of the just value of the just value of the damaged or destroyed portion.

[2] If the destroyed property is not replaced as of the next January 1, the property is assessed in the manner provided in section 193.155(5), F.S. until the January 1 after it is replaced, when it would be assessed at just value. See discussion below for assessment at just value.

Applicable Legal Authority

2006 Statute and Legislative History

As amended in 2006 the statute reads:

> (4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.
>
> (b) Changes, additions, or improvements that replace all or a portion of homestead property damaged or destroyed by misfortune or calamity shall not increase the homestead property's assessed value when the square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction. Additionally, the homestead property's assessed value shall not increase if the total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the homestead property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (1). The homestead property's assessed value shall be increased by the just value of that portion of the changed or improved homestead property which is in excess of 110 percent of the square footage of the homestead property before the damage or destruction or of that portion exceeding 1,500 square feet. Homestead property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the homestead property's total square footage before the damage or destruction shall be assessed pursuant to subsection (5). This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the homestead.

This 2006 amendment indicates if the property was under 1500 square feet and the replacement property pushed the square feet over 1500 then the excess over 1500 square feet is assessed at just value; if the property was over 1500 square feet to start with then the excess over 110 percent of the pre damage square footage is assessed at just value.

Staff analyses of the 2006 legislation states in part:

> Current law limits the increase in assessed value of homesteaded property. Changes, additions, and improvements to such property are assessed at full just value. However, if a homestead property is destroyed by misfortune or calamity, the property may be repaired or replaced without being assessed at full just value, provided that the just value of

> property as repaired or replaced does not exceed 125 percent of the just value before the destruction.
>
> The bill amends s. 193.155(4), F.S., to provide that changes, additions, or improvements to damaged or destroyed homestead property shall not increase the assessed value if:
> * the square footage of a homestead is increased by 10 percent or less, or
> * the square footage of the house as rebuilt or repaired does not exceed 1500 square feet.

(Emphasis supplied). This term "house" is repeated in other staff analyses. See the following staff analyses of HB 7109 (2006):

> Finance & Tax Committee h7109.FT.doc 3/2/2006
> Growth Management Committee, h7109a.GM.doc, 3/24/2006
> Growth Management Committee, h7109b.GM.doc, 3/28/2006
> Finance & Tax Committee h7109c.FC.doc 4/19/2006
> Finance & Tax Committee h7109d.FC.doc 4/21/2006

Department bulletin PTA-06-12, September 8, 2006 states:

> The change allows for rebuilding homestead property damaged or destroyed to a total size of 1,500 square feet without any assessment increase. For such buildings the homestead property's assessed value shall be increased by the just value of that portion of the changed or improved homestead property that exceeds 1,500 square feet. That would in effect eliminate the 110 percent rule for properties of less than 1,500 square feet. Therefore, the 110 percent rule would apply only to properties in excess of 1,500 square feet. The homestead property's assessed value shall be increased by the just value of that portion of the changed or improved homestead property which is in excess of 110 percent of the square footage of the homestead property before the damage or destruction or of that portion exceeding 1,500 square feet.

(Emphasis supplied). The bill also required the Department to prepare a study. See Florida's Property Tax Structure: An Analysis of Save Our Homes and Truth in Millage Pursuant to Chapter 2006-311, L.O.F., Florida Dept of Revenue January 2, 2007. The bill further required EDR to prepare a study. See Florida's Property Tax Study Interim Report, (As required by Chapter 2006-311, Laws of Florida), Legislative Office of Economic and Demographic Research, February 15, 2007 at:
http://edr.state.fl.us/Content/special-research-projects/property-tax-study/Ad%20Valorem-iterim-report.pdf

(Last accessed January 4, 2018) Neither of these study documents discusses the issue presented here relating to the square footage limits.

Previous 2005 Statute

Prior to amendment in 2006 the statute read:

> (4)(a) Changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.
>
> (b) Changes, additions, or improvements do not include replacement of a portion of real property damaged or destroyed by misfortune or calamity when the just value of the damaged or destroyed portion as replaced is not more than 125 percent of the just value of the damaged or destroyed portion. The value of any replaced real property, or portion thereof, which is in excess of 125 percent of the just value of the damaged or destroyed property shall be deemed to be a change, addition, or improvement. Replaced real property with a just value of less than 100 percent of the original property's just value shall be assessed pursuant to subsection (5).
>
> (c) Changes, additions, or improvements include improvements made to common areas or other improvements made to property other than to the homestead property by the owner or by an owner association, which improvements directly benefit the homestead property. Such changes, additions, or improvements shall be assessed at just value, and the just value shall be apportioned among the parcels benefiting from the improvement.
>
> (5) When property is destroyed or removed and not replaced, the assessed value of the parcel shall be reduced by the assessed value attributable to the destroyed or removed property.

2005 Statute for 2004 Named Storms and Legislative History

Also illustrative is the prior legislation in 2005, Section 193.1551, F.S., which also provided an exception to the 2005 version of Section 193.155(4)b), F.S. quoted immediately above:

> 193.1551 Assessment of certain homestead property damaged in 2004 named storms.--
>
> Notwithstanding the provisions of s. 193.155(4), the assessment at just value for changes, additions, or improvements to homestead property rendered uninhabitable in one or more of the named storms of 2004 shall be limited to the square footage exceeding 110 percent of the homestead property's total square footage. Additionally, homes having square footage of 1,350 square feet or less which were rendered uninhabitable may rebuild up to 1,500 total square feet and the increase in square footage shall not be considered as a change, an addition, or an improvement that is subject to assessment at just value. The

> provisions of this section are limited to homestead properties in which repairs are commenced by January 1, 2008, and apply retroactively to January 1, 2005.

(History.-- s. 1, 2005-268 (CS/SB 1194); s. 2, ch. 2007-106.)The 2005 staff analysis of this provision, Section 193.1551, states:

> Similarly, the CS would allow the owners of smaller, older homes (those homes less than 1,350 square feet) damaged during the 2004 hurricane season to rebuild up to 1,500 square feet without incurring higher property assessments. The square footage increase in excess of the 1,500 square foot limit would be subject to additional assessment.

(Emphasis supplied). See Staff Analysis CS/SB 1194, Community Affairs Committee, March 28, 2005 (2005s1194.ca.pdf). The staff analysis also refers to "homestead properties less than 1,350 square feet". This analysis indicates the legislature used the terms "home" and "homestead property" interchangeably in this legislation. See also Staff Analysis CS/SB 1194, Government Efficiency Appropriations Committee, March 30, 2005 (2005s1194.ge.pdf).

The staff analysis in 2005 on a very similar 2005 bill, CS HB537, refers to "square footage of a house" at several points. See Staff Analysis, House Finance and Tax Committee, CS HB 537 (h0537e.FC.doc 4/20/2005). The staff analysis also uses the term "rebuild", which suggests the square footage would be related to a house and not rebuilding of a feature such as a dock.

Analysis

The 2006 Statute Addresses Dwellings

The conclusion from the above is that the 2006 legislation addresses dwellings.

It does not appear that the words "any replaced real property" in the 2005 Subsection (4)(b) was specifically targeted by the 2006 legislation. However, it should be observed that the term would apparently have included replacements of boat docks. It should also be observed that prior to 2006, if a boat dock was a change, addition, or improvement, then its value after rebuilding would have contributed to the 125 percent threshhold the excess of which would be assessed at just value under Subsection (4)(a). After 2006, the effect of the legislation was to exclude extra features such as you describe from square foot formula. This exclusion leaves any excess value they contrite above the pre damage value to be assessed at just value.

This exclusion is as follows. It does not appear that the square footage of a boat dock was regarded as part of the square footage of the "homestead property" in the 2006 amendment. It

certainly appears that the use of the word "house", in the 2006 staff analyses, indicates that the extra features you describe are not part of the dwelling unit of the homestead. [3]

The reference in 2005 to "property rendered uninhabitable" by the 2004 named storms suggests that this legislation was directed at homes and houses used and inhabited as living quarters. When the statutes were generalized in 2006 beyond the 2004 storms, there is no contrary intent apparent. The legislature retained the terms "changes, additions, or improvements to homestead property". The omission in 2006 of the limiting criterion "rendered uninhabitable" appears to be an expansion of the coverage of the statute to the same homestead property that had been the subject of the 2005 legislation, as follows. Although the homestead property described in 2006 was the same living quarters as those the 2005 legislation, addressing the 2004 named storms, was describing, the living quarters no longer had to be rendered uninhabitable in order to be covered by the statute.

The term "rendered uninhabitable" was used when the legislature had previously enacted ch. 2004-474, L.O.F., which provided for owners of homestead property to be reimbursed for a portion of the property taxes on their property if it was rendered uninhabitable for at least 60 days in 2004 by a hurricane or tropical storm. [4]

In the 2005 legislation these provisions applied to homestead properties on which repairs were completed by January 1, 2008, and applied retroactively to January 1, 2005. [5] In 2007 the legislature amended the section to apply to homestead properties in which repairs are commenced by January 1, 2008, and apply retroactively to January 1, 2005. See Ch. 2007-106 s. 2, L.O.F. (SB2482). The 2006 amendment specified that it applied to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the homestead. See section 193.155(4)(b), F.S. [6]

Under the Florida Constitution Article VII, Section 4(d)(5), changes, additions, or improvements are assessed as provided by general law. The use of the term "homestead property" in Section 193.155(4)(b) is narrower than elsewhere in Section 193.155 and in the Florida Constitution Article VII, Section 4.

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[3] Cf. the term "residential unit" in Article VII, Section 6, Florida Constitution regarding homestead exemptions.

[4] See also Section 196.031(6), F.S. which uses the term "rendered uninhabitable".

[5] Section 193.1551, F.S (2005).

[6] Section 196.031(6), F.S. states abandonment of the homestead occurs where "homestead property" is "rendered uninhabitable" on January 1 after the damage or destruction and repairs are not commenced within 3 years after that January 1. This feature, added by Ch. 2006-311, s. 2, L.O.F. was numbered then as Subsection 196.031(7), F.S.

The constitution for example, refers to "homestead" in Article VII, Section 4(d) and to "homestead property" in Section (4)(d)(3), (4), and (5).

In the constitution and elsewhere in Section 193.155, and elsewhere in the statutes, "homestead property" refers to any or all property that receives the homestead exemption. [7]

In Section 193.155(4)(b), F.S. "homestead property" apparently corresponds to the square footage that commonly and customarily would be reported or advertised in a home sale or offer. This is living area or floor space; this correspondence is supported by the legislative history discussed above.

Boat Docks Would Be Assessed at Just Value

For a boat dock, "rebuilding" or replacement would be assessed at just value under Section 193.155(4)(a), F.S. Items such as boat docks apparently do not qualify within the square footage limits [8] stated in subsection (4)(b), and these items must be assessed at just value under subsection (4)(a). [9]

---

[7] See Section 193.155 the first sentence of which states "Homestead property shall be assessed at just value as of January 1, 1994."

See the following parts of 193.155:

(8)(c) a new homestead property;

(8)(h) application for homestead property;

(8)(i)3. the previous homestead property;

(9) Erroneous assessments of homestead property assessed under this section.

Also see Section 196.031(6) and (7);

Section 196.082(1) relating to discounts for disabled veterans;

Section 196.173(1) relating to deployed servicemembers: A servicemember who receives a homestead exemption may receive an additional ad valorem tax exemption on that homestead property as provided in this section;

Section 197.243 Definitions relating to homestead property tax deferral;

Section 197.502(6)(c) property assessed on the latest tax roll as homestead property.

But see Section 193.1551, F.S., the title of which contains the term "certain homestead property".

And see Section 193.1552 relating to drywall: "(5) Homestead property to which this section applies shall be considered damaged by misfortune or calamity under s. 193.155(4)(b), except that the 3-year deadline does not apply."

[8] Or cause the square footage limits to be exceeded.

[9] Other limits in (4)(c) relating to common element areas are not relevant here.

Description of Assessment at Just Value

Assessment at just value, referenced in subsection 193.155(4)(a), F.S., entails removal of the just value of the item from just value, [10] then removal of the assessed value attributable to the item from assessed value, then adding the just value of the replacement item into just value and into assessed value.

For items not replaced, the assessed value [11] is reduced by the assessed value of the item, and the just value of the whole is valued without the item. See Section 193.155(5) and Rule 12D-8.0063(4), F.A.C.

Example of Assessment at Just Value

Assume a dock with a just value of $10,000 and an assessed value of $5,000. Assume 40 percent of the dock is destroyed ($4,000 is destroyed). Reduce just value by 40 percent to $6,000 ($10,000 - $4,000) and reduce assessed value by 40 percent (40 percent of $5,000 is $2,000) to $3,000 ($5,000 - $2,000).

Just value is now $6,000 and assessed value is $3,000.

Assume the rebuilt dock contributes a just value of $15,000. Add $15,000 to just value: $6,000 + $15,000 = $21,000 and also add $15,000 to assessed value: $3,000 + $15,000 = $18,000.

If you or the property appraiser have additional or specific questions on methodologies or calculations for these values please let us know.

Conclusion

The use of the word “buildings” in the Department’s Informational Bulletin PTA 2006-12 reflects the Department’s view consistent with the above.

Under the statute only the amounts within the limits for square footage are under the assessment increase limitation cap; any just value remainder from space above the square footage limits would be placed on the assessment roll at just value and this increase in just value also increases the assessed value.

[10] In other words reduce just value to the just value of the property without the item.
[11] This is the assessed value on January 1 following the damage.

The general rule in Section 193.155(4)(a), F.S. is that changes, additions, or improvements are assessed at just value. This means that the assessed value is increased by the increase in just value attributable to the changes, additions, or improvements. Subsection (4)(b) of the statute was intended to reduce the amount that would come in at just value above the existing assessed value cap.

This assessment at just value would also include any improvement features that are not assessed on a square footage basis. Such features would not affect the square footage, and therefore under subsection (4)(b) of the statute the just value of these improvement features would qualify as increases to the assessed value. These features would include extra features not appraised on a square footage basis, and certain items that are outside the house, dwelling units, or living quarters.

The property appraiser must use consistent appraisal practices across each of these classes of property for property described by the statutory and rule provisions that falls outside the square footage limits.

For example, property that is replaced before the next January 1 should be assessed consistently compared with property that is replaced after January 1. [12] These consistent appraisal practices should be employed so that property is not assessed arbitrarily based on appraisal practices that are different from the appraisal practices generally applied by the property appraiser to comparable property within the same county. [13]

We are providing these general comments in an effort to be of some assistance and these are not a substitute for your own independent legal research on such matters. This response is advisory only and is sent in an effort to assist you by informing you of applicable legal provisions which apply and which we believe must be followed; it is not directory or an order of any kind.

/

[12] Where such latter property must be assessed without the replacement under Section 193.155(5) on that January 1.

[13] See Section 194.301(2)(a)3., F.S.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 1254
INTRODUCER:	Senator Bean
SUBJECT:	Ad Valorem Assessments
DATE:	March 16, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.			FT	
3.			AP	

I. Summary:

SB 1254 amends the homestead assessment statute to provide two additional instances that are not to be considered a "change of ownership" for property assessment purposes. A change of ownership causes the property to be assessed at market value, where otherwise a property would have a lower assessment and therefore lower tax burden. The first instance is where homestead property's title is transferred and the owner entitled to the homestead exemption is both grantor and grantee, and one or more other joint tenants with rights of survivorship are removed from the title. The second is where the transfer occurs with respect to a property where one joint tenant dies, and following the transfer the surviving owner entitled to the homestead exemption remains an owner and entitled to the homestead exemption.

The bill further provides that ancillary improvements, like other changes, additions, and improvements, that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the property's assessed value.

The bill takes effect July 1, 2021.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.[1] The property appraiser annually determines the "just value"[2] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes[4] on real estate or tangible personal property, and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[5]

Homestead Assessments

Homestead property is assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are limited to the lower of three percent of the assessed value of the property for the prior year or the percentage change in the Consumer Price Index for All Urban Consumers.[6] A change of ownership is any sale, foreclosure, or transfer of legal or beneficial title, except where: [7]

- After the change the same owner is still entitled to the same homestead exemption and:
  - The transfer of title is to correct an error;
  - The transfer is between legal and equitable title; or
  - The change is by means of an instrument in which the owner is listed as both grantee and grantor, and one or more other individuals who do not apply for a homestead exemption are named as grantee;
- The change is between husband and wife, including a change due to divorce;
- The transfer occurs by intestate inheritance to a surviving spouse or minor children; or
- Upon the death of the owner, the transfer is between the owner and someone who is a permanent resident and legal or natural dependent of the owner.

Changes, Additions, and Improvements to Real Property

One way the Florida Constitution specifically authorizes the Legislature to provide for property valuations at less than just value is by specifying certain improvements that cannot be considered in evaluating a property's assessed value. Currently the improvements under this provision are

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

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

[3] *See* s. 192.001(2) and (16), F.S.

[4] FLA. CONST. art. VII, s. 1(a).

[5] *See* FLA. CONST. art. VII, s. 4.

[6] FLA. CONST. art. VII, s. 4(d).

[7] Section 193.155(3)(a), F.S.

those made to improve a residential property's resistance to wind damage, and any installation of solar or renewable energy devices.[8]

A homestead property's tax assessment cannot be increased in one year by more than the greater of 3 percent or the percent change in the Consumer Price Index, except for under certain circumstances.[9] One such exception is that changes, additions, and improvements to homestead property are assessed at market value, which can increase the total assessment by any amount.[10]

However, those changes, additions, and improvements that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the homestead property's assessed value as long as the new property's square footage does not exceed 110 percent of the property before the change.[11] Additionally, the homestead property's assessed value may not increase if the total square footage of the property as changed does not exceed 1,500 feet.[12] After a change, addition, or improvement that results in property more than 110 percent of its previous square footage or more than 1,500 feet, the assessed value is required to be increased by the value of that portion in excess of 110 percent of the previous area or 1,500 feet.[13]

This statutory provision also applies to non-homestead property if, during the year when the damage or destruction took place, the owner applies for and is granted a homestead exemption.[14] These provisions apply as long as the changes, additions or improvements are commenced within three years after the January 1 following the damage or destruction of the homestead.[15] When property is destroyed or removed and not replaced, the assessed value of the parcel is reduced by the value attributable to the destroyed or removed property.[16]

Nonhomestead Property

The assessment on nonhomestead property, residential or not, cannot increase by more than 10 percent each year, except for in the same circumstances as provided for homestead property.[17] The same provisions discussed above with respect to changes, additions, and improvements which replace damaged or destroyed property also apply to nonhomestead property.[18] Changes, additions, or improvements that replace all or a portion of nonhomestead property damaged or destroyed by misfortune or calamity shall not increase the property's assessed value when the square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction.[19]

[8] FLA. CONST. art. VII, s. 4(i).
[9] FLA. CONST. art. VII, s. 4(d).
[10] Section 193.155(4)(a), F.S.
[11] Section 193.155(4)(b), F.S.
[12] Id.
[13] Id.
[14] Section 193.155(4)(c), F.S.
[15] Fla. Admin. Code R. 12D-8.0063(3).
[16] Section 193.155(5), F.S.
[17] FLA. CONST. art. VII, s. 4(h); Section 193.1555, F.S.
[18] Section 193.1554(6), F.S.; Section 193.1555(5), F.S.
[19] Section 193.1554(6), F.S.; Section 193.1555(6), F.S.

III. Effect of Proposed Changes:

The bill amends s. 193.155, F.S., to provide that it is not considered a change of ownership for assessment purposes when homestead property's title is transferred via an instrument in which the owner entitled to the homestead exemption is both grantor and grantee, and one or more other individuals who held title as joint tenants with rights of survivorship with the owner are removed from the title.

The bill creates s. 193.155(3)(a)5., F.S., which states it is not considered a change of ownership when the transfer occurs with respect to a property where:

- Multiple owners hold title as joint tenants with rights of survivorship;
- One or more owners were entitled to and received the homestead exemption on the property;
- The death of one or more owner occurs; and
- Following the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption.

The bill further provides that ancillary[20] improvements, like other changes, additions, and improvements, that replace all or a portion of property damaged or destroyed by misfortune or calamity may not increase the property's assessed value. For each category of property (homestead residential property, nonhomestead residential property, and nonhomestead nonresidential property), the same amendments are made. An assessment on a property improved, changed, or added to replace property damaged or destroyed by misfortune or calamity must be calculated using the property's assessed value as of the January 1 immediately preceding the damage or destruction. As in current law, when property is destroyed or removed and not replaced, the assessed value of the parcel is reduced by the value attributable to the destroyed or removed property.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2020-2021, is forecast at $2.2 million.

The mandate provisions may apply because the bill holds that certain transfers no longer trigger assessment at just value, and expands the categories of replacement improvements

[20] The term "ancillary improvement" is not defined in law, but might be generally understood to include extra features, such as boat docks, that are not attached to a house and not assessed on a square footage basis. See DOR Advisory Memorandum from Steve Keller RE *Section 193.155(4) and Changes, Additions, or Improvements to Homestead Property*, February 20, 2018 (on file with the Senate Committee on Community Affairs).

property appraisers must appraise at less than just value. If the amount of ad valorem tax revenue lost due to these effects is determined to exceed $2.2 million in the aggregate, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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

B. Private Sector Impact:

The bill may have a positive fiscal impact on the private sector by allowing property owners to maintain their homestead exemption upon certain property transfer actions that might otherwise be considered a change of ownership. Additionally, homestead property owners may face a positive fiscal impact due to the ability to rebuild "ancillary improvements" without increasing their assessed value.

C. Government Sector Impact:

The bill may result in a negative fiscal impact to local governments due to certain homestead property transfers no longer triggering a just value assessment, and due to the expansion of the types of improvements property appraisers must appraise at less than just value to include "ancillary improvements" to homestead property damaged by misfortune or calamity.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 193.155, 193.1554, and 193.1555.

This bill reenacts section 193.1557 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Bean

4-00898C-21 20211254__

A bill to be entitled

An act relating to ad valorem assessments; amending s. 193.155, F.S.; adding exceptions to the definition of the term "change of ownership" for purposes of a certain homestead assessment limitation; providing that changes, additions, or improvements, including ancillary improvements, to homestead property damaged or destroyed by misfortune or calamity must be assessed upon substantial completion; specifying that the assessed value of the replaced homestead property must be calculated using the assessed value of the homestead property on a certain date before the date on which the damage or destruction was sustained; providing that certain changes, additions, or improvements must be reassessed at just value in subsequent years; amending s. 193.1554, F.S.; providing that changes, additions, or improvements, including ancillary improvements, to nonhomestead residential property damaged or destroyed by misfortune or calamity must be assessed upon substantial completion; specifying that the assessed value of the replaced nonhomestead residential property must be calculated using the assessed value of the nonhomestead residential property on a certain date before the date on which the damage or destruction was sustained; providing that certain changes, additions, or improvements must be reassessed at just value in subsequent years; amending s. 193.1555, F.S.; providing that changes, additions, or

4-00898C-21 20211254__

improvements, including ancillary improvements, to certain nonresidential real property damaged or destroyed by misfortune or calamity must be assessed upon substantial completion; specifying that the assessed value of the replaced nonresidential real property shall be calculated using the assessed value of the residential and nonresidential real property on a certain date before the date on which the damage or destruction was sustained; providing that certain changes, additions, or improvements must be reassessed at just value in subsequent years; reenacting s. 193.1557, F.S., relating to assessment of property damaged or destroyed by Hurricane Michael, to incorporate amendments made by this act in references thereto; providing applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) and paragraph (b) of subsection (4) of section 193.155, Florida Statutes, are amended to read:

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

(3)(a) Except as provided in this subsection or subsection

(8), property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except if any of the following apply:

1. Subsequent to the change or transfer, the same person is entitled to the homestead exemption as was previously entitled and:

a. The transfer of title is to correct an error;

b. The transfer is between legal and equitable title or equitable and equitable title and no additional person applies for a homestead exemption on the property;

c. The change or transfer is by means of an instrument in which the owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, if any individual who is additionally named as a grantee applies for a homestead exemption on the property, the application is considered a change of ownership; ~~or~~

d. The change or transfer is by means of an instrument in which the owner entitled to the homestead exemption is listed as both grantor and grantee of the real property and one or more other individuals, all of whom held title as joint tenants with rights of survivorship with the owner, are named only as grantors and are removed from the title; or

e. The person is a lessee entitled to the homestead

exemption under s. 196.041(1).

2. Legal or equitable title is changed or transferred between husband and wife, including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage;

3. The transfer occurs by operation of law to the surviving spouse or minor child or children under s. 732.401; ~~or~~

4. Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and who is legally or naturally dependent upon the owner; or

5. The transfer occurs with respect to a property where all of the following apply:

a. Multiple owners hold title as joint tenants with rights of survivorship;

b. One or more owners were entitled to and received the homestead exemption on the property;

c. The death of one or more owners occurs; and

d. Subsequent to the transfer, the surviving owner or owners previously entitled to and receiving the homestead exemption continue to be entitled to and receive the homestead exemption.

(4)

(b)1. Changes, additions, or improvements that replace all or a portion of homestead property, including ancillary improvements, damaged or destroyed by misfortune or calamity shall be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using ~~shall not increase~~ the homestead property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations

in subsections (1) and (2), when:

a. The square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction; or.

b. ~~Additionally, the homestead property's assessed value shall not increase if~~ The total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. ~~Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the homestead property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (1).~~

2. The homestead property's assessed value must ~~shall~~ be increased by the just value of that portion of the changed or improved homestead property which is in excess of 110 percent of the square footage of the homestead property before the damage or destruction or of that portion exceeding 1,500 square feet.

Changes, additions, or improvements assessed pursuant to this paragraph must be reassessed pursuant to subsection (1) in subsequent years.

3. Homestead property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the homestead property's total square footage before the damage or destruction shall be assessed pursuant to subsection (5).

4. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the homestead.

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

193.1554 Assessment of nonhomestead residential property.—

(6)

(b)1. Changes, additions, or improvements that replace all or a portion of nonhomestead residential property, including ancillary improvements, damaged or destroyed by misfortune or calamity must be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using ~~shall not increase~~ the nonhomestead property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations in subsections (1) and (2), when:

a. The square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction; or.

b. ~~Additionally, the property's assessed value shall not increase if~~ The total square footage of the property as changed or improved does not exceed 1,500 square feet. ~~Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (3).~~

2. The property's assessed value must ~~shall~~ be increased by the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction or of that portion exceeding 1,500 square feet.

Changes, additions, or improvements assessed pursuant to this paragraph shall be reassessed pursuant to subsection (3) in subsequent years.

3. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8).

4. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.

Section 3. Paragraph (b) of subsection (6) of section 193.1555, Florida Statutes, is amended to read:

193.1555 Assessment of certain residential and nonresidential real property.—

(6)

(b)1. Changes, additions, or improvements that replace all or a portion of nonresidential real property, including ancillary improvements, damaged or destroyed by misfortune or calamity must be assessed upon substantial completion as provided in this paragraph. Such assessment must be calculated using ~~shall not increase~~ the nonresidential real property's assessed value as of the January 1 immediately before the date on which the damage or destruction was sustained, subject to the assessment limitations in subsections (1) and (2), when:

a. The square footage of the property as changed or improved does not exceed 110 percent of the square footage of the property before the damage or destruction; and

b. The changes, additions, or improvements do not change the property's character or use. ~~Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the property before the damage or destruction and do not change the property's character or use shall be reassessed as provided under subsection (3).~~

2. The property's assessed value must ~~shall~~ be increased by the just value of that portion of the changed or improved property which is in excess of 110 percent of the square footage of the property before the damage or destruction.

Changes, additions, or improvements assessed pursuant to this paragraph must be reassessed pursuant to subsection (3) in subsequent years.

3. Property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage of less than 100 percent of the property's total square footage before the damage or destruction shall be assessed pursuant to subsection (8).

4. This paragraph applies to changes, additions, or improvements commenced within 3 years after the January 1 following the damage or destruction of the property.

Section 4. For the purpose of incorporating the amendments made by this act to sections 193.155, 193.1554, and 193.1555, Florida Statutes, in references thereto, section 193.1557, Florida Statutes, is reenacted to read:

193.1557 Assessment of certain property damaged or destroyed by Hurricane Michael.—For property damaged or destroyed by Hurricane Michael in 2018, s. 193.155(4)(b), s.

193.1554(6)(b), or s. 193.1555(6)(b) applies to changes, additions, or improvements commenced within 5 years after January 1, 2019. This section applies to the 2019-2023 tax rolls and shall stand repealed on December 31, 2023.

Section 5. The amendments made by this act to sections 193.155, 193.1554, and 193.1555, Florida Statutes, are remedial and clarifying in nature, but the amendments may not affect any assessment for tax rolls before 2021 unless the assessment is under review by a value adjustment board or a Florida court as of the effective date of this act. If changes, additions, or improvements that replaced all or a portion of property damaged or destroyed by misfortune or calamity were not assessed in accordance with this act as of the January 1 immediately after they were substantially completed, the property appraiser must determine the assessment for the year they were substantially completed and recalculate the just and assessed value for each subsequent year so that the 2021 tax roll and subsequent tax rolls will be corrected.

Section 6. This act applies to assessments made as of January 1, 2021.

Section 7. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

1490
Bill Number (if applicable)

159428
Amendment Barcode (if applicable)

Topic Amendment to SB 1490

Name TRAVIS MOORE

Job Title

Address P.O. Box 2020
Street

St. Petersburg FL 33731
City *State* *Zip*

Phone 727.421.6902

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Community Associations Institute

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

1490
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic CONDOMINIUM INVESTMENT

Name LOUIS ORLOFF

Job Title

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/21
Meeting Date

1490
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 1490

Name Mark Anderson

Job Title Lobbyist

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Street

Phone 813-205-0658

Tallahassee FL 32301
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Email Mark@ConsultAnderson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Protected Reserve Funds

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 24
Meeting Date

1490
Bill Number (if applicable)

Topic Investments of Condo Assn.

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title Consultant

Address 115 E. Park Ave
Street

Phone 727-5000

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associa

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-24-21
Meeting Date

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

1490
Bill Number (if applicable)

159428
Amendment Barcode (if applicable)

Topic Investment by Condominium Assoc.

Name Justin Thames

Job Title Director of Governmental Affairs

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Tallahassee FL 32301
City *State* *Zip*

Email justin@ficpa.org

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

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

Representing Florida Institute of CPAs

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 1490
INTRODUCER:	Community Affairs Committee and Senator Pizzo
SUBJECT:	Investments by Condominium Associations
DATE:	March 25, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Paglialonga	Ryon	CA	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1490 authorizes condominium associations, including multicondominium associations, to invest association funds. The bill provides relevant procedures and requirement an association must follow when investing.

To invest association funds, the association board of directors must obtain prior approval by a majority vote of the unit owners at a duly called meeting of the association. Furthermore, the board must develop a written investment policy statement, which must be annually approved by association members during a budget meeting. The investment policy statement must address specified investment criteria.

The bill also requires the board to select a registered investment adviser if the association opts to invest funds in an investment product other than a depository account.

The investment adviser may not be related by affinity or consanguinity to any board member or unit owner. The investment adviser must comply with the prudent investor rule in s. 518.11, F.S., act as a fiduciary to the association, annually provide the association with a written certification of compliance with the requirements in the bill, and submit monthly, quarterly, and annual reports to the association prepared in accordance with investment industry standards. Investment portfolios managed by the investment adviser may contain any type of investment necessary to meet the objectives in the investment policy statement, but may not contain stocks,

securities, or other obligations that the State Board of Administration or state agencies are prohibited from investing in.

The association must have at least 36 months of projected reserves in cash or cash equivalents available at all times. Additionally, any principal, earnings, or interest in the investment portfolio must be available at no cost or charge to the association within 15 business days after delivery of the association's written or electronic request.

Under the bill, an association's investment policy statement is an official record of the association that must be available to unit owners for inspection and copying.

The bill takes effect July 1, 2021.

II. Present Situation:

Condominium

A condominium is a "form of ownership of real property created under ch. 718, F.S."[1] Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements and members of the condominium association.[2] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[3] A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.[4] A declaration is similar to a constitution in that it:

> [S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.[5]

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.[6] Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."[7] The board of administrators is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and

[1] Section 718.103(11), F.S.
[2] *See* s. 718.103, F.S.
[3] *Id.*
[4] Section 718.104(2), F.S.
[5] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[6] Section 718.303(3), F.S.
[7] Section 718.103(4), F.S.

are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.[8] In litigation, an association's board of directors is in charge of directing attorney actions.[9]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominiums.[10]

Reserve Accounts

Condominium associations are required to prepare an annual budget detailing the annual operating revenues and expenses for the fiscal year.[11] The association must provide members with a copy of the proposed annual budget and the adopted annual budget.[12]

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance.[13] Reserve funds and any accrued interest must remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association.[14]

All funds collected by an association must be maintained separately in the association's name. Reserve funds may be commingled with operating funds of the association for investment purposes only. Commingled operating and reserve funds must be accounted for separately, and a commingled account may not, at any time, be less than the amount identified as reserve funds.[15] Although current law permits reserve and operating funds to be commingled for investment purposes, current law does not provide a process or requirements for the investment of association funds.

Reserve funds and any interest accruing on those funds may be used only for authorized reserve expenditures, unless the use for other purposes has been approved in advance by a majority vote at a duly called meeting of the condominium association.[16]

In Fiscal Year 2019-2020, there were 2,011 complaints received by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Of those complaints 459 (22.82 percent) were related to budgets, financial reports, and assessments. [17]

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[8] Section 718.103(2), F.S.
[9] Section 718.103(30), F.S.
[10] *See* s. 718.501, F.S. *See infra,* the *Present Situation* for the proposed revisions to the division's authority set forth in s. 718.501, F.S.
[11] Section 718.112(2)(f)1., F.S.,
[12] Section 718. 112(2)(e), F.S.
[13] Section 718. 112(2)(f)2., F.S.
[14] Section 718. 112(2)(f)3., F.S.
[15] Section 718.111(14), F.S.
[16] Section 718.112(2)(f)3., F.S.
[17] Division of Florida Condominiums, Timeshares, and Mobile Homes, *Annual Report, Fiscal Year 2019-2020,* at page 2, *available* at SPTLLSC0420082413380 (myfloridalicense.com) (last visited March 13, 2021). The largest number of complaints were regarding access to official records (508 – 25.26 percent).

Fiduciary Duty and Prohibited Acts

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty.[18] An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or kickback for which consideration has not been provided for the benefit of such person (or immediate family members) from any person providing or proposing to provide goods or services to the association.[19]

Section 718.111(1)(a), F.S., provides that any officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.,[20] and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.[21] An officer, director, or agent must discharge his or her duties in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association.[22] An officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties and the breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.[23]

Investment Advisers

Investment advisors are defined as "any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services."[24] The term does not include:

- Any licensed practicing attorney whose performance of such services is solely incidental to the practice of her or his profession;

[18] Section 718.111(1)(a), F.S.
[19] Section 718.111(1)(a), F.S., does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.
[20] Section 718.501(1)(d), F.S., authorizes the division to impose a civil penalty of not more than $5,000.
[21] The only crimes specifically referenced in s. 718.111(1)(d), F.S., are offenses relating to forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records. Additionally, s. 718.111(1)(d), F.S., states that an officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834, F.S. However, s. 617.0834, F.S., does not provide a criminal prohibition.
[22] Section 718.111(1)(d), F.S.
[23] *Id.*
[24] Section 517.021(14)(a), F.S.

- Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;
- Any bank authorized to do business in this state;
- Any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state;
- Any trust company having trust powers which it is authorized to exercise in the state, which trust company renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;
- Any person who renders investment advice exclusively to insurance or investment companies;
- Any person who does not hold herself or himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state;
- Any person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940; or
- A federal covered adviser.[25]

An investment advisor must be registered with the Office of Financial Regulation within the Financial Services Commission[26] to "sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office pursuant to the provisions of this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to [ch. 517, F.S.]"[27]

III. Effect of Proposed Changes:

The bill creates s. 718.111(16), F.S., to authorize condominium associations, including multicondominium associations, to invest association funds in one or in any combination of investment products.

If an association invests funds in any type of investment product other than a depository account described in s. 215.47(1)(h), F.S.,[28] the board of the association must:

- Obtain prior approval by a majority vote of the unit owners at a duly called meeting of the association;

Develop a written investment policy statement, which must be annually approved by association members during a budget meeting, and must address liquidity, safety, yield short-term and

[25] Section 517.021(14)(b), F.S.
[26] Section 517.021(8), F.S.
[27] Section 517.12(1), F.S.
[28] Section 215.47(1)(h), F.S., authorizes the State Board of Administration to invest in savings accounts in, or certificates of deposit of, any bank, savings bank, or savings and loan association. Such accounts must be insured by the Federal Government or an agency thereof and have a prime quality of the highest letter and numerical ratings as provided for by at least one nationally recognized statistical rating organization, provided such savings accounts and certificates of deposit are secured in the manner prescribed in ch. 280, F.S., the Florida Security for Public Deposits Act.

long-term goals, authorized investments, the mix of investments allowed, and the limits of authority relative to investment; and
- Select an investment adviser who is registered with the Office of Financial Regulation under s. 517.12, F.S.

The investment adviser may not be related by affinity or consanguinity to any board member or unit owner. The association may pay any investment fees and commissions from the invested reserve funds or operating funds.

The investment adviser selected by the board must:
- Comply with the prudent investor rule in s. 518.11, F.S.,[29] if the funds are not deposited in a depository account;
- Act as a fiduciary to the association in compliance with the standards set forth in the Employee Retirement Income Security Act of 1974 (ERISA);[30]
- Annually provide the association with a written certification of compliance with s. 718.111(16), F.S.; and
- Submit monthly, quarterly, and annual reports to the association which are prepared in accordance with investment industry standards.

At least once each calendar year, the association must provide the investment adviser with:
- The association's investment policy statement;
- The most recent reserve study report or a good faith estimate disclosing the annual amount of reserve funds which would be necessary for the association to fully fund reserves for each reserve item; and
- The annual financial reports prepared pursuant to s. 718.111(13), F.S.

The investment adviser must annually review these documents and provide the association with a portfolio allocation model that is suitably structured to match projected reserve fund and liability liquidity requirements. Additionally, the association must have at least 36 months of projected reserves in cash or cash equivalents available at all times.

Investment portfolios managed by the investment adviser may contain any type of investment necessary to meet the objectives in the investment policy statement, but may not contain stocks, securities, or other obligations that the State Board of Administration or state agencies are

[29] Section 518.11, F.S., sets forth the prudent investor rule. Generally, a fiduciary has a duty to invest and manage investment assets as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.
[30] The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. s. 1104(a)(1)(A)- (C), is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. ERISA requires plans to provide participants with plan information; sets minimum standards for participation, vesting, benefit accrual and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; gives participants the right to sue for benefits and breaches of fiduciary duty; and, if a defined benefit plan is terminated, guarantees payment of certain benefits through a federally chartered corporation, known as the Pension Benefit Guaranty Corporation (PBGC). See U.S. Department of Labor, *Employee Retirement Income Security Act of 1974 (ERISA), available at*: https://www.dol.gov/general/topic/retirement/erisa (last visited Mar. 10, 2021.)

prohibited from investing in under ss.215.471, 215.4725, 215.472, and 215.473, F.S., as determined by the investment adviser.[31]

The bill requires any principal, earnings, or interest in the investment portfolio must be available at no cost or charge to the association within 15 business days after delivery of the association's written or electronic request.

Official Records

The bill amends s. 718.111(12), to provide that an association's investment policy statement is an official record of the association that must be available to unit owners for inspection and copying.

Effective Date

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[31] These provisions deal with investments in stocks, securities, or other obligations of companies doing business with Cuba or Venezuela, that boycott Israel or engage in a boycott of Israel, or that conduct certain business operations with [North] Sudan and Iran.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111 and 718.3026.

IX. Additional Information:

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

CS by Community Affairs on March 24, 2021:
The CS:

- Requires the board to obtain approval from the majority of unit owners to invest association funds;
- Requires the board to develop a written investment policy statement, which must address specified investment criteria and be annually approved by association members during a budget meeting;
- Removes the requirement that any funds invested must be held in third-party custodial accounts and insured by the Securities Investor Protection Corporation in an amount equal to or greater than the assets held; and
- Removes the requirement that at least once each calendar year, the association must select a certified public accountant to provide the association with a statement verifying the invested fund transactions and a report of cash receipts and disbursements for the invested funds.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Delete lines 119 - 275

and insert:

pursuant to sub-subparagraph (16)(b)2.

18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws,

the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association’s total

annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

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2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) Unless an association invests funds pursuant to paragraph (16)(b), and only if approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association’s financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in

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the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

(e) If an association invests funds pursuant to paragraph (16)(b), the association must prepare financial statements pursuant to paragraphs (a) and (b) of this subsection.

(16) INVESTMENT OF ASSOCIATION FUNDS.—

(a) Unless otherwise prohibited in the declaration, and in accordance with s. 718.112(2)(f), an association, including a multicondominium association, may invest any funds in one or any combination of investment products described in this subsection.

(b) If an association invests funds in any type of investment product other than a depository account described in s. 215.47(1)(h), the association must meet all of the following requirements:

1. The board must obtain prior approval by a majority vote of the unit owners or all nondeveloper voting interests at a duly called meeting of the association before investing funds in investment products other than a depository account described in s. 215.47(1)(h).

2. The board must develop a written investment policy statement and such statement must be annually approved during a budget meeting. An investment policy statement must, at minimum, address:

a. Liquidity;

b. Safety;

c. Yield;

d. Short-term and long-term goals;

e. Authorized investments;

f. The mix of investments allowed; and

g. The limits of authority relative to investment transactions.

3. The board must select an investment adviser who is registered under s. 517.12 and who is not related by affinity or consanguinity to any board member or unit owner. Any investment fees and commissions may be paid from the invested reserve funds or operating funds. The investment adviser selected by the board shall invest any funds not deposited into a depository account described in s. 215.47(1)(h) by the board and shall comply with the prudent investor rule in s. 518.11. The investment adviser shall act as a fiduciary to the association in compliance with the standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this subparagraph shall prevail.

4. At least once each calendar year, the association shall provide the investment adviser with the association's investment policy statement, the most recent reserve study report or a good faith estimate disclosing the annual amount of reserve funds which would be necessary for the association to fully fund reserves for each reserve item, and the financial reports prepared pursuant to subsection (13). The investment adviser

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shall annually review these documents and provide the association with a portfolio allocation model that is suitably structured to match projected reserve fund and liability liquidity requirements. There must be at least 36 months of projected reserves in cash or cash equivalents available to the association at all times.

(c) Portfolios managed by the investment adviser may contain any type of investment necessary to meet the objectives in the investment policy statement; however, portfolios may not contain stocks, securities, or other obligations that the State Board of Administration is prohibited from investing in under ss. 215.471, 215.4725, and 215.473 or that state agencies are prohibited from investing in under s. 215.472, as determined by the investment adviser.

(d) The investment adviser shall:

1. Annually provide the association with a written certification of compliance with this section; and

2. Submit monthly, quarterly, and annual reports to the association which are prepared in accordance with investment industry standards.

(e) Any principal, earnings, or interest managed under this subsection must be available at no cost or charge to the association within 15 business days after delivery of the association's written or electronic request.

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

And the directory clause is amended as follows:

Delete line 43

and insert:

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718.111, Florida Statutes, is amended, and paragraph (e) is added to subsection (13) of that section and subsection (16) is

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

And the title is amended as follows:

Delete lines 6 - 35

and insert:

requiring associations that make certain investments to prepare financial statements in a specified manner; authorizing associations to invest funds in specified investment products; requiring certain association boards to obtain prior approval before investing funds in certain investment products, annually develop an investment policy statement, and select an investment adviser who meets specified requirements; authorizing investment fees and commissions to be paid from invested reserve funds or operating funds; requiring investment advisers to invest certain operating or reserve funds in compliance with a specified rule; requiring investment advisers to act as association fiduciaries; providing construction; requiring that certain funds be held in specified accounts; requiring associations to provide their investment adviser with certain documents at least annually; requiring investment advisers to annually review such documents and provide the association with a portfolio allocation model that meets specified requirements; providing that portfolios may not contain certain investments; requiring investment advisers to annually

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provide to the association a certain certification and to periodically submit certain reports; requiring that certain funds be made available to associations within a certain timeframe after they submit a written or electronic request; amending s. 718.3026, F.S.;

By Senator Pizzo

38-00245C-21 20211490__

A bill to be entitled

An act relating to investments by condominium associations; amending s. 718.111, F.S.; requiring condominium associations to maintain a copy of their investment policy statement as an official record; authorizing associations to invest funds in specified investment products; requiring certain association boards to annually develop an investment policy statement and select an investment adviser who meets specified requirements; authorizing investment fees and commissions to be paid from invested reserve funds or operating funds; requiring investment advisers to invest certain operating or reserve funds in compliance with a specified rule; requiring investment advisers to act as association fiduciaries; providing construction; requiring that certain funds be held in specified accounts; requiring associations to provide their investment adviser with certain documents at least annually; requiring investment advisers to annually review such documents and provide the association with a portfolio allocation model that meets specified requirements; providing that portfolios may not contain certain investments; requiring investment advisers to annually provide to the association a certain certification and to periodically submit certain reports; requiring that certain funds be made available to associations within a certain timeframe after they submit a written or electronic request; requiring that a certified public

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accountant at least annually provide associations with specified information; amending s. 718.112, F.S.; specifying that certain votes are required to make specified investments; specifying that only certain voting interests may vote on questions that involve certain investments; amending s. 718.3026, F.S.; exempting registered investment advisers from certain provisions relating to contracts for products and services; providing an effective date.

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

Section 1. Paragraph (a) of subsection (12) of section 718.111, Florida Statutes, is amended, and subsection (16) is added to that section, to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and

each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing

harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. ~~All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

~~16.~~ A copy of the inspection report as described in s. 718.301(4)(p).

16.~~17.~~ Bids for materials, equipment, or services.

17. A copy of the investment policy statement adopted pursuant to sub-subparagraph (16)(b)1.a.

18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(16) INVESTMENT OF ASSOCIATION FUNDS.—

(a) Unless otherwise prohibited in the declaration, and in accordance with s. 718.112(2)(f), an association, including a multicondominium association, may invest any funds in one or any combination of investment products described in this subsection.

(b) If an association invests funds in any type of investment product other than a depository account described in s. 215.47(1)(h), the association must meet all of the following requirements:

1.a. The board shall annually develop and adopt a written investment policy statement and select an investment adviser who is registered under s. 517.12 and who is not related by affinity or consanguinity to any board member or unit owner. Any investment fees and commissions may be paid from the invested reserve funds or operating funds.

b. The investment adviser selected by the board shall invest any funds not deposited into a depository account described in s. 215.47(1)(h) by the board and shall comply with the prudent investor rule in s. 518.11. The investment adviser shall act as a fiduciary to the association in compliance with the standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other provisions of law authorizing

investments, the investment and fiduciary standards set forth in this sub-subparagraph shall prevail.

c. Any funds invested under this subparagraph must be held in third-party custodial accounts and are subject to insurance coverage by the Securities Investor Protection Corporation in an amount equal to or greater than the assets held.

2. At least once each calendar year, the association shall provide the investment adviser with the association's investment policy statement, the most recent reserve study report or a good faith estimate disclosing the annual amount of reserve funds which would be necessary for the association to fully fund reserves for each reserve item, and the financial reports prepared pursuant to subsection (13). The investment adviser shall annually review these documents and provide the association with a portfolio allocation model that is suitably structured to match projected reserve fund and liability liquidity requirements. There must be at least 36 months of projected reserves in cash or cash equivalents available to the association at all times.

(c) Portfolios managed by the investment adviser may contain any type of investment necessary to meet the objectives in the investment policy statement; however, portfolios may not contain stocks, securities, or other obligations that the State Board of Administration is prohibited from investing in under ss. 215.471, 215.4725, and 215.473 or that state agencies are prohibited from investing in under s. 215.472, as determined by the investment adviser.

(d) The investment adviser shall:

1. Annually provide the association with a written

certification of compliance with this section; and

2. Submit monthly, quarterly, and annual reports to the association which are prepared in accordance with investment industry standards.

(e) Any principal, earnings, or interest managed under this subsection must be available at no cost or charge to the association within 15 business days after delivery of the association's written or electronic request.

(f) At least once each calendar year, the association must select a certified public accountant to provide the association with a statement verifying the invested fund transactions and a report of cash receipts and disbursements for the invested funds.

Section 2. Paragraph (f) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those

entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second

fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any earnings ~~interest~~ accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes, including investing funds pursuant to s. 718.111(16), is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended, including investing funds pursuant to s. 718.111(16), without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of

reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, including investing funds pursuant to s. 718.111(16), are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended, including investing funds pursuant to s. 718.111(16), must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 3. Paragraph (a) of subsection (2) of section 718.3026, Florida Statutes, is amended to read:

718.3026 Contracts for products and services; in writing; bids; exceptions.—Associations with 10 or fewer units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

(2)(a) Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, registered investment adviser, and landscape architect services are not subject to the provisions of this section.

Section 4. This act shall take effect July 1, 2021.

From:	Hackett, Jack
To:	Everette, Shirlyne
Subject:	FW: [EXT] RE: 1620 question
Date:	Monday, March 22, 2021 3:30:57 PM
Attachments:	SB 1620 Autonomous Delivery Vehicle RW Comments.pdf

Here's the "on file" for SB 1620- both the email and the attachment.

Jack Hackett
Attorney
The Florida Senate
Community Affairs Committee
315 Knott Building
850 487 5630

From: Price, Cindy <PRICE.CINDY@flsenate.gov>
Sent: Monday, March 22, 2021 3:29 PM
To: Hackett, Jack <Hackett.Jack@flsenate.gov>
Subject: FW: [EXT] RE: 1620 question

Not sure I sent the entire email – see below. I think I only sent the attachment…

From: Jacobs, Kevin <KevinJacobs@flhsmv.gov>
Sent: Monday, March 8, 2021 10:12 AM
To: Price, Cindy <PRICE.CINDY@flsenate.gov>
Subject: RE: [EXT] RE: 1620 question

Comments from our Motorist Services side

From: Price, Cindy <PRICE.CINDY@flsenate.gov>
Sent: Monday, March 8, 2021 9:59 AM
To: Jacobs, Kevin <KevinJacobs@flhsmv.gov>
Subject: [EXT] RE: 1620 question

Thanks so much, Kevin! Really appreciate your help!

From: Jacobs, Kevin <KevinJacobs@flhsmv.gov>
Sent: Monday, March 8, 2021 9:58 AM
To: Price, Cindy <PRICE.CINDY@flsenate.gov>
Subject: 1620 question

Cindy,

Spoke with our bureau that deals with insurance. They didn't read anything in the bill that indicated one way or another on the Autonomous LSV shuttle being required to have PIP/PD vs autonomous

vehicle coverage, so unsure how it would be interpreted. Clarifying language is always helpful when we are determining how to implement these types of provisions.

Kevin Jacobs
Department of Highway Safety & Motor Vehicles
Legislative Affairs Director
(850) 617-3112

By Senator Brandes

24-01183D-21 20211620__

A bill to be entitled

An act relating to autonomous vehicles; amending s. 316.003, F.S.; defining the term "low-speed autonomous delivery vehicle"; amending s. 316.2122, F.S.; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; amending s. 316.215, F.S.; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (38) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (39) through (106), respectively, a new subsection (38) is added to that section, and present subsection (62) of that section is amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(38) LOW-SPEED AUTONOMOUS DELIVERY VEHICLE.—A fully

autonomous vehicle that meets the definition of a low-speed vehicle in 49 C.F.R. s. 571.3.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (85)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Section 316.2122, Florida Statutes, is amended to read:

316.2122 Operation of a low-speed vehicle, ~~or~~ mini truck, or low-speed autonomous delivery vehicle on certain roadways.—

(1) The operation of a low-speed vehicle as defined in s. 320.01 or a mini truck as defined in s. 320.01 on any road is authorized with the following restrictions:

(a) ~~(1)~~ A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) ~~(2)~~ A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(c) ~~(3)~~ A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02 and titled pursuant to chapter 319.

(d) ~~(4)~~ Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.

(2) The operation of a low-speed autonomous delivery vehicle on any road is authorized with the following restrictions:

(a) A low-speed autonomous delivery vehicle may operate only on streets or roads where the posted speed limit is 35 miles per hour or less. This paragraph does not prohibit a low-speed autonomous delivery vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:

1. The low-speed autonomous delivery vehicle travels no more than 1 continuous mile on such a street or road, except that the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;

2. The low-speed autonomous delivery vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and

3. On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the autonomous delivery vehicle, the low-speed autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

(c) A low-speed autonomous delivery vehicle must be equipped with headlamps, stop lamps, turn signal lamps,

taillamps, reflex reflectors, and vehicle identification numbers.

(d) Federal regulations adopted by the National Highway Traffic Safety Administration shall supersede this subsection when found to be in conflict with this subsection.

(3)~~(5)~~ A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(4)~~(6)~~ The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

Section 3. Present subsection (6) of section 316.215, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and present subsection (6) is republished, to read:

316.215 Scope and effect of regulations.—

(6) The provisions of any motor vehicle equipment laws or regulations of this state which relate to or support motor vehicle operation by a human driver but are not relevant for an automated driving system shall not apply to fully autonomous vehicles that are designed to be operated exclusively by the automated driving system for all trips.

(7)~~(6)~~ A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 4. Paragraph (a) of subsection (3) of section

316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(106) ~~s. 316.003(105)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

Section 5. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) “Access area” means any paved walkway or sidewalk which

is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(85)(a) or (b) ~~s. 316.003(84)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 6. This act shall take effect July 1, 2021.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 1620
INTRODUCER:	Transportation Committee and Senator Brandes
SUBJECT:	Autonomous Vehicles
DATE:	March 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	Hackett	Ryon	CA	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1620 defines the term "low-speed autonomous delivery vehicle" as a fully autonomous vehicle that meets the current federal definition. The bill authorizes such vehicles to operate only on streets or roads where the posted speed limit is 35 miles per hour or less but are not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour. A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, under certain conditions.

The bill sets out equipment requirements for such vehicles and provides that the new provisions are superseded by any conflicting federal regulations. The bill also establishes insurance coverage requirements for such vehicles. The provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system, are rendered inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for *all* trips.

The bill also makes conforming revisions made necessary by the above provisions.

The fiscal impact to state and local revenues is indeterminate. See the "Fiscal Impact Statement" below for details.

The bill takes effect July 1, 2021.

II. Present Situation:

Low-Speed Autonomous Delivery Vehicles

Convenient delivery of goods to households is increasingly popular, particularly so in the current pandemic. New types of vehicles designed specifically for such purposes are emerging. One such vehicle is produced by Nuro, Inc., based in California,[1] which produces a vehicle called the R2X. Nuro indicates the vehicle is about half the width and weight of a typical car.[2]

As described by the National Highway Traffic Safety Administration (NHTSA),[3] the R2X is a highly automated low-speed, electrically-powered delivery vehicle designed to carry cargo exclusively (everything "from dinner to dry cleaning"[4]) and operate without a human driver. The vehicle has no occupant compartments, designated seating positions, or manual controls for driving the vehicle. The R2X is equipped with a system that allows a remote operator to take over the driving functions of the vehicle.[5]

Federal law defines "low-speed vehicle" to mean a motor vehicle:
- That is 4-wheeled,
- Whose speed attainable in 1 mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface, and
- Whose gross vehicle weight rating is less than 3,000 pounds.[6]

Federal regulations in 49 C.F.R. s. 571.500 require each low-speed vehicle to be equipped with:
- Headlamps,
- Front and rear turn signal lamps,
- Taillamps,
- Stop lamps,
- Reflex reflectors: one red on each side as far to the rear as practicable, and one red on the rear,
- An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror,
- A parking brake,
- A windshield that conforms to a specified Federal Motor Vehicle Safety Standard (FMVSS) relating to glazing.
- A vehicle identification number.
- Seat belt assemblies that comply with a specified FMVSS.
- Specified rear visibility requirements relating to back-up cameras.
- An alert sound necessary for pedestrians to detect and recognize the vehicle.

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[1] *See* Nuro, *About*, available at Nuro — About (last visited March 8, 2021).
[2] *See* Nuro, *Delivery Safety: Nuro's Approach,* at p. 9, available at delivering_safety_nuros_approach.pdf (squarespace.com) (last visited March 8, 2021).
[3] *See* Federal Register, Volume 85, No. 28, Tuesday, February 11, 2020, available at Federal Register :: Nuro, Inc.; Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System (last visited March 8, 2021).
[4] Nuro, available at Nuro — Product (last visited March 8, 2021).
[5] NHTSA notes its understanding that the remote operator system is a "fallback" safety feature and is not a primary means of controlling the system. *Id.* at p. 1.
[6] 49 C.F.R. 571.3.

Temporary Exemption from Federal Motor Vehicle Safety Standards

The National Traffic and Motor Vehicle Safety Act[7] grants the U.S. Department of Transportation (USDOT) broad authority to exempt motor vehicles from an FMVSS or bumper standard on a temporary basis under specified terms and conditions.[8] The USDOT Secretary has delegated this authority to NHTSA.[9]

Pursuant to that authority, NHTSA has granted at least one company, Nuro, *temporary* exemptions from three of the low-speed vehicle equipment requirements in 49 C.F.R. s. 571.500.[10] The exemptions are from the following equipment requirements listed above:

- The exterior and interior mirror requirement.
- The windshield glazing requirements.
- The rear visibility requirements (relating to backup camera "linger time").

The exemption was granted under a number of terms and conditions and authorizes Nuro to produce 2,500 of the exempted R2X vehicles during any 12-month period of the exemption, or a maximum of 5,000 exempted vehicles over the full two-year period of the exemption. The exemption expires on February 10, 2022.

Autonomous Vehicles

Federal Policy and Guidance

In October of 2018, the USDOT began releasing federal guidance for automated driving systems, building on previous policy and adopting an industry standard to ensure consistency in taxonomy usage. The standard sets out levels of vehicle automation, ranging from Level 0 (no automation) to Level 6 (full automation). The USDOT has since issued additional guidance, involving the work of multiple stakeholders, in periodic publications intended to lay the groundwork for deployment of automated vehicles and technology.[11] The latest guidance comes in the form of an *Automated Vehicles Comprehensive Plan,*[12] the goals of which are summarized by the USDOT as follows:

- Promote Collaboration and Transparency – USDOT will promote access to clear and reliable information to its partners and stakeholders, including the public, regarding the capabilities and limitations of ADS.[13]
- Modernize the Regulatory Environment – USDOT will modernize regulations to remove unintended and unnecessary barriers to innovative vehicle designs, features, and operational models, and will develop safety focused frameworks and tools to assess the safe performance of ADS technologies.

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[7] 49 U.S.C. 310 *et seq.*
[8] 49 U.S.C. 30113.
[9] 49 C.F.R. 1.95.
[10] *See* Federal Register, Volume 85, No. 28, Tuesday, February 11, 2020, available at Federal Register :: Nuro, Inc.; Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System (last visited March 8, 2021).
[11] USDOT, *USDOT Automated Vehicles Activities,* "ADS 2.0 Activities," "AV 3.0 Activities," and "AV 4.0 Activities" tabs available at https://www.transportation.gov/AV (last visited March 7, 2021).
[12] Available at Automated Vehicles Comprehensive Plan | US Department of Transportation (last visited March 7, 2021).
[13] "Automated driving systems." *See* discussion of current Florida definitions on p. 2 of this analysis.

- Prepare the Transportation System – USDOT will conduct, in partnership with stakeholders, the foundational research and demonstration activities needed to safely evaluate and integrate ADS, while working to improve the safety, efficiency, and accessibility of the transportation system.[14]

The USDOT is seeking public comments on the plan, with the comment period ending on March 22, 2021. Thus far, only guidance has been issued. No federal statutes or rules specifically applicable to automated vehicles are currently in place.

Current Florida Autonomous Vehicle Law

Definitions

Current law defines the following relevant terms:

- "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task of an autonomous vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain.
- "Autonomous vehicle" means any vehicle equipped with an automated driving system.
- "Dynamic driving task" means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within its specific operational design domain, if any, excluding strategic functions such as trip scheduling and selection of destinations and waypoints.
- "Fully autonomous vehicle" means a vehicle equipped with an automated driving system designed to function without a human operator.
- "Operational design domain" means a description of the specific operating domain in which an automated driving system is designed to properly operate, including, but not limited to, roadway types, speed ranges, environmental conditions such as weather and time of day, and other domain constraints.[15]
- "Teleoperation system" means the hardware and software installed in a motor vehicle which allow a remote human operator to supervise or perform aspects of, or the entirety of, the dynamic driving task.
- "Remote human operator" means a natural person who is not physically present in a vehicle equipped with an automated driving system who engages or monitors the vehicle from a remote location. A remote human operator may have the ability to perform aspects of, or the entirety of, the dynamic driving task for the vehicle or cause the vehicle to achieve a minimal risk condition. A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.[16]
- "Minimal risk condition" means a reasonably safe state, such as bringing the vehicle to a complete stop and activating the vehicle's hazard lamps.[17]

A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.

[14] *Id.*
[15] Section 316.003(3), F.S.
[16] Section 316.003(90), F.S.
[17] Section 319.145(2), F.S.

Operation and Compliance with Traffic and Motor Vehicle Laws

A licensed operator is not required to operate a fully autonomous vehicle, and such vehicle may operate in this state regardless of whether a human operator, or any human at all, is physically present in the vehicle. For purposes of state uniform traffic control, the automated driving system, when engaged, is deemed the operator of an autonomous vehicle, regardless of whether a person is physically present in the vehicle while the vehicle is operating with the automated driving system engaged.[18] If the autonomous vehicle is fully autonomous, it must be able to achieve a minimal risk condition if a failure of the automated driving system occurs which renders that system unable to perform the entire dynamic driving task relevant to its intended operational design domain.[19]

The existing requirement for a driver's license does not apply when a fully autonomous vehicle is operated with the automated driving system engaged and without a human operator.[20] No registration statute specific to autonomous vehicles exists in current law; autonomous vehicle owners pay the same license tax as for any other vehicle, generally based on vehicle type and weight.[21] The owner or registrant of a fully autonomous vehicle (which is not a transportation network company) must have automobile insurance:

- In the amount of $1 million because of bodily injury to, or death of, one person in any one crash.
- Subject to such limits for one person, in the amount of $1 million because of bodily injury to, or death of, two or more persons in any one crash.
- In the amount of $1 million because of injury to, or destruction of, property of others in any one crash.[22]

An autonomous vehicle or a fully autonomous vehicle equipped with a teleoperation system may operate without a human operator physically present in the vehicle when the teleoperation system is engaged and, if so equipped, is exempt from certain duties and a prohibition relating to vehicle operation on a *driver* in ch. 316, F.S., such as the duty to provide information and render reasonable assistance in a crash, the duty to give notice of the crash to appropriate law enforcement, and the prohibition again leaving an unattended motor vehicle without first setting the brake.[23]

An autonomous vehicle registered in this state must meet all of the following requirements:

- When required by federal law:
  - Have been certified in accordance with federal regulations in 49 C.F.R. part 567 as being in compliance with applicable federal motor vehicle safety standards.
  - Bear the required certification label or labels including reference to any exemption granted under applicable federal law.

[18] Section 316.85, F.S.
[19] Section 319.145, F.S.
[20] Section 322.015, F.S.
[21] *See* s. 320.08, F.S.
[22] Section 627.749(3), F.S.
[23] The exemptions are contained in ss. 316.062(5), 316.063(4), 316.065(5), 316.1975(3), and 316.303(1). F.S.

- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state, regardless of whether the vehicle is operating with the automated driving system engaged.

Current Florida Low-Speed Vehicle Law

Definitions

Current Florida law defines "low-speed vehicle," to mean any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122, F.S.[24]

Operation and Compliance with Traffic and Motor Vehicle Laws

The operation of a low-speed vehicle on any road in this state is authorized with the following restrictions:

- A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.
- A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
- A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02, F.S.,[25] and titled pursuant to ch. 319, F.S.[26]
- Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.
- The FDOT, counties, and municipalities, if necessary in the interest of safety, may prohibit the operation of low-speed vehicles on any road under their respective jurisdictions.[27]

For purposes of seasonal delivery personnel, a low-speed vehicle, under certain restrictions for package size and weight, annually from midnight October 15 until midnight January 31 may operate on any public road within a residential area with a posted speed limit of 35 miles per hour or less. The vehicle must be:

- Marked in a conspicuous manner with the name of the delivery service;
- Equipped with, at a minimum, the equipment required under s. 316.212(6), F.S.

[24] Section 320.01(41), F.S.

[25] That section requires every owner or person in charge of a motor vehicle that is operated or driven on the roads of this state to register the vehicle in this state. Florida's Financial Responsibility Law requires minimum amounts of liability coverage of $10,000 in the event of bodily injury to, or death of, one person, $20,000 in the event of injury to, or death of, two or more persons, and $10,000 in the event of damage to property of others, or $30,000 combined policy. *See* s. 324.022, F.S. In addition, personal injury protection must provide a minimum benefit of $10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a $2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed. *See* s. 627.736(1), F.S.

[26] That section provides for applications for and issuance of certificates of title for every motor vehicle to be registered and licensed under the laws of this state.

[27] Section 316.2122, F.S.

- Equipped with head lamps and tail lamps, in addition to the safety requirements in s. 316.212(6), F.S., if operated after sunset.[28]

These low-speed vehicles are presumably operated by a human driver and not autonomous.

The license tax for an electric low-speed vehicle is the same as that prescribed for any other vehicle, generally based on vehicle type and weight.[29] Low-speed vehicles must have a license plate that complies with the requirements of s. 320.06, F.S., relating to plate symbols and numbers and renewal and replacement, etc.

III. Effect of Proposed Changes:

The bill defines the term "low-speed autonomous delivery vehicle," authorizes such vehicles to operate on certain streets and roads under specified conditions, and renders inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for *all* trips, the provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system.

Section 1 amends s. 316.003, F.S., adding a new definition of "low-speed autonomous delivery vehicle," meaning a fully autonomous vehicle that meets the definition of a low-speed vehicle in the Code of Federal Regulations.[30]

Section 2 amends s. 316.2122, F.S., currently applicable to low-speed vehicles (and mini trucks) on specified roadways. The bill authorizes an LSADV to operate on any road with the following restrictions:

- An LSADV may operate only on streets or roads where the posted speed limit is 35 miles per hour or less but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.
- An LSADV may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:
  - The vehicle travels no more than 1 continuous mile on such a street or road, but the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;
  - The vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and
  - On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the LSADV, the autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

[28] Section 316.2126(3), F.S.
[29] *Supra* note 21.
[30] *Supra* note 6.

An LSADV must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, and vehicle identification numbers. This provision conflicts with the federal equipment requirements[31] for low-speed vehicles discussed above. However, the bill provides that federal regulations adopted by NHTSA[32] supersede this provision. Because this provision is superseded by the equipment requirements of the federal regulations, only those vehicles that comply with the federal equipment requirements, or entities with vehicles that are granted an exemption from the requirements, are therefore authorized to operate under the restrictions set out above.

An LSADV must be covered by a policy of automobile insurance providing the following coverage:

- Primary liability coverage of at least $1 million for death, bodily injury, and property damage.
- Minimum personal injury protection benefits required under current law.[33]
- Uninsured and underinsured vehicle coverage.[34]

Under the bill, the coverage requirements may be satisfied by automobile insurance maintained by the owner of an LSADV, the owner of the teleoperation system, the remote human operator, or a combination thereof.

These insurance requirements are identical to those for fully autonomous vehicles used in the passenger-transportation arena. Should an LSADV be involved in an incident involving an uninsured or underinsured motorist, the LSADV policy would provide benefits to the at-fault party.

The bill preserves the existing authority of the FDOT, counties, and municipalities, if necessary in the interest of safety, to prohibit the operation of low-speed vehicles (and by definition, LSADVs) on any road under their respective jurisdictions.

Section 3 amends s. 316.215, F.S., rendering the provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system, inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for all trips. To the extent that any unidentified conflict with federal law exists or arises, this provision may result in unintended consequences.

Sections 1, 4, and 5 amend ss. 316.003(62), 316.306(3)(a), and 655.960(1), F.S., respectively, to conform cross-references made necessary by the bill's revisions.

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[31] 49 C.F.R. s. 571.500, *supra* p. 4

[32] NHTSA, the National Highway Traffic Safety Administration, is a part of the USDOT. See USDOT, *U.S. Department of Transportation Administrations*, available at U.S. Department of Transportation Administrations | US Department of Transportation (last visited March 7, 2021).

[33] *Supra* note 25.

[34] Uninsured and underinsured motorist coverage generally provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage. The limits of coverage must generally be not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the rating plan of the company selected by the insured. *See* s. 627.727, F.S.

Section 6 provides the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Persons required to title, register, and insure the subject vehicles will incur expenses doing so. However, the number of such vehicles deployed or planned for deployment in Florida is unknown.

C. Government Sector Impact:

Indeterminate. The number of such vehicles deployed or planned for deployment in Florida is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DHSMV notes the following issues: [35]

- The definition does not express that the vehicle is authorized solely for the delivery of goods and without passengers.
- The portion of the bill deeming motor vehicle equipment laws or regulations inapplicable to fully autonomous vehicles is vague and subject to a variety of interpretations.
- Safety concerns arise in the context of these vehicles crossing streets with speed limits greater than 35 miles per hour, given that their required maximum speed is 25 miles per hour.

Enforcement of the bill's provisions may prove difficult for law enforcement. Whether *any* vehicle currently complies with the provisions of the bill is presently unknown. However, with no human in the vehicle, law enforcement may have difficulty even investigating such compliance.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.003, 316.2122, 316.215, 316.306, and 655.960.

IX. Additional Information:

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

CS by Transportation on March 20, 2021:
The CS establishes insurance coverage requirements for LSADVs.

B. Amendments:

None.

[35] DHSMV analysis of SB 1620 (2020), and Email from DHSMV, March 8, 2021, on file with Senate Committee on Community Affairs.

By the Committee on Transportation; and Senator Brandes

596-02645-21 20211620c1

A bill to be entitled

An act relating to autonomous vehicles; amending s. 316.003, F.S.; defining the term "low-speed autonomous delivery vehicle"; amending s. 316.2122, F.S.; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; amending s. 316.215, F.S.; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (38) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (39) through (106), respectively, a new subsection (38) is added to that section, and present subsection (62) of that section is amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(38) LOW-SPEED AUTONOMOUS DELIVERY VEHICLE.—A fully autonomous vehicle that meets the definition of a low-speed vehicle in 49 C.F.R. s. 571.3.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (85)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Section 316.2122, Florida Statutes, is amended to read:

316.2122 Operation of a low-speed vehicle, ~~or~~ mini truck, or low-speed autonomous delivery vehicle on certain roadways.—

(1) The operation of a low-speed vehicle as defined in s. 320.01 or a mini truck as defined in s. 320.01 on any road is authorized with the following restrictions:

(a) ~~(1)~~ A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) ~~(2)~~ A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(c) ~~(3)~~ A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02 and titled pursuant to chapter 319.

(d) ~~(4)~~ Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.

(2) The operation of a low-speed autonomous delivery vehicle on any road is authorized with the following restrictions:

(a) A low-speed autonomous delivery vehicle may operate only on streets or roads where the posted speed limit is 35 miles per hour or less. This paragraph does not prohibit a low-speed autonomous delivery vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:

1. The low-speed autonomous delivery vehicle travels no more than 1 continuous mile on such a street or road, except that the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;

2. The low-speed autonomous delivery vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and

3. On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the autonomous delivery vehicle, the low-speed autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

(c) A low-speed autonomous delivery vehicle must be equipped with headlamps, stop lamps, turn signal lamps,

taillamps, reflex reflectors, and vehicle identification numbers.

(d) Federal regulations adopted by the National Highway Traffic Safety Administration shall supersede this subsection when found to be in conflict with this subsection.

(e) A low-speed autonomous delivery vehicle must be covered by a policy of automobile insurance which provides the coverage required by s. 627.749(2)(a)1., 2., and 3. The coverage requirements of this paragraph may be satisfied by automobile insurance maintained by the owner of a low-speed autonomous delivery vehicle, the owner of the teleoperation system, the remote human operator, or a combination thereof.

(3) ~~(5)~~ A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(4) ~~(6)~~ The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

Section 3. Present subsection (6) of section 316.215, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and present subsection (6) is republished, to read:

316.215 Scope and effect of regulations.—

(6) The provisions of any motor vehicle equipment laws or regulations of this state which relate to or support motor vehicle operation by a human driver but are not relevant for an

automated driving system shall not apply to fully autonomous vehicles that are designed to be operated exclusively by the automated driving system for all trips.

(7)~~(6)~~ A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 4. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(106) ~~s. 316.003(105)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a

handheld manner in violation of subparagraph 1.

Section 5. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(85)(a) or (b) ~~s. 316.003(84)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 6. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Health Policy
Military and Veterans Affairs, Space, and Domestic Security

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR JANET CRUZ
18th District

March 24, 2021

The Honorable Jennifer Bradley
Chair, Community Affairs Committee
315 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Bradley,

I respectfully request to be excused from the Community Affairs Committee meeting on March 24, 2021. I will monitor the committee virtually to remain informed on the topics that are on the agenda.

Please let me know if you have any questions or concerns regarding this request.

Thank you,

Janet Cruz
State Senator, District 18

REPLY TO:
❒ 210A S. MacDill Avenue, Tampa, Florida 33609 (813) 348-1017 FAX: (888) 263-3681
❒ 216 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: *www.flsenate.gov*

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: SB 37 **Case No.:** **Type:**
Caption: Senate Community Affairs Committee **Judge:**

Started: 3/24/2021 8:32:35 AM
Ends: 3/24/2021 10:21:22 AM Length: 01:48:48

8:32:34 AM Meeting has come to order
8:32:37 AM
8:32:39 AM Roll call
8:32:45 AM Quorum present
8:32:56 AM Pledge of Allegiance
8:34:14 AM Tab 7 SB 1254 by Senator Bean
8:34:24 AM Senator Bean explains SB 1254
8:36:17 AM Questions?
8:36:22 AM Appearance form
8:36:26 AM Loren Levy, Property Appraisers' Association of Florida waives in support
8:36:40 AM Debate
8:36:44 AM Senator Bean closes
8:36:52 AM Roll call SB 1254
8:37:00 AM SB 1254 is reported favorably
8:37:16 AM Tab 6 SB 1212 by Senator Rodriguez
8:37:36 AM Senator Rodriguez explains bill
8:37:47 AM Questions?
8:38:06 AM Debate, none
8:38:12 AM Senator Rodriguez closes
8:38:20 AM Roll call on SB 1212
8:38:28 AM SB 1212 is reported favorably
8:38:42 AM Tab 5 SB 998 by Senator Brodeur
8:38:54 AM Senator Brodeur explains bill
8:39:10 AM Questions?
8:40:06 AM Appearance forms, none
8:40:19 AM Debate, none
8:40:29 AM Senator Brodeur waives close
8:40:30 AM Roll call on SB 998
8:40:36 AM SB 998 is reported favorably
8:40:49 AM Temporary recess
8:41:11 AM Recording Paused
8:41:59 AM Recording Resumed
8:42:00 AM Meeting to resume
8:42:43 AM Tab 2 SB 750 by Senator Gruters
8:42:50 AM Senator Gruters explain bill
8:43:10 AM Take up strike all amendment barcode 355484
8:43:21 AM Senator Gruters explain amendment
8:43:57 AM Questions on amendment
8:44:08 AM Take up amendment to the amendment
8:44:16 AM Senator Garcia explains amendment barcode 399928
8:44:42 AM Questions on amendment to amendment
8:44:51 AM Appearance forms
8:44:54 AM David Cruz, Florida League of Cities waives in support
8:45:10 AM Debate?
8:45:14 AM Senator Garcia waives close
8:45:22 AM Amendment barcode 399928 to amendment is adopted
8:45:29 AM Questions
8:45:32 AM Senator Powell with question
8:45:53 AM Senator Gruters responds
8:46:35 AM Senator Powell with follow up
8:46:43 AM Senator Gruters with response to follow up
8:46:59 AM Debate?

8:47:35 AM Senator Gruters waives close
8:47:42 AM Amendment barcode 355484 is adopted
8:47:50 AM Back on bill CS/SB 750
8:47:54 AM Questions
8:47:59 AM Appearance forms
8:48:03 AM Louis Rotundo, City of Altamonte Springs speaking against
8:50:23 AM Jane West, 1000 Friends of Florida speaking against
8:52:27 AM Warren Husband, Florida Associated General Contractors Council waives in support
8:52:35 AM Scott McCracken, representing self- waives in support
8:52:41 AM Gary Hunter, Association of Florida Community Developers, Inc. waives in support
8:52:50 AM Bob McKee, Florid Association of Counties speaking against
8:55:11 AM Kari Hebrank, Florida Home Builders, NUCA of Florida speaking in support
8:58:12 AM David Cruz, Florida League of Cities, Inc. speaking against
8:59:41 AM Wendy Dahmar, Florida Home Builders Association waives in support
8:59:49 AM Marco Paredes, Encone Capital Management, LLC waives in support
9:00:04 AM Debate
9:00:09 AM Senator Baxley in debate
9:02:42 AM Senator Powell in debate
9:04:20 AM Senator Gruters closes on bill
9:04:40 AM Roll call on SB 750
9:05:17 AM CS/SB 750 is reported favorably
9:05:49 AM Tab 8 SB 1490 by Senator Pizzo
9:05:59 AM Senator Pizzo explains bill
9:06:27 AM Take up amendment barcode 159428
9:06:43 AM Senator Pizzo explains amendment
9:07:22 AM Questions? none
9:07:26 AM Appearance form
9:07:33 AM Travis Moore, Community Associations Institute waives in support
9:07:44 AM
9:07:50 AM Sean Stafford, Associa, waive in support
9:08:29 AM Louis Orloff, representing self speaking in support
9:10:36 AM Debate on amendment
9:10:41 AM Senator Baxley with debate
9:13:11 AM Senator Pizzo closes on amendment
9:13:36 AM Amendment barcode 1594288 is adopted
9:13:41 AM Back on bill
9:13:43 AM Questions
9:13:46 AM Appearance form
9:13:49 AM Lousi Orloff, representing self waives in support
9:14:04 AM Mark Anderson, Florida Protected Reserve Funds waives in support
9:14:30 AM Sean Stafford, Associa waives in support
9:14:45 AM Debate?
9:14:48 AM Senator Hooper with debate
9:16:03 AM Senator Pizzo closes
9:16:11 AM Roll call CS/SB 1490
9:16:21 AM CS/SB 1490 is reported favorably
9:16:36 AM Tab 9 CS/SB 1620 by Senator Brandes
9:16:53 AM Senator Brandes explains bill
9:19:40 AM Questions
9:20:41 AM Senator Hooper with question
9:20:50 AM Senator Brandes responds
9:20:59 AM Debate
9:21:51 AM Senator Baxley with debate
9:23:03 AM Senator Brandes closes on bill
9:23:14 AM Roll call on CS/SB 1620
9:23:38 AM CS/SB 1620 is reported favorably
9:23:55 AM Tab 4 SB 872 by Senator Rodrigues
9:24:02 AM Senator Rodrigues explains bill
9:25:26 AM Questions
9:25:40 AM Debate, none
9:25:47 AM Senator Rodrigues waives close
9:25:51 AM Roll call SB 872

9:26:03 AM SB 872 is reported favorably
9:26:17 AM Tab 3 CS/SB 804 by Senator Harrell
9:26:28 AM Senator Harrell explains the bill
9:27:46 AM Strike all amendment barcode 763484
9:28:11 AM Senator Harrell explains amendment
9:30:21 AM Questions on amendment
9:31:24 AM Senator Baxley with question
9:31:38 AM Senator Harrell with response
9:32:22 AM Senator Baxley with comment
9:32:57 AM Debate, none
9:33:03 AM Senator Harrell waives close on amendment
9:33:08 AM Amendment barcode 763484 is adopted
9:33:13 AM Back on bill
9:33:16 AM Questions
9:33:18 AM Appearance form
9:33:25 AM Eric Prutsman, Florida Fire Marshals & Inspectors Association/ Florida Fire Chiefs Association waives in support
9:33:38 AM Debate
9:33:42 AM Senator Harrell closes on bill
9:34:24 AM Roll call on CS/SB 804
9:35:26 AM CS/SB 804 is reported favorably
9:35:45 AM Tab 1 CS/SB 426
9:35:55 AM Senator Boyd explains CS/SB 426
9:37:21 AM Take up Amendment barcode 314294
9:37:54 AM Amendment is explained by Senator Boyd
9:39:44 AM Questions on amendment?
9:40:45 AM Senator Powell with question
9:41:01 AM Senator Boyd with response
9:41:32 AM Senator Powell with follow up
9:41:55 AM Senator Boyd with response to follow up
9:42:43 AM Senator Powell with follow up
9:43:36 AM Senator Boyd with response
9:44:00 AM Senator Powell with follow up
9:44:23 AM Senator Boyd with response
9:45:09 AM Senator Baxley with question
9:45:20 AM Senator Boyd with response
9:45:50 AM Senator Baxley with response
9:46:58 AM Appearance form
9:47:01 AM Michael Rubin, Florida Ports Council speaking in support
9:48:58 AM Debate
9:49:01 AM Senator Boyd waives close
9:49:07 AM Amendment barcode 314294 is adopted
9:49:11 AM Back on bill
9:49:16 AM Questions
9:49:19 AM Senator Hooper with question
9:49:33 AM Senator Boyd with response
9:50:14 AM Senator Hooper follow up
9:50:58 AM Senator Boyd with response to follow up
9:51:40 AM Appearance forms
9:52:01 AM Warren Husband, Florida Harbor Pilots Association & Marquesas, LLC speaking in support
9:54:24 AM Josh Aubuchon, Florida Ports for Economic Independence speaking against
9:57:38 AM Holly Parker Curry, Surfrider Foundation speaking against
9:59:54 AM Jessica Lewis, Sierra Club speaking against
10:01:53 AM Jonathan Webber, Florida Conservation Voters waiving against
10:02:02 AM Nicole Fogarty, St. Lucie County waiving against
10:02:18 AM Ida Eskamani, Florida Rising, speaking against the bill
10:03:30 AM Jane West, 1000 Friends of Florida waiving against
10:03:44 AM Debate
10:03:48 AM Senator Baxley with debate
10:07:16 AM Senator Powell with debate
10:10:14 AM Senator Hooper with debate
10:14:05 AM Senator Garcia with debate

10:15:33 AM Senator Boyd closes on bill
10:18:57 AM Roll call on CS/SB 426
10:19:58 AM CS/SB 426 is reported favorably
10:20:25 AM Senators to be recorded on bill?
10:20:32 AM Senator Powell, motion to vote Yea on SB 872
10:20:45 AM Senator Hooper, motion to vote Yea on SB 998, SB 1212, SB 1254
10:21:03 AM Motions adopted
10:21:06 AM Senator Hooper moves we adjourn
10:21:13 AM Meeting is adjourned