Tab 1	**SB 268** by **Perry**; (Similar to H 00735) Preemption of Local Occupational Licensing

917258	A	S	RI, Perry	Delete L.42 - 73:	03/15 01:13 PM

Tab 2	**SB 896** by **Brodeur**; (Similar to H 00539) Renewable Natural Gas

929598	A	S	RI, Brodeur	Delete L.26 - 45:	03/11 05:06 PM

Tab 3	**SB 998** by **Brodeur**; (Similar to CS/H 00823) Contractor Advertising

Tab 4	**SB 1490** by **Pizzo**; (Similar to H 01005) Investments by Condominium Associations

Tab 5	**CS/SB 1060** by **JU, Bradley**; (Similar to H 00891) Limitation of Liability for Voluntary Engineering or Architectural Services

295152	A	S	RI, Bradley	Delete L.24 - 25:	03/15 08:38 AM

Tab 6	**SB 872** by **Rodrigues**; (Similar to H 00665) Homeowners' Associations

Tab 7	**SB 1176** by **Stewart**; (Identical to H 00855) Barber Services

Tab 8	**SB 1944** by **Albritton**; (Identical to H 01567) Utility and Communications Poles

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Book, Vice Chair

MEETING DATE: Tuesday, March 16, 2021
TIME: 3:30—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIC TESTIOMY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL 32301		
1	**SB 268** Perry (Similar H 735)	Preemption of Local Occupational Licensing; Preempting licensing of occupations to the state; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; authorizing counties and municipalities to issue certain journeyman licenses, etc. RI 03/16/2021 CA RC	
2	**SB 896** Brodeur (Similar H 539)	Renewable Natural Gas; Defining the terms “biogas” and “renewable natural gas”; revising the definition of the term “renewable energy” to include certain energy created for transportation fuel, etc. RI 03/09/2021 Temporarily Postponed RI 03/16/2021 EN RC	
3	**SB 998** Brodeur (Similar CS/H 823, Compare 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 CA RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1490** Pizzo (Similar H 1005, Compare CS/H 615, CS/H 867, 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 CA RC	
5	**CS/SB 1060** Judiciary / Bradley (Similar H 891)	Limitation of Liability for Voluntary Engineering or Architectural Services; Defining the term “structures specialist”; exempting engineers, architects, and structures specialists from liability for certain voluntary engineering or architectural services under certain circumstances, etc. JU 03/02/2021 Fav/CS RI 03/16/2021 RC	
6	**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 CA RC	
7	**SB 1176** Stewart (Identical H 855)	Barber Services; Authorizing a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without specified arrangements, etc. RI 03/16/2021 CM RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1944** Albritton (Identical H 1567)	Utility and Communications Poles; Requiring the Public Service Commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; authorizing the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of a written notice from the pole owner, etc. RI 03/16/2021 CA AP	

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 268
INTRODUCER:	Senator Perry
SUBJECT:	Preemption of Local Occupational Licensing
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 268 expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations, with the exception of local government licensing of occupations authorized by general law or occupational licenses imposed by a local government before July 1, 2021. However, the exception for local government licensing imposed by a local government expires July 1, 2023. Local government occupational licensing requirements in place by the deadline may not be increased or modified thereafter.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within the Department of Business and Professional Regulation. It specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning or ornamental iron installation.

Finally, the bill authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical, and HVAC trades, as well as the electrical and alarm system trades, which is the current practice by counties and municipalities. Local journeyman licensing is excepted from the preemption of local licensing to the state since it would be authorized under general law.

The bill has no impact on state government.

The bill is effective 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 local 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]

Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or general law.[4] Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[5]

Revenue Sources Authorized in the Florida Constitution[6]

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes[7] shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.[8]
>
> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.[9]

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the

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[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[4] *See* s. 189.031(3)(b), F.S. *See also State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So.2d 1067, 1068 (Fla. 1st DCA 1982).
[5] State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018 - 2020, available at* https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Mar. 10, 2021).
[6] *See* Office of Economic and Demographic Research, The Florida Legislature, *2020 Local Government Financial Handbook, available at* http://edr.state.fl.us/Content/local-government/reports/lgfih20.pdf (last visited Mar. 10, 2021).
[7] Pursuant to s. 192.001(1), F.S., "ad valorem tax" means a tax based upon the assessed value of property.
[8] FLA. CONST. art. VII, s. 1(a).
[9] FLA. CONST. art. VII, s. 9(a).

charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Local Government Revenue Sources Based on Home Rule Authority[10]

Pursuant to home rule authority, counties and municipalities may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. Because special districts do not possess home rule powers, they may impose only those taxes, assessments, or fees authorized by special or general law.[11]

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment is inconsistent with state law when (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.[12]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[13] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[14] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[15]

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.[16] In one case, the court stated that implied preemption "is actually a decision by the courts to create preemption in the absence of an explicit legislative directive."[17] Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and

[10] *See also* The Florida Legislature, *2020 Local Government Financial Handbook supra* note 6.
[11] *See* ch. 189, F.S. *See also* Florida House of Representatives, *2018 - 2020 Local Government Formation Manual, supra* note 5, at 70.
[12] *See* James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009) *available at* https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited Mar. 10, 2021).
[13] *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).
[14] *Mulligan*, 934 So.2d at 1243.
[15] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010). Examples of activities "expressly preempted to the state" include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and, the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.
[16] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[17] *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

strong public policy reasons exist for finding preemption.[18] Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.[19]

Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 26 professions and occupations.[20]

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[21] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[22] Florida law currently preempts local regulation with regard to the following:

- Assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor; [23]
- Assessing local fees and rules regarding low-voltage alarm system projects;[24]
- Smoking;[25]
- Firearms and ammunition;[26]
- Employment benefits;[27]
- Polystyrene products;[28]
- Public lodging establishments and public food service establishments;[29] and
- Disposable plastic bags.[30]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations, and professions in certain circumstances.[31] Florida law authorizes local regulations relating to:

- Zoning and land use;[32]
- The levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on

[18] *Id*.
[19] *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.
[20] *See* s. 20.165, F.S., and *Annual Report, Fiscal Year 2019-2020, for the Division of Professions, Certified Public Accounting, Real Estate, and Regulation,* and the list of professions and occupations at 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Mar. 10, 2021).
[21] *See* FLA. CONST art. VIII, s. 1(f), art. VIII, s. 2(b), and ss. 125.01(1) and 166.021(1), F.S.
[22] *See* Wolf and Bolinder, *supra* note 12.
[23] Section 553.80(7)(a)5., F.S.
[24] Section 489.503(14), F.S.
[25] Section 386.209, F.S.
[26] Section 790.33(1), F.S.
[27] Section 218.077, F.S.
[28] Section 500.90, F.S.
[29] Section 509.032(7), F.S.
[30] Section 403.7033, F.S.
[31] *See* Wolf and Bolinder, *supra* note 12.
[32] *See* part II, ch. 163, F.S.

such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter;"[33]

- The levy of local business taxes;[34]
- Building code inspection fees;[35]
- Tattoo establishments;[36]
- Massage practices;[37]
- Child care facilities;[38]
- Taxis and other vehicles for hire;[39]
- Waste and sewage collection;[40] and
- Regulation of vaping.[41]

Construction Professional Licenses

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction Contracting

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR.[42] The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.[43] The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[44]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[45]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[46]

[33] Section 166.221, F.S.
[34] Chapter 205, F.S.
[35] Section 166.222, F.S.
[36] Section 381.00791, F.S.
[37] Section 480.052, F.S.
[38] Section 402.306, F.S
[39] Section 125.01(1)(n), F.S.
[40] Section 125.01(1)(k), F.S.
[41] Section 386.209, F.S.
[42] *See* ss. 489.105, 489.107, and 489.113, F.S.
[43] Section 489.107(1), F.S.
[44] Section 489.107, F.S.
[45] *See* ss. 489.105(6)-(8) and (11), F.S.
[46] *See* ss. 489.108, 489.113, 489.117, and 489.131, F.S.

"Registered contractors" are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[47]

The following table provides examples of CILB licenses for types of contractors.[48]

Statutory Licenses	Specialty Licenses
• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[49] Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified specialty contractor, such as painting and fence erection licenses. Local governments may only collect licensing fees that cover the cost of regulation.[50] Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.[51]

[47] Section 489.117, F.S.
[48] *See* s. 489.105(a)-(q), F.S., and Fla. Admin. Code R. 61G4-15.015 through 61G4-15.040 (2021).
[49] Sections 489.117 and 489.131, F.S.
[50] *See also* The Florida Legislature, *2020 Local Government Financial Handbook supra* note 6.
[51] Sections 489.105 and 489.117(4), F.S.

Electrical and Alarm System Contracting

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the Electrical Contractors' Licensing Board (ECLB).[52] Certified contractors may practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.[53]

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.[54]

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[55]

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking.[56] Certified electrical specialty contractors may practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting Maintenance Specialty Contractor;
- Sign Specialty Electrical Contractor;
- Residential Electrical Contractor;
- Limited Energy Systems Specialty Contractor;
- Utility line electrical contractor; and
- Two-Way Radio Communications Enhancement Systems Contractor.[57]

Journeyman Licenses

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate or issue a license to a journeyman.[58]

However, under ch. 489, F.S., a tradesman may be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions (license reciprocity) without having to take another examination or pay an additional licensing fee to qualify to work in the other

[52] *See* Sections 489.505(3) and 489.507, F.S.
[53] *See* s. 489.505(16), F.S.
[54] Sections 489.505(12) and 489.537(7), F.S.
[55] Sections 489.505(1) and (2), F.S.
[56] Sections 489.507(3) and 489.511(4), F.S.
[57] Sections 489.505(19) and 489.511(4), F.S; *See* Fla. Admin. Code R. 61G6-7.001.
[58] Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

jurisdictions (county or municipality). If eligible for license reciprocity, a journeyman with a valid, active journeyman license issued by a county or municipality in Florida need not take any additional examinations or pay additional license fees and may work in the:

- Plumbing/pipe fitting, mechanical, or HVAC trades;[59] or
- Electrical and alarm system trades.[60]

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:[61]

- Scoring at least 75 percent on an approved proctored examination for that construction trade;
- Completing a registered apprenticeship program and demonstrating four years of verifiable practical experience in the particular trade, or alternatively demonstrating six years of such experience in the particular trade;
- Completing coursework approved by the Florida Building Commission specific to the discipline within the required time frame; and
- Not having a license suspended or revoked within the last five years.

Residency Requirements for Contracting Licenses

Some local governments have adopted policies to promote the usage of local residents for contracting activities within their jurisdictions. For example, it is the policy of Miami-Dade County that, except where federal or state laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a county construction contract must satisfy the requirements of the Miami-Dade County Residents First Training and Employment Program.[62] These requirements include that the contractor will make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having 51 percent of all construction labor hours performed by Miami-Dade County residents.[63]

III. Effect of Proposed Changes:

Section 1 creates s. 163.211, F.S., to define the following terms:

- "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.
- “Local government” means a county, municipality, special district, or political subdivision of the state.
- “Occupation” means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

This section of the bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

[59] Section 489.1455, F.S.
[60] Section 489.5355, F.S.
[61] Sections 489.1455 and 489.5355, F.S.
[62] *See* Code of Miami Dade County Florida, Chapter 2, Article I, Section 2.11.17, *available at* https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH2AD_ARTIINGE_S2-11.17REFITREMPR (last visited Mar. 10, 2021).
[63] *Id.* at paragraph (5)(a)(ii) of Article I, Section 2.11.17.

- The local licensing requirements for an occupation are enacted before July 1, 2021; or
- The licensing of occupations by local governments is authorized by general law.

However, after July 1, 2023, the exception for local government licensing of occupations imposed by a local government expires. After that date, local government licensing of occupations is preempted to the state.

In addition, this section of the bill prohibits local governments that license an occupation from imposing additional licensing requirements on that occupation and from modifying such licensing. Under the bill, any local licensing of an occupation that is not imposed before July 1, 2021 or otherwise authorized by general law does not apply and may not be enforced.

Section 2 amends s. 489.117, F.S., relating to registration of specialty contractors to provide that persons whose job scope is outside the contractor trades or certified specialty trades need not register with the Construction Industry Licensing Board (CILB). A county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB, or the plumbing, pipefitting, mechanical, or HVAC trades of a journeyman under s. 489.1455(1), F.S.

The bill specifically prohibits counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning or ornamental iron installation.

Sections 3 and 4 amend ss. 489.1455 and 489.5335, F.S., to authorize counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades, as well as the electrical and alarm system trades, which is the current practice by counties and municipalities. Therefore, local journeyman licensing is excepted from the preemption of local licensing to the state, as provided in the bill.

Section 5 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certain professionals will not be required to pay local licensing and/or examination fees due to the preemption of occupational licensure to the state. This may have a positive impact on the number of individuals practicing certain professions. The impact on construction costs and workers' wages is indeterminate.

C. Government Sector Impact:

The bill will have indeterminate impact on local government costs and revenues linked to licensing. Under the bill, local governments are not authorized to increase existing license fees after July 1, 2021, and the authority of local governments to license occupations and collect license fees expires on July 1, 2023.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that local occupational licensing that is not authorized under s. 163.211, F.S., created by the bill, or otherwise authorized by general law "does not apply and may not be enforced." *See* lines 50 to 53 of the bill. These authorizations do not address occupational licensing imposed by local governments that may be authorized by special act of the Legislature (previously or in the future), or licensing imposed by local ordinance for a purpose such as protection of water quality.

As an example, the Pinellas County Construction Licensing Board was originally established in 1975 by special act, which was last revised in 2018 by special act of the Legislature.[64] Similarly, in 2008 Lee County adopted an ordinance regulating landscape management practices, including registration of landscaping businesses and certain landscapers, and completion of certain training.[65] A stated purpose of this ordinance is to meet federal and state water quality standards

[64] *See* ch. 2018-179, Laws of Florida.
[65] *See* Lee County Ordinance No. 08-08 at https://www.leegov.com/bocc/ordinances/08-08.pdf (last visited Mar. 10, 2021).

and to minimize the detrimental impacts on the county's lakes, estuaries, wetlands, the Caloosahatchee River, and the Gulf of Mexico.[66] Similar requirements exist for drilling of elevator shafts and water wells,[67] to avoid cross contamination of local aquifers.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.117, 489.1455, and 489.5335.

This bill creates s. 163.211 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.

[66] *Id*. at 3 (Section Two).
[67] *See* Lee County Ordinance No. 16-06 at https://www.leegov.com/bocc/Ordinances/16-06.pdf (last visited Mar. 10, 2021).


917258

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 42 - 73
and insert:
occupations before January 1, 2021. However, any such local government licensing of occupations expires on July 1, 2023.

(b) Any local government licensing of occupations authorized by general law.

(3) EXISTING LICENSING LIMIT.—A local government that licenses occupations and retains such licensing as set forth in

917258

paragraph (2)(a) may not impose additional licensing requirements on that occupation or modify such licensing.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an occupation that is not authorized under this section or otherwise authorized by general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)(a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board ~~to perform contracting activities within the scope of such specialty license~~. A local government, as defined in s. 163.211, may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1). For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning and ornamental iron

By Senator Perry

8-00208-21 2021268__

A bill to be entitled

An act relating to preemption of local occupational licensing; creating s. 163.211, F.S.; defining terms; preempting licensing of occupations to the state; providing exceptions; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain local licensing that does not meet specified criteria does not apply and may not be enforced; amending s. 489.117, F.S.; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; prohibiting local governments from requiring certain specialty contractors to obtain a license under specified circumstances; specifying job scopes for which a local government may not require a license; amending ss. 489.1455 and 489.5335, F.S.; authorizing counties and municipalities to issue certain journeyman licenses; providing an effective date.

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

Section 1. Section 163.211, Florida Statutes, is created to read:

163.211 Licensing of occupations preempted to state.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Licensing" means any training, education, test, certification, registration, or license that is required for a

8-00208-21 2021268__

person to perform an occupation in addition to any associated fee.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.—The licensing of occupations is expressly preempted to the state and this section supersedes any local government licensing requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on occupations before July 1, 2021. However, any such local government licensing of occupations expires on July 1, 2023.

(b) Any local government licensing of occupations authorized by general law.

(3) EXISTING LICENSING LIMIT.—A local government that licenses occupations and retains such licensing as set forth in paragraph (2)(a) may not impose additional licensing requirements on that occupation or modify such licensing.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an occupation that is not authorized under this section or otherwise authorized by general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)(a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one

of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board ~~to perform contracting activities within the scope of such specialty license~~. A local government, as defined in s. 163.211, may not require a person to obtain a license for a job scope that does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1). For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning or ornamental iron installation.

Section 3. Section 489.1455, Florida Statutes, is amended to read:

489.1455 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades.

(2)~~(1)~~ An individual who holds a valid, active journeyman license in the plumbing, pipe fitting ~~plumbing/pipe fitting~~, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s. 553.841, specific to the discipline or, pursuant to authorization by the certifying authority, provides proof of completion of such coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3)~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 4. Section 489.5335, Florida Statutes, is amended to read:

489.5335 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the electrical and alarm system trades.

(2)~~(1)~~ An individual who holds a valid, active journeyman license in the electrical or alarm system trade issued by any county or municipality in this state may work as a journeyman in

the trade in which he or she is licensed in any other county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the ~~electrical~~ trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s. 553.841, specific to the discipline~~,~~ or, pursuant to authorization by the certifying authority, provides proof of completion of such curriculum or coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3)~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 5. 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 Regulated Industries

BILL:	SB 896
INTRODUCER:	Senator Brodeur
SUBJECT:	Renewable Natural Gas
DATE:	March 8, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Pre-meeting**
2.			EN	
3.			RC	

I. Summary:

SB 896 amends s. 366.91, F.S., by adding the terms "biogas" and "renewable natural gas," and expanding the term "renewable energy."

The term "biogas" means a mixture of gases, largely comprised of carbon dioxide, hydrocarbons, and methane gas, that is produced by the biological decomposition of organic materials.

The term "renewable Natural Gas" (RNG) means anaerobically generated biogas, landfill gas, or wastewater treatment gas, which is refined to a methane content of 90 percent or more, that may be used as transportation fuel, for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

The term "renewable energy," is expanded to mean electrical energy produced or energy created to displace traditional fuel sources from a method that uses one or more of the following fuels or energy sources. The bill also provides that hydrogen produced or resulting from energy sources other than fossil fuels, such as biomass, solar energy, geothermal energy, wind energy, ocean energy, RNG, and hydroelectric power, also constitute renewable energy.

The bill is effective on July 1, 2021.

II. Present Situation:

Renewable Natural Gas and Biogas

Natural gas is a fossil energy source which forms beneath the earth's surface.[1]

[1] U.S. Energy Information Administration, *Natural gas explained*, https://www.eia.gov/energyexplained/natural-gas/ (last visited Mar. 6, 2021).

Natural gas contains many different compounds, the largest of which is methane.[2] Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as "fracking." The term RNG refers to biogas that has been refined to use in place of conventional natural gas.[3]

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities and organic waste management operations.[4] Raw biogas has a methane content between 45 and 65 percent.[5] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements.[6] The nitrogen and oxygen content is reduced and once upgraded the RNG has a methane content of 90 percent or more.[7] RNG prepared for injection into a natural gas pipeline typically has a methane content between 96 and 98 percent.[8]

Expansion of RNG offers an opportunity to decarbonize traditional gas end uses such as transportation and heating.[9] RNG qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[10] This program was enacted by Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[11]

Nationwide, there were 157 total confirmed operational RNG projects as of December, 2020.[12] While there were at least two RNG projects reportedly under construction in Florida at the end of 2020, it is not confirmed whether any operational production has been achieved in the state.[13]

Florida Public Service Commission

Chapter 366, F.S., provides for the regulation of electric utilities by the Florida Public Service Commission (PSC). The PSC is an arm of the legislative branch of government and has rate-setting jurisdiction over electric and natural gas public utilities.[14] The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[15] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic

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[2] *Id*.
[3] United States Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, https://www.epa.gov/lmop/renewable-natural-gas (last visited Mar. 6, 2021).
[4] *Id*.
[5] *Id*.
[6] Florida Dept. of Agriculture and Consumer Services, *Bill Analysis for SB 896* (Feb. 15, 2021) (on file with the Senate Committee on Regulated Industries).
[7] USEPA, LMOP: Renewable Natural Gas, *supra* at n. 3.
[8] *Id*.
[9] FDACS, *Bill Analysis*, *supra* at n. 6.
[10] *Id*.
[11] United States Environmental Protection Agency, *Renewable Fuel Standard Program*, https://www.epa.gov/renewable-fuel-standard-program (last visited Mar. 6, 2021).
[12] FDACS, *Bill Analysis*, *supra* at n. 6.
[13] *Id*.
[14] See ss. 350.001, 366.02, and 366.05, F.S.
[15] *See* Florida Public Service Commission, *The PSC's Role*, http://www.psc.state.fl.us (last visited Mar. 6, 2021).

regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.[16] The PSC monitors the safety and reliability of the electric power grid[17] and may order the addition or repair of infrastructure as necessary.[18] Further, the PSC reviews applications to determine the need for certain new electrical power plants[19] and certain large transmission lines as part of the Department of Environmental Protection's siting process.[20]

The PSC has jurisdiction over 27 municipally-owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.[21]

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.[22] Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a "public utility" subjecting them to the PSC's regulatory jurisdiction, under s. 366.02(1), F.S.[23] The PSC's jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.[24]

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.[25] Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.[26] These utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[27]

Municipally-Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries

[16] *Id*.
[17] Sections 366.04(5) and (6), F.S.
[18] Sections 366.05(1) and (8), F.S.
[19] Section 403.519, F.S.
[20] Section 403.537, F.S.
[21] Florida Public Service Commission, *2020 FPSC Annual Report*, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Mar. 6, 2021).
[22] Section 366.02(1), F.S.
[23] *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC's regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that "to the public," as used in ch. 366, F.S., means "to any member of the public," rather than "to the general public").
[24] Section 366.04 (1), F.S.
[25] *Id*.
[26] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Mar. 5, 2021).
[27] FPSC, *2020 Annual Report*, *supra* at n. 21.

of the municipality.[28] Municipally-owned utility rates and revenues are regulated by their city commission.[29] As noted above, the PSC has limited jurisdiction over municipally-owned electric utilities.[30] There are 34 municipal electric companies in Florida.[31] Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.[32]

Natural Gas Utilities

Florida's natural gas network is comprised of four interstate pipelines and two intrastate pipelines.[33] These pipelines supply natural gas to five investor-owned natural gas utilities, 27 municipal natural gas utilities, and four special gas districts.[34] The PSC has regulatory authority over the investor-owned natural gas utilities in all aspects of operations, including safety; authority over municipally-owned natural gas utilities that is limited to safety and territorial boundary disputes; and authority over special gas districts that is limited to safety and territorial boundary disputes.[35]

Public Utility Regulatory Policies Act

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA).[36] The PURPA requires promotion of energy efficiency and use of renewables.[37] Primarily, the PURPA was enacted to encourage:

- The conservation of electric energy;
- Increased efficiency in the use of facilities and resources by electric utilities;
- Equitable retail rates for electric consumers;
- Expeditious development of hydroelectric potential at existing small dams;
- Conservation of natural gas while ensuring that rates to natural gas consumers are equitable.[38]

The PURPA requires utilities to interconnect with and purchase power from "qualifying facilities," which fall into two categories: (1) qualifying small power production facilities and (2) qualifying cogeneration facilities.[39] Qualifying small power production facilities must produce less than 80 megawatts and use biomass, waste, renewable resources, geothermal resources, or any combination thereof, of which 75 percent or more of the total energy input must be from these sources.[40] Qualifying cogeneration facilities are entities that generate electricity as a

[28] FDACS, *Electric Utilities*, *supra* at n. 26.
[29] *Id*.
[30] FPSC, *2020 Annual Report*, *supra* at n. 21.
[31] FDACS, *Electric Utilities*, *supra* at n. 26.
[32] Florida Municipal Electric Association, *About FMEA*, https://www.publicpower.com/about-us (last visited Mar. 6, 2021).
[33] Florida Department of Agriculture and Consumer Services, *Natural Gas Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Natural-Gas-Utilities (last visited Mar. 6, 2021).
[34] *Id*.
[35] Section 366, F.S. *See also*, FPSC, *2020 Annual Report*, *supra* at n. 21.
[36] Public Law 95-617 (HR 4018) November 9, 1978.
[37] Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, https://www.ferc.gov/qf (last visited Mar. 6, 2021).
[38] *Id*.
[39] *Id*.
[40] 18 C.F.R. 292.204.

byproduct of an industrial process, which is not intended fundamentality for sale to an electric utility.[41]

The PURPA directed the Federal Energy Regulatory Commission to implement its provisions, which in turn, directed the states to implement these provisions. In response, the Florida Legislature created s. 366.051, F.S., directing utilities to purchase power from cogenerators and small power producers and defining "full avoided costs." "A utility's 'full avoided costs' are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source."[42] Traditionally, the Commission has approved electric utilities power purchase contracts that include provisions for payment, capacity, and energy based upon either the utility's cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the interchange market.[43]

Renewable Energy

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy. This section requires utilities to continuously offer a purchase contract to renewable energy producers for a minimum of 10 years and contain payment provisions for energy and capacity based upon the utility's full avoided costs.[44] It also includes municipal electric utilities and rural electric cooperatives whose annual sales exceed 2,000 gigawatt hours.[45] The term "renewable energy" means electrical energy produced from:

- Hydrogen produced from sources other than fossil fuels;[46]
- Biomass,
- Solar energy,
- Geothermal energy,
- Wind energy,
- Ocean energy,
- Hydroelectric power, and
- "The alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration."

[41] 18 C.F.R. 292.205.
[42] Section 366.051(3) and (4), F.S.
[43] Florida Public Service Commission, *States' Electric Restructuring Activities Update: Wholesale Sales* http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4 (last visited Mar. 6, 2021); Florida Public Service Commission, *States' Electric Restructuring Activities Update: Federal Legislation - Public Utilities Regulatory Policy Act* http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#5 (last visited Mar. 6, 2021).
[44] Section 366.91(3), F.S.
[45] Section 366.91(4), F.S.
[46] Section 366.91(2)(d), F.S. "Traditional fuel sources" is assumed to be limited to fossil fuels and fuels derived from fossil fuels. *See* U.S. Energy Information Administration, What is energy? Sources of energy: Most of Our Energy is Nonrenewable, https://www.eia.gov/energyexplained/what-is-energy/sources-of-energy.php (last visited Mar. 6, 2021) (listing petroleum, hydrocarbon gas liquids, natural gas, coal, and nuclear energy as the most common energy sources, in the U.S. and abroad).

III. Effect of Proposed Changes:

SB 896 amends s. 366.91, F.S., by adding the terms "biogas" and "renewable natural gas," and expanding the term "renewable energy."

The term "biogas" means a mixture of gases, largely comprised of carbon dioxide, hydrocarbons, and methane gas, that is produced by the biological decomposition of organic materials.

The term "renewable Natural Gas" means anaerobically generated biogas, landfill gas, or wastewater treatment gas, which is refined to a methane content of 90 percent or more, that may be used as transportation fuel, for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

The term "renewable energy," is expanded to mean electrical energy produced or energy created to displace traditional fuel sources from a method that uses one or more of the following fuels or energy sources. The bill also provides that hydrogen produced or resulting from energy sources other than fossil fuels, such as biomass, solar energy, geothermal energy, wind energy, ocean energy, RNG, and hydroelectric power, also constitute renewable energy.

The bill amends the references to "renewable energy" included in ss. 366.92, 373.236, and 403.973, F.S., to reflect the revised definition.

The bill includes conforming changes in ss. 366.92, 373.236, 403.973, and 288.9606(7) F.S., to reflect the revised definition of "renewable energy."

The bill reenacts s. 288.9606(7), F.S., without modification, to incorporate the changes made to s. 366.91, F.S.

The bill is effective on July 1, 2021.

I. 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.

II. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

III. Technical Deficiencies:

None.

IV. Related Issues:

The expansion of the term "renewable energy" in the bill to include "energy created to displace traditional fuel sources," may have the effect of expanding the definition beyond electricity. This appears to impose the requirement that public utilities continuously offer a purchase contract to producers of biogas and RNG, for a term of at least 10 years, which contains payment provisions for energy and capacity based upon the utility's full avoided cost pursuant to s. 366.051, F.S.

The PSC has traditionally based a utility's full avoided cost on either the cost to construct and operate a generating unit or the cost of purchasing capacity and energy from another utility's generating unit. The basis for pricing under this expanded definition appears unclear.

The bill does not grant the PSC rulemaking authority in order to determine the applicable terms and conditions that would apply to purchase contracts for non-electric renewable energy or set forth parameters for determining a utility's full avoided cost for RNG.

V. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.91, 366.92, 373.236, 403.973, and 288.9606.

VI. 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.

929598

LEGISLATIVE ACTION

Senate . House

. . . . . .

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

Senate Amendment (with directory and title amendments)

Delete lines 26 - 45

and insert:

from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy

929598

produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

(f) "Renewable natural gas" means anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline.

(9) The commission may approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but which are otherwise deemed reasonable and prudent by the commission.

Section 2. Paragraph (b) of subsection (2) of section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

(2) As used in this section, the term:

(b) "Renewable energy" includes ~~means~~ renewable energy and renewable natural gas as those terms are defined in s. 366.91(2) ~~s. 366.91(2)(d)~~.

====== 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 lines 18 - 19

and insert:

and paragraph (f) are added to that subsection, present paragraph (d) of that subsection is amended, and subsection (9) is added to that section, to read:

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

929598

And the title is amended as follows:

Delete lines 3 - 6

and insert:

366.91, F.S.; defining and redefining terms; authorizing the Florida Public Service Commission to approve cost recovery by a gas public utility for certain contracts for the purchase of renewable natural gas; amending ss. 366.92,

By Senator Brodeur

9-00798A-21 2021896__

A bill to be entitled

An act relating to renewable natural gas; amending s. 366.91, F.S.; defining the terms "biogas" and "renewable natural gas"; revising the definition of the term "renewable energy" to include certain energy created for transportation fuel; amending ss. 366.92, 373.236, and 403.973, F.S.; conforming cross-references; reenacting s. 288.9606(7), F.S., relating to the issuance of revenue bonds, to incorporate the amendment made to s. 366.91, F.S., in a reference thereto; providing an effective date.

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

Section 1. Present paragraphs (a) through (d) of subsection (2) of section 366.91, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, a new paragraph (a) and paragraph (f) are added to that subsection, and present paragraph (d) of that subsection is amended, to read:

366.91 Renewable energy.—

(2) As used in this section, the term:

(a) "Biogas" means a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.

(e) ~~(d)~~ "Renewable energy" means electrical energy produced or energy created to displace traditional fuel sources from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind

9-00798A-21 2021896__

energy, ocean energy, renewable natural gas, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

(f) "Renewable natural gas" means anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline.

Section 2. Paragraph (b) of subsection (2) of section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

(2) As used in this section, the term:

(b) "Renewable energy" means renewable energy as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~.

Section 3. Subsection (7) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(7) A permit approved for a renewable energy generating facility or the cultivation of agricultural products on lands consisting of 1,000 acres or more for use in the production of renewable energy, as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~, shall be granted for a term of at least 25 years at the applicant's request based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, a permit may be issued for a shorter duration that reflects the longest period

for which such reasonable assurances are provided. Such a permit is subject to compliance reports under subsection (4).

Section 4. Paragraph (f) of subsection (3) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(f) Projects resulting in the production of biofuels cultivated on lands that are 1,000 acres or more or in the construction of a biofuel or biodiesel processing facility or a facility generating renewable energy, as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~, are eligible for the expedited permitting process.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~.

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, or sewage pipeline.

Section 5. For the purpose of incorporating the amendment

made by this act to section 366.91, Florida Statutes, in a reference thereto, subsection (7) of section 288.9606, Florida Statutes, is reenacted to read:

288.9606 Issue of revenue bonds.—

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(a) Finance the undertaking of any project within the state that promotes renewable energy as defined in s. 366.91 or s. 377.803;

(b) Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; or

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08.

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 Regulated Industries

BILL:	SB 998
INTRODUCER:	Senator Brodeur
SUBJECT:	Contractor Advertising
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			CA	
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 the following sections of the Florida Statutes: 489.521 and 553.7921.

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.

2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	SB 998
BILL TITLE:	Contractor Advertising
BILL SPONSOR:	Sen. Brodeur
EFFECTIVE DATE:	07/01/2021

COMMITTEES OF REFERENCE
1) Regulated Industries
2) Community Affairs
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
N/A

SIMILAR BILLS	
BILL NUMBER:	HB 823 (similar); HB 1209; SB 1408 (compare)
SPONSOR:	Rep. Mariano; Rep. Fetterhoff; Rep. Burgess

PREVIOUS LEGISLATION	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS	
BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	February 24, 2021
LEAD AGENCY ANALYST:	Jeffrey Kelly, Deputy Director; Division of Professions
ADDITIONAL ANALYST(S):	Ruthanne Christie, Executive Director Thomas Campbell, Executive Director, Florida Building Commission Tracy Dixon, Service Operations

	Jake Whealdon, Acting OGC Rules Jerry Wilson, Regulation Tom Coker, Technology
LEGAL ANALYST:	Alison A. Parker, Deputy General Counsel – Administration // Acting DGC Prof.
FISCAL ANALYST:	Raleigh Close, Administration

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends advertising requirements for alarm system contractors to provide that a licensed alarm contractor can provide a website address on advertising where license numbers will be displayed rather than including license numbers directly in the advertisement. The bill authorizes a contractor to begin repairing certain fire alarm systems after filing an application for a required permit but before receiving the permit.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 489.521, F.S., requires all certified and registered contractors to affix their certification or registration numbers in each offer of services, business proposal, or advertisement, regardless of the medium used.

Section 553.7921, F.S., requires a contractor to file a Uniform Fire Alarm Permit Application with the appropriate local enforcement agency and receive the fire alarm permit before installing or replacing a fire alarm if the local enforcement agency requires a plan review for the installation or replacement.

2. EFFECT OF THE BILL:

Section 1

The bill amends s. 489.521, F.S., to specify that the requirement of fixing certification or registration numbers does not apply to alarm system contractors 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.

Section 2

The bill amends s. 553.7921, F.S., to provide that a contractor may begin work repairing an existing alarm system that was previously permitted by a local enforcement agency after filing a Uniform Fire Alarm Permit Application. However, the fire alarm repaired may not be considered compliant until the required permit has been issued and the local enforcement agency has approved the repair.

Section 3

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

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

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

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

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

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

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

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

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

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

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☒

Revenues:	N/A

Expenditures:	N/A
Does the legislation contain a State Government appropriation?	N/A
If yes, was this appropriated last year?	N/A

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

Revenues:	Indeterminate
Expenditures:	None
Other:	N/A

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

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

TECHNOLOGY IMPACT

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

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

FEDERAL IMPACT

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

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

ADDITIONAL COMMENTS

Florida Building Commission: Section 2 of the bill is a local permit enforcement issue. It does not impact the requirements of the Florida Building Code or the Florida Building Commission.

Professions: Alarm System contractors that practice nationwide have found it onerous to list every different state license number in their national print, radio and TV advertising.

DSO: No impact.

OGC Rules: No additional comments.

Regulation: No impact

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	No additional comments.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1490
INTRODUCER:	Senator Pizzo
SUBJECT:	Investments by Condominium Associations
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 1490 authorizes condominium associations, including multicondominium associations, to invest association funds. It requires associations to annually develop and adopt a written investment policy statement and 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. Additionally, 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.

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.

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.

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 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]

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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.

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 comingled 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]

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

[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).
[18] Section 718.111(1)(a), F.S.

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;
- 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;

[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 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:

- Annually develop and adopt a written investment policy statement; 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:

[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.

- 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.

Under the bill, any funds invested must be held in third-party custodial accounts and insured by the Securities Investor Protection Corporation[31] in an amount equal to or greater than the assets held.

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.)

[31] The Securities Investor Protection Corporation (SIPC) was created under the Securities Investor Protection Act, 15 U.S.C. s. 78aaa, *et seq.*, as a non-profit membership corporation. The SIPC oversees the liquidation of member firms that close when the firm is bankrupt or in financial trouble, and customer assets are missing. In a liquidation under the act, the SIPC and the court-appointed trustee work to return customers' securities and cash as quickly as possible. Within limits, the SIPC expedites the return of missing customer property by protecting each customer up to $500,000 for securities and cash (including a $250,000 limit for cash only). Securities Investor Protection Corporation, *Mission, available at*: https://www.sipc.org/about-sipc/sipc-mission (last visited March 11, 2021).

prohibited from investing in under ss.215.471, 215.4725, 215.472, and 215.473, F.S., as determined by the investment adviser.[32]

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.

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.

The bill also amends s. 718.112, F.S., to authorize the investing of reserve funds under s. 718.111(16), F.S.

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.

[32] 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.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, and 718.3026.

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 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

38-00245C-21 20211490__

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.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1060
INTRODUCER:	Judiciary Committee and Senator Bradley
SUBJECT:	Limitation of Liability for Voluntary Engineering or Architectural Services
DATE:	March 15, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Kraemer	Imhof	RI	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1060 creates immunity from civil liability for an engineer, architect, or structures specialist furnishing engineering or architectural services as a volunteer in response to a declared federal, state, or local emergency. The liability protection does not apply to an act or omission that was done with gross negligence or willful misconduct.

The bill is effective July 1, 2021.

II. Present Situation:

The United States Army Corps of Engineers, through its Urban Search and Rescue Program, notes that urban search and rescue is a dangerous undertaking conducted in buildings that are fully or partially collapsed.[1] Typically, these structures are multi-storied and contain heavy debris with a high potential for additional collapse.[2] Rescue crews utilize trained professionals that assist them in moving or shoring up debris in order to rescue victims in and around the collapsed structure. Time is of the essence in these endeavors. The professionals must balance the safety of the rescuers with the need to find and retrieve trapped and injured civilians before they expire.

[1] *See* US Army Corps of Engineers, *Urban Search and Rescue Program, Fact Sheet (Feb. 2009), available at* https://www.swd.usace.army.mil/Portals/42/docs/emergencymgmt/USR2009%5B1%5D.pdf (last visited Mar. 10, 2021).
[2] *Id.*

Professionals who Advise Urban Search and Rescue Teams

Engineers

An engineer is a professional practicing engineering. Engineering is:

> any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.[3]

Florida regulates engineers through the Department of Business and Professional Regulation.[4] Engineers are authorized to practice within a qualified business entity, such as a corporation.[5]

Architects

An architect is a professional practicing architecture. Architecture is the provision of:

> services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.[6]

Florida regulates architects through the Department of Business and Professional Regulation.[7] Architects are authorized to practice within a qualified business entity, such as a corporation.[8]

[3] Section 471.005(7), F.S.
[4] *See generally*, ch. 471, F.S.
[5] Section 471.023, F.S.
[6] Section 481.203(2), F.S.
[7] *See generally*, ch. 481, F.S.
[8] Section 481.219, F.S.

Structures Specialists

Structures specialists are engineers who have been specially trained by the United States Army Corps of Engineers. Engineers trained as Structures Specialists can evaluate a damaged building or hazard in order to reduce the risks to rescue personnel and victims. Structures Specialists design shoring systems to stabilize structures for rescuers to gain safe access to the victims. The Structures Specialists are trained in Rescue Systems 1 (a basic rescue skills course). They also receive instruction in structural collapse patterns, hazard identification and building monitoring, rapid assessment of buildings, building triage and marking systems, advance shoring and shoring calculations.[9]

Tort Law - In General

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.[10] When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. Negligence is defined as the failure to use reasonable care. It means the care that a reasonably careful person would use under similar circumstances. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.[11]

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.[12]

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:
- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence:

Slight Negligence
Slight negligence is generally defined to mean the failure to exercise a great amount of care.[13]

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[9] *See* US Army Corps of Engineers, *Urban Search and Rescue Program, Fact Sheet, supra* n. 1.
[10] BLACK'S LAW DICTIONARY (11th ed. 2019).
[11] Fla. Std. Jury Instr. Civil 401.3, *Negligence*.
[12] Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.
[13] Sawaya, Thomas, 6 Fla. Prac., *Personal Injury & Practice With Wrongful Death Actions* § 1:2 – *Degrees of Negligence* (2020-2021 ed.).

Ordinary Negligence

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.[14]

Gross Negligence and Intentional Misconduct

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a "reasonably prudent person knows will probably and most likely result in injury to another" person.[15] In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.[16]

Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct, that there was a high probability of injury or damage to the claimant and, despite that knowledge, the defendant intentionally pursued that course of conduct, resulting in injury or damage.[17]

Current Law Regarding Tort Liability for Emergency Action

Current law addresses some of the tort liability addressed in this bill. A licensed professional providing professional services during a declared emergency, where such services are related to the emergency, is not liable for professional malpractice so long as the professional acted as an ordinary reasonably prudent member of that profession would have acted under the same or similar circumstances.[18]

III. Effect of Proposed Changes:

The bill creates s. 768.30, F.S., to provide that an engineer, architect, or structures specialist is not liable for personal injury, wrongful death, property damages, or economic loss resulting from acts or omissions related to engineering or architectural services rendered on a volunteer basis during a state of emergency.

The bill gives tort immunity to a person who is one of the following:

- A Florida engineer, defined by reference to the definition of engineer in the state licensing law.
- An engineer licensed or registered outside of Florida "as a member of a mobile support unit of another state." The term "mobile support unit" is not defined in the bill. As related to this bill, the term generally refers to units or teams, sometimes affiliated with a state National

[14] *Id*.
[15] *Id.*
[16] *Id*. Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.
[17] Fla. Std. Jury Instr. 503.1, *Punitive Damages - Bifurcated Procedure*.
[18] Section 768.1345, F.S.

Guard, that travel to disaster sites as needed, including travel to other states, to aid in disaster response.[19]
- A Florida architect, defined by reference to the definition of architect in the state licensing law.
- An architect licensed or registered outside of Florida as a member of a mobile support unit of another state.
- A structures specialist, defined as a person who has been trained by and holds a current certification as a structures specialist from the United States Army Corps of Engineers.

The limitation on liability provided by the bill applies to an act or omission of an engineer, architect, or structures specialist in the performance of his or her services on a volunteer basis. However, the limitation on liability does not apply to an act or omission constituting gross negligence or willful misconduct. The limitation on liability only applies during a declared national, state, or local emergency, or within 90 days after the end of such emergency.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[19] *See generally*, Connecticut ch. 517, s. 28-6; Indiana IC 10-14-3-19; Kansas s. 48-911; Nevada s. 414.037.

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 768.38 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on March 2, 2021:
The committee substitute clarifies that architectural services are also covered by the liability protections in the bill, and clarifies the language regarding tort liability to remove unnecessary language.

B. Amendments:

None.

295152

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 24 - 25

and insert:

participates in emergency response activities by providing engineering or architectural services while under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency in response to a declared federal, state, or local emergency, may

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not be held

By the Committee on Judiciary; and Senator Bradley

590-02339-21 20211060c1

A bill to be entitled

An act relating to limitation of liability for voluntary engineering or architectural services; creating s. 768.38, F.S.; defining the term "structures specialist"; exempting engineers, architects, and structures specialists from liability for certain voluntary engineering or architectural services under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Section 768.38, Florida Statutes, is created to read:

768.38 Limitation of liability for certain voluntary engineering or architectural services.—

(1) For the purposes of this section, the term "structures specialist" means a person who has been trained by, and holds a current certification from, the United States Army Corps of Engineers as a structures specialist.

(2) An engineer as defined in s. 471.005, an architect as defined in s. 481.203, or a structures specialist, and any qualified business organization of such person, who voluntarily provides engineering or architectural services related to a declared federal, state, or local emergency may not be held liable for any personal injury, wrongful death, property damage, or other economic loss related to his or her acts or omissions in the performance of his or her services, unless the act or omission constituted gross negligence or willful misconduct.

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590-02339-21 20211060c1

(3) The immunity from liability under this section also applies to any person who is licensed or registered as an engineer or architect in any other jurisdiction and who is rendering aid in this state as a member of a mobile support unit of another state.

(4) The immunity from liability under this section applies only to services provided during, or within 90 calendar days after the end of, a declared federal, state, or local emergency.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 872
INTRODUCER:	Senator Rodrigues
SUBJECT:	Homeowners' Associations
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CA	
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.

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 Regulated Industries

BILL:	SB 1176
INTRODUCER:	Senator Stewart
SUBJECT:	Barber Services
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CM	
3.			RC	

I. Summary:

SB 1176 permits a barber to shampoo, cut, or arrange hair in a location other than a registered barber shop without arranging the barber service through a registered barbershop. Current law requires arrangements for the performance of barber services in a location other than a registered barbershop to be made only through a registered barbershop.

The bill takes effect July 1, 2021.

II. Present Situation:

The term "barbering" in ch. 476, F.S., the Barbers' Act, includes any of the following practices when done for payment by the public: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard, applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.[1]

License Qualifications

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;
- Pay the application fee; and
- Have held an active valid license in another state for at least one year,[2] or have a minimum of 900 hours of specified training.[3]

[1] *See* s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

[2] *See* s. 476.144(5), F.S. Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida.

[3] *See* s. 476.114(2), F.S.

The Barbers' Board within the Department of Business and Professional Regulation (department) is authorized to establish by rule a procedure for a barber school or program to certify a person to take the licensure examination following completion of a minimum of 600 actual hours of training and for licensure of applicants passing the examination. Upon passage of the licensure examination, the training requirement of 900 hours is deemed satisfied; failing the examination requires completion of the full educational requirement.[4]

Alternatively, a person may apply for and receive a "restricted license" to practice barbering. A restricted barbering license authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers' Board.[5] An applicant for a restricted barber license must satisfactorily complete a restricted barber course, have held an active license to practice barbering in another state or country, or have held a Florida license which has been declared null and for failure to renew. Additionally, the applicant must not have been disciplined for a violation related to the practice of barbering in the previous five years and must pass a written examination on the laws and rules governing the practice of barbering in Florida, as established by the board.[6]

Barbers must complete an educational course approved by the Barbers' Board on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) as a condition for licensure and as continuing education as part of biennial license renewal or recertification.[7]

Where Barber Services May be Performed

The term "barbershop" means "any place of business wherein the practice of barbering is carried on."[8] A barbershop may not operate without a license issued by the department.[9]

Generally, barber services may be performed only by licensed barbers in registered barbershops.[10] However, the board may established rules allowing barber services to be performed by a licensed barber in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, when a client for reasons of ill health is unable to go to a registered barbershop.[11]

Arrangements for the performance of barber services in a location other than a registered barbershop must be made only through a registered barbershop.[12] The registered barbershop must record the name of the client and the location at which the services are to be performed in the appointment book of the barbershop. The appointment book must remain at the barbershop and made available upon request to any investigator or inspector of the department.[13]

[4] *Id.*
[5] *See* s. 476.144(6), F.S., and Fla. Admin. Code R. 61G3-16.006 (2021).
[6] *Id.*
[7] Section 455.2228, F.S.
[8] Section 476.034(3), F.S.
[9] Section 476.184, F.S.
[10] Section 476.188(1), F.S.
[11] Section 476.188(2), F.S.
[12] *Id.*
[13] Fla. Admin. Code R. 61G3-19.010.

If barber services are performed in an unlicensed location within a hospital, nursing home, or similar facility, such services may lawfully be performed only upon clients, residents, or patients, who for reasons of ill health are unable to visit a licensed shop. If the barber services are to be performed upon employees or persons who do not reside in the facility, or any other nonqualified persons, the location must be a licensed barbershop.[14]

Additionally, a person who holds a valid barber's license in any state or who is authorized to practice barbering in any country, territory, or jurisdiction of the United States may perform barber services in a location other than a registered barbershop when such services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a manufacturer trade show demonstration; or an educational seminar.[15]

III. Effect of Proposed Changes:

The bill amends s. 476.188, F.S., to permit a barber to shampoo, cut, or arrange hair in a location other than a registered barber shop without arranging the barber service through a registered barbershop.

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.

[14] *Id.*
[15] Section 476.188(3), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 476.188 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 Stewart

13-00976-21 20211176__

A bill to be entitled

An act relating to barber services; amending s. 476.188, F.S.; authorizing a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without specified arrangements; providing an effective date.

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

Section 1. Subsection (2) of section 476.188, Florida Statutes, is amended to read:

476.188 Barber services to be performed in registered barbershop; exception.—

(2) Pursuant to rules established by the board, barber services may be performed by a licensed barber in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, when a client for reasons of ill health is unable to go to a registered barbershop. Arrangements for the performance of barber services in a location other than a registered barbershop shall be made only through a registered barbershop. However, a barber may shampoo, cut, or arrange hair in a location other than a registered barbershop without such arrangements.

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 Regulated Industries

BILL:	SB 1944
INTRODUCER:	Senator Albritton
SUBJECT:	Utility and Communications Poles
DATE:	March 15, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Pre-meeting**
2.			CA	
3.			AP	

I. Summary:

SB 1944 creates a process for handling redundant utility poles and abandoned pole attachments and vests the Florida Public Service Commission (commission) with jurisdiction to administer the bill's provisions.

The bill defines the terms "attaching entity," "communications services," "pole," "pole attachments," "pole owner," and "redundant pole."

The bill delineates circumstances in which a pole owner may deny access to its poles, including insufficient capacity, safety, and reliability, and provides that a pole owner may consider the financial and performance-related capabilities of the entity requesting access.

Under the bill, the commission is authorized to regulate and enforce rates, charges, terms, and conditions for pole attachments when parties are unable to reach an agreement; and to regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles and pole attachments. The commission may hear and resolve complaints, including denial of pole attachment. Under the bill, Federal Communications Commission (FCC) precedent is not binding, and the commission must assume jurisdiction over a complaint proceeding that is pending before the FCC, if requested by a party.

The bill requires the commission to adopt rules by October 1, 2021, that consider the interests of the subscribers. The rules must include:

- At least one formula for apportioning costs;
- A requirement for communications services providers to establish storm reserve funds;
- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management;
- Establishment of storm reserve funds;

- The sequential and timely removal of pole attachments; and
- Monetary penalties imposed on communication services providers for failure to comply with commission rules.

The bill creates s. 366.97, F.S.; relating to redundant poles, their transfer of ownership, and provides for penalties. The bill:

- Requires attachments to be removed from a redundant pole within 90 days of receiving written notice to do so;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense;
- Allows a pole owner to remove and sell or dispose of an attachment, at the attaching entity's expense, and requires the attaching party to indemnify, defend, and hold the pole owner harmless;
- Allows the commission to impose requirements for an attaching entity to post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal, transfer, or disposal of the attachment;
- Provides an expedited process for a pole owner to transfer title of a redundant pole to the noncompliant attaching entity by operation of law, requires payment for the pole's remaining book value within 60 days of title transfer, and allows enforcement in the circuit court in which the pole is located.
- Authorizes the commission to impose monetary penalties for violation of these provisions.
- Provides that parties may enter into pole attachment contracts without commission approval and that existing contract rights under valid pole agreements entered into before the bill's effective date are not impaired.

The bill is effective upon becoming law.

II. Present Situation:

Regulation of Pole Attachment

In 1978, Congress passed the "Pole Attachment Act," which added s. 224 to the Communications Act of 1934, to require the FCC to establish rates, terms, and conditions for pole attachments for the cable industry.[1]

In 1996, the "Telecommunications Act" added provisions making access to utility poles mandatory for telecommunications service providers, providing for nondiscriminatory access, unless there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.[2] Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.[3] The term "utility" is defined as:

> [A]ny person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or

[1] P.L. 95-234, *codified* at 47 U.S.C. s. 224.
[2] P.L. 104-104, *codified* at 47 U.S.C. s. 224(f).
[3] 47 U.S.C. s. 224(a)(1).

> rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.[4]

A state, however, can assume regulation of pole attachment through a process known as "reverse preemption." This requires a state to expressly assert jurisdiction through state legislation, followed by certifying to the FCC that "in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services."[5] As of March 19, 2020, 22 states and the District of Columbia have reversed preemption.[6] Florida does not presently regulate pole attachments.

There are currently five pending "Section 224 Pole Attachment Complaints" filed with the FCC.[7] Four of the pending complaints concern BellSouth Telecommunications LLC, d/b/a AT&T Florida (AT&T); of which two are against Florida Power and Light Company (FPL)[8], and two are against Duke Energy affiliated companies.

The complaint filed by AT&T against FPL on July 1, 2019, alleged that the rate paid to attach AT&T's facilities to FPL was unjust and unreasonable under FCC rules and orders issued pursuant to 47 U.S.C. s. 224.[9] The FCC granted the complaint in part, finding that AT&T was entitled to a reduced rate for the period ending on December 31, 2018.[10] Under that order, the parties were unable to agree as to the proper calculation of the reduced rate and the FCC further decided that AT&T was entitled to a refund of any overpayments for the period of July 1, 2014 to December 31, 2018.[11] The FCC established the pole attachments rate under its last order.[12]

Third-Party Pole Attachment and Joint Use

A third-party pole attachment is a communications attachment by a "third-party attacher," such as a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.[13] On April 7, 2011, the FCC approved its pole

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[4] *Id*.
[5] 47 USC § 224(c)(2).
[6] FCC, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, Mar. 19, 2020, https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2 (last visited Mar. 14, 2021).
[7] *See* FCC, *EB - Market Disputes Resolution Division Pending Complaints*, https://www.fcc.gov/general/eb-market-disputes-resolution-division-pending-complaints (last visited Mar. 14, 2021).
[8] *See* FCC, *Memorandum Opinion and Order*, *DA-21-57*, January 14, 2021, https://docs.fcc.gov/public/attachments/DA-21-57A1.pdf (last visited Mar. 14, 2021). After release of the bureau order in AT&T vs FPL, the parties were unable resolve their differences and AT&T then filed a second complaint against FPL with the FCC asserting that the provisions invoked by FPL in its Notice of Termination are unjust and unreasonable under section 224 and requested that they be amended.
[9] *Id.*, at 1 n.1.
[10] FCC, *Grants, in Part, AT&T Pole Attachment. Complaint Against FL P&L: Memorandum Opinion and Order*, DA-20-529, May 20, 2020, https://www.fcc.gov/document/fcc-grants-part-att-pole-attach-complaint-against-fl-pl (last visited March 14, 2021).
[11] FCC, *EB Grants in Part and Stays in Part AT&T Florida's Complaint Memorandum Opinion and Order*: *DA-21-57*, January 14, 2021, https://www.fcc.gov/document/eb-grants-part-and-stays-part-att-floridas-complaint (last visited March 14, 2021).
[12] *Id*.
[13] 47 USC s. 224(a)(4).

attachment order.[14] Public power utilities are not directly impacted by the order because their pole attachments are not subject to the FCC's jurisdiction. The order revised the telecom formula and make-ready provisions to provide a benchmark for pole attachment rates and access.[15]

"Joint use" refers to sharing use of a utility pole by agreement between pole-owning utilities.[16] "Pole attachments" relate to non-pole-owning cable and telecommunication service providers, such as cable TV and broadband providers.[17] This provides non-pole owning utilities with access to a utility's distribution poles, conduits, and rights of way for installation of facilities and equipment in order to build an interconnected network with reduced cost to consumers.[18] Other benefits of joint use and pole attachments include the ability to share the high cost of infrastructure; minimizing the visual impact of two separate pole networks; and minimizing roadway hazards.

According to the Edison Electric Institute, the mandatory nature of providing non-pole-owning utilities with access to poles has resulted in a number of issues such as:

- "Overlashing," where existing attachments are made without notification;
- Compromised safety and reliability requirements for the installation of cable or telecommunications facilities;
- Failure to support utility efforts to inspect for safety violations and capacity overloading;
- Failed cooperation among the pole owner and attaching entities as it pertains to repairs, the expedited transfer of attachments to newly erected hardened poles, and undergrounding; and
- Electric utilities primarily bearing the burden of costs, particularly as it relates to weathering and storm damage.[19]

National Joint Utilities Notification System

The National Joint Utilities Notification System (NJUNS) is a consortium of utility companies formed for the purpose of improving communication among utilities as it relates to pole transfers and replacements.[20] After a tragic incident occurred during a pole transfer, it was decided that certified letters and phone calls were no longer a suitable way to provide notice.[21] NJUNS, provides a dashboard system that allows members to generate tickets and track pole transfers.[22] Florida has been a member of NJUNS since 1992.[23]

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[14] FCC, FCC Reforms Pole Attachment Rules to Boost Broadband Deployment, FCC 11-50, April 7, 2011, https://www.fcc.gov/document/fcc-reforms-pole-attachment-rules-boost-broadband-deployment (last visited March 14, 2021).
[15] *See* American public Power Association, Preserving the Municipal Exemption from Federal Pole Attachment Regulations, https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations#:~:text=In%201978%2C%20Congress%20passed%20the%20Pole%20Attachment%20Act%2C,for%20pole%20attachments%20for%20the%20then-new%20cable%20industry (last visited March 14, 2021).
[16] *See* Edison Electric Institute, *Pole Attachments 101*, https://ecfsapi.fcc.gov/file/7020708245.pdf (last visited Mar. 14, 2021). While joint use is usually governed by contracts, the terms and conditions for detachment from a pole are usually handled in the form of an amendment to the original contract.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] NJUNS, *About: Who We are*, https://web.njuns.com/about/ (last visited Mar. 14,2021).
[21] *Id*.
[22] *See* NJUNS, *Best Practices*, https://web.njuns.com/njuns-best-practices/ (last visited Mar. 14, 2021).
[23] NJUNS, *Members*, https://web.njuns.com/njuns-best-practices/ (last visited Mar. 14, 2021).

Florida Public Service Commission

The commission is an arm of the legislative branch of government.[24] The role of the commission is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[25] In order to do so, the commission exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.[26]

Currently, the commission does not have the authority to regulate pole attachments, absent the legislature expressly conferring this jurisdiction on the commission.[27] "Traditionally, each time a public service of this state is made subject to the regulatory power of the commission, the legislature has enacted a comprehensive plan of regulation and control and then conferred upon the commission the authority to administer such plan."[28]

Storm Reserve Funds

Extreme wind events, like hurricanes and tornados, can destroy electric infrastructure, snapping poles and collapsing transmission towers; even underground electric systems are susceptible to the upending of fallen tree roots and erosion.[29] Prior to Hurricane Andrew in 1992, electric utilities could purchase commercial insurance at reasonable and affordable prices, which allowed them the financial ability to maintain relatively small storm damage reserves.[30] However, after Hurricane Andrew, risk management for electric utilities fundamentally changed, with insurance costs drastically increasing.[31] Given the change in landscape, the electric utilities asked the commission to allow them to self-insure, which the commission began addressing in 1993, giving way to a storm damage reserve balance that can accommodate most storm years.[32]

Currently, cable television providers, local exchange companies and communications services providers do not have storm reserve funds or cost recovery mechanisms that are established or approved by the commission.

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[24] Section 350.001 F.S.
[25] *See* FPSC, *The PSC's Role*, http://www.psc.state.fl.us (last visited Mar. 14, 2021).
[26] *Id*.
[27] *See Teleprompter Corp. v. Hawkins*, 384 So. 2d 648, 650 (Fla. 1980), *citing Radio Tel. Commc'ns, Inc. v. Se. Tel. Co.*, 170 So. 2d 577, 581 (Fla. 1964), "The commission did not have jurisdiction over radio communication service, notwithstanding the interconnection of such radio service with a regulated utility's telephone landline." [T]he legislature of Florida has never conferred upon this commission any general authority to regulate public utilities."
[28] *Hawkins*, 384 So. 2d at 650.
[29] *See* FPSC, *Background on Storm-related Cost Recovery Mechanisms and Review of Storm Preparedness and Restoration* (Apr. 10, 2018) (on file with the Senate Committee on Regulated Industries).
[30] *Id*.
[31] *Id*. For example, prior to Hurricane Andrew, Florida Power and Light had a per-occurrence, or per-storm, insurance limit of $350 million, which cost $3.5 million in annual premiums. After Hurricane Andrew, the best available coverage rate was an aggregate limit of $100 million the year with a $23 million annual premium.
[32] *See, e.g.*, Order No. PSC-93-0918-FOF-EI, June 17, 1993, Docket No. 930405-EI, http://www.floridapsc.com/library/filings/1993/06506-1993/06506-1993.pdf (last visited Mar. 14, 2021); Order No. PSC-93-0918-FOF-EI, Oct. 15, 1993, Docket No. 930867-EI, http://www.floridapsc.com/library/filings/1993/11100-1993/11100-1993.pdf (last visited Mar. 14, 2021).

Electric Utilities

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.[33] Investor-owned electric utility rates and revenues are regulated by the commission.[34] Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the commission to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[35] As of year-end 2020, Florida's electric utilities owned a collective 2,867,025 poles, which had 2,837,881 attachments from other entities.[36]

Municipally Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.[37] Municipally owned utility rates and revenues are regulated by their city commission.[38] The commission does not fully regulate publicly owned municipal electric utilities.[39] However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[40]

In total there are 34 municipal electric companies in Florida.[41] Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.[42]

Rural Electric Cooperative Utilities

Rural electric cooperative utilities are joint ventures organized for purposes of providing electricity to a specified area.[43] Rates and revenues for a cooperative utility are regulated by their elected cooperative officers.[44] Most cooperatives have been financed by the Rural Electrification Association and most, in Florida, are represented by the Florida Electric Cooperatives Association Inc.[45]

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[33] *Id*.
[34] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Mar. 14, 2021).
[35] FPSC, *2020 FPSC Annual Report*, http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Mar. 14, 2021).
[36] FPSC, 2019 Distribution Reliability Reports for IOUs in Florida, *Initiative 2*, http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability (last visited Mar. 14, 2021).
[37] FDACS, *Electric Utilities*, *supra* at n. 28.
[38] *Id*.
[39] FPSC, *2020 Annual Report*, *supra* at n. 29.
[40] *Id*.
[41] FDACS, *Electric Utilities*, *supra* at n. 28.
[42] Florida Municipal Electric Association, *About FMEA*, https://www.publicpower.com/about-us (last visited Mar. 14, 2021).
[43] FDACS, *Electric Utilities*, *supra* at n. 28.
[44] *Id*.
[45] *Id*.

In total there are 18 rural electric cooperatives in Florida.[46] The commission does not regulate the rates and service quality of cooperatives, however, it does have jurisdiction as to rate structure, territorial boundaries, bulk power supply operations, and power supply planning.[47]

Telecommunications Companies

In 2011, the Florida Legislature deregulated telecommunications companies and consequently, the commission lost its authority to require telecommunications companies to continue performing pole inspections after July 1, 2011. Prior to losing jurisdiction, the commission had issued an order in 2006, requiring telecommunications companies to implement an eight year inspection program of its wooden poles based on the requirements of the National Electrical Safety Code.[48] Section 364.011, F.S., expressly exempts the following services from commission oversight:

- Intrastate interexchange telecommunications services;
- Broadband services, regardless of the provider, platform, or protocol;
- VoIP;
- Wireless telecommunications, including commercial mobile radio service providers;
- Basic service; and
- Nonbasic services or comparable services offered by any telecommunications company.

III. Effect of Proposed Changes:

Section 1 amends s. 366.02, F.S. to define the terms:

- "Attaching entity," means a local exchange carrier, a public utility or an electric utility, a communications services provider, or a cable television operator who owns or controls pole attachments.
- "Communications services," has the same meaning as in s. 202.11, F.S., which includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals.
- "Pole" meaning a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity, owned by a pole owner; or a streetlight fixture owned by a public utility.
- "Pole attachments," means local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner.
- "Pole owner," means a local exchange carrier, a public utility or an electric utility, a communications services provider, a cable television operator, or other public utility which owns a pole used for electrical purposes or wire or wireless communications.
- "Redundant pole," means:
  - A pole owned that is within 50 feet of a new pole intended to replace an old pole, from which attachments have not been removed or transferred to the new pole;
  - A pole that still has attachments after the pole owner has relocated its facilities underground; or

[46] *Id*.
[47] FPSC, *2020 Annual Report*, *supra* at n. 29.
[48] *See* FPSC, Order No. PSC-2006-0168-PAA-TL, March 1, 2006, Docket No. 20060077-TP,http://www.psc.state.fl.us/library/filings/2006/01762-2006/01762-2006.PDF (last visited Mar. 14, 2021).

- A pole left standing after a pole owner's attachments have been removed to another location to accommodate a new service route.

Section 2 grants the commission jurisdiction to regulate and enforce rates, charges, terms, and conditions, for pole attachments when the parties are unable to reach an agreement.

The bill provides that the commission's authority includes but is not limited to that referenced in 47 U.S.C. s. 224(c), relating to pole attachments.

The bill provides:
- Legislative intent that parties be encouraged to enter into voluntary pole attachment agreements without commission approval and that parties not be prevented from voluntarily entering into such contracts without commission approval.
- Circumstances in which a pole owner can deny access to its poles, including insufficient capacity, safety, reliability, and provides that a pole owner can consider the financial and performance-related capabilities of the entity requesting attachment.
- Jurisdiction for the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, including denial of pole attachment, and provides that FCC precedent is not binding in such proceedings.
- A requirement for the commission to assume jurisdiction of a complaint proceeding pending before the FCC, if requested to do so by a party to the proceeding.
- The commission must regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers.

The bill requires the commission to adopt rules by October 1, 2021, which consider the interests of the subscribers and users. The rules must include:
- At least one formula for apportioning costs;
- A requirement for communications services providers to establish storm reserve funds;
- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management;
- Establishment of storm reserve funds;
- The sequential and timely removal of pole attachments; and
- Monetary penalties imposed on communication services providers for failure to comply with commission rules.

Section 3 creates s. 366.97, F.S.; relating to redundant poles, their transfer of ownership, and provides for penalties. The bill includes the following statements of legislative intent:
- It is in the public's interest for poles to be hardened against extreme weather conditions by replacing older poles, which may result in redundant poles;
- Pole owners may incur liability when prevented from removing redundant poles because of remaining attachments still in use by other entities;
- Redundant poles are aesthetically unappealing and may create overcrowding and unsafe conditions; and

- It is in the public interest to timely and sequentially remove pole attachments from redundant poles and transfer ownership of a pole to a user from an owner no longer using it.

The bill provides a procedure for dealing with redundant or abandoned poles which:

- Requires attachments to be removed from a redundant pole within 90 days of receiving written notice to do so;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense;
- Allows a pole owner to remove and sell or dispose of an attachment, at the attaching entity's expense and requires the attaching party to indemnify, defend, and hold the pole owner harmless;
- Allows the commission to impose requirements for an attaching entity to post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal, transfer, or disposal of the attachment: and
- Provides an expedited process for a pole owner to transfer title of a redundant pole to the noncompliant attaching entity by operation of law, requires payment for the pole's remaining book value within 60 days of title transfer, and allows enforcement in the circuit court in which the pole is located.

Under the bill, the commission is required to impose fines for violation of the provisions within section 3 of the bill by entities under its jurisdiction. Upon petition by a pole owner, the commission may issue orders for the removal or transfer of pole attachments by noncompliant attaching entities, and must impose monetary penalties.

The commission must use all monetary penalties to provide grants for installing and upgrading broadband infrastructure in unserved and underserved rural and low-income areas of the state. The commission must establish criteria for awarding grants from the fund to businesses and organizations that have demonstrated the ability to construct and install infrastructure. Such entities must submit an application and proposal detailing how the grant funds would further the objective of expanding broadband services in unserved and underserved areas.

The bill repeats a statement of legislative intent that the provisions in Section 3 should not be construed to prevent parties from voluntarily entering into such contracts without commission approval, or construed to impair contract rights in existence before the bill becomes effective.

The commission must adopt rules by October 1, 2021, to implement Section 3 of the bill, including rules for the sequential removal of attachments from redundant poles and the establishment of monetary penalties.

Section 4 directs the Division of Law Revision to replace references to "the effective date of this act," with the date that the bill becomes a law.

Section 5 provides that the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill authorizes the commission to impose a monetary penalty (fine) for a violation of s. 366.97, F.S. The bill does not provide a maximum amount for the authorized fine.

Section 366.095, F.S., on penalties, provides the commission with the authority to impose a penalty on entities subject to its jurisdiction for failure to comply or willful violation of any commission rule or provision within ch. 366, F.S. The fine may not exceed $5,000 per offense and each day in which refusal to comply or the violation continues constitutes a separate offense. Section 350.127, F.S., contains a similar provision, which includes violations of commission orders and the authority to amend, suspend, or revoke any certificate issued by the commission.

An invalid delegation of authority violates the principal of separation of powers in Article II, section 3 of the Florida Constitution. When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when delegating the duties. The bill may constitute and unconstitutional delegation of authority to the commission because it fails to provide the commission any standards by which to impose the maximum permissible fine.
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V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The PSC estimates the implementation of this bill will require 13 full-time positions and $976,201 ($790,078 recurring) from the Regulatory Trust Fund based on staffing needs and other expenses associated with the additional regulatory responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 162-164 of the bill subject communication services providers that fail to comply with any such rule of the commission to monetary fines but it silent as to other types of utilities which may also have attachments on utility poles.

The bill references electricity distribution in its definition of a pole but does not define this term. It is generally industry practice that electrical distribution is defined as 69 kV or less, poles included. However, distribution wires are sometimes attached to transmission poles, making it unclear whether transmission poles would be included under the definition of "pole" under the bill.[49]

The bill adds significant areas of regulation to the Public Service Commission's jurisdiction including telecommunications services, which the commission has not regulated since 2011, and wireless communications and cable-television providers, which have never been regulated by the commission. Given the stringent requirements of Florida's Administrative Procedure Act, it is unlikely that the commission will be able to promulgate rules by October 1, 2021.[50]

The bill requires the commission to administer the grant program, however, the commission currently does not administer any grants. Florida's Office of Broadband, housed within the Florida Department of Economic Opportunity, is charged with developing, marketing and promoting broadband internet services, pursuant to s. 364.0315, F.S., and may already have the capability to administer additional funds resulting from the monetary penalties imposed by this bill.[51] The establishment of a trust fund may also be required to deposit penalties assessed for non-compliance with commission rules and may be required for disbursements associated with broadband grants.[52]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.02 and 366.04.

This bill creates section 366.97 of the Florida Statutes.

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[49] *See* Public Service Commission, *Bill Analysis for SB 1944* (Mar. 15, 2021) (on file with the Senate Committee on Regulated Industries).
[50] *Id*.
[51] *See* Florida Department of Economic Opportunity, Office of Broadband, https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband (last visited (Mar. 14, 2021).
[52] *See* PSC, *Analysis*, *supra* at n. 49.

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 Albritton

26-01453-21 20211944__

A bill to be entitled

An act relating to utility and communications poles; amending s. 366.02, F.S.; defining terms; amending s. 366.04, F.S.; requiring the Public Service Commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing requirements for such rules; providing construction; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; authorizing the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring the commission, at the request of a party, to assume jurisdiction over certain complaints before the Federal Communications Commission; requiring the commission to adopt rules by a specified date; requiring the commission to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for certain plants and equipment of communications services providers; requiring the commission to adopt rules, including monetary penalties, by a specified date; creating s. 366.97, F.S.; providing legislative findings; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of a written notice from the pole owner; requiring the commission to provide the

26-01453-21 20211944__

form and requirements for such notice; authorizing a pole owner or its agent to transfer or relocate pole attachments of an attaching entity at the entity's expense under certain circumstances; providing an exception; authorizing a pole owner to remove and sell or dispose of certain abandoned pole attachments; requiring that the pole owner and its directors, officers, agents, and employees be held harmless under certain circumstances for such actions; authorizing the commission to require attaching entities to post certain security instruments by rule; authorizing certain pole owners to transfer legal title of a redundant pole to an attaching entity that has not removed a pole attachment within a specified timeframe; providing for such transfer of title; providing for the transfer of obligation, responsibility, and liability of a pole to the new owner upon such a transfer of title; requiring the commission to impose monetary penalties for violations; requiring the commission to provide grants to install and upgrade broadband infrastructure in this state from any monetary penalty collected; providing construction; requiring the commission to adopt rules by a specified date; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Subsection (4) through (9) are added to section 366.02, Florida Statutes, to read:

366.02 Definitions.—As used in this chapter:

(4) "Attaching entity" means a person that is a local exchange carrier, a public utility or an electric utility, a communications services provider, or a cable television operator who owns or controls pole attachments.

(5) "Communications services" has the same meaning as in s. 202.11.

(6) "Pole" means a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner, or a streetlight fixture that is owned in whole or in part by a public utility.

(7) "Pole attachments" means local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner.

(8) "Pole owner" means a local exchange carrier, a public utility or an electric utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or for any wire or wireless communications.

(9) "Redundant pole" means a pole owned or controlled by a pole owner which is:

1. Within 50 feet of a new pole which is intended to replace the old pole from which some or all of the pole attachments have not been removed and transferred to the new pole;

2. Left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or

3. Left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery service.

Section 2. Subsections (8) and (9) are added to section 366.04, Florida Statutes, to read:

366.04 Jurisdiction of commission.—

(8)(a) The commission shall regulate and enforce rates, charges, terms, and conditions for pole attachments in situations in which a pole owner is unable to reach an agreement with a party seeking pole attachments, including the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, or attachments to poles owned by a communications services provider, to ensure that such rates, charges, terms, and conditions are just and reasonable. The commission's authority under this subsection includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c).

(b) In developing the rules, the commission shall consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.

(c) It is the intent of the Legislature to encourage parties to enter into voluntary pole attachment agreements, and this subsection may not be construed to prevent parties from voluntarily entering into pole attachment agreements without commission approval.

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and reliability standards approved by the commission and may include an evaluation of the financial and performance-related capabilities of the entity requesting attachment.

(e) The commission may hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments with regard to the types of attachments regulated under 47 U.S.C. s. 224, attachments to streetlight fixtures, or attachments owned by a communications services provider. Federal Communications Commission precedent is not binding upon the commission in the exercise of its authority under this subsection.

(f) Upon commencement of its authority under this subsection, the commission, upon the request of a party to a complaint proceeding pending before the Federal Communications Commission, shall assume jurisdiction over the matter if it is not yet subject to a final order of the Federal Communications Commission at the time of the request.

(g) The commission shall adopt rules by October 1, 2021, to administer and implement this subsection, including one or more appropriate formulae for apportioning costs.

(9)(a) The commission shall regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers. The commission shall require communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters.

(b) The commission shall adopt rules by October 1, 2021, to administer and implement this subsection, including, but not limited to:

1. Mandatory pole inspections, including repair or replacement; vegetation management requirements for poles owned by providers of communications services; the establishment of storm reserve funds; and the sequential and timely removal of pole attachments; and

2. Monetary penalties to be imposed upon any communication services provider that fails to comply with any such rule of the commission.

Section 3. Section 366.97, Florida Statutes, is created to read:

366.97 Redundant poles; transfer of ownership; penalties.—

(1) The Legislature finds that:

(a) It is in the public interest for public utilities, communications services providers, and cable television operators that own poles to harden their infrastructure to strengthen the ability of their above-ground infrastructure to withstand extreme weather conditions, by and among other things, replacing older poles with newer, stronger poles; however, this

work combined with the undergrounding of electrical facilities may result in redundant poles within public rights-of-way and easements for significant durations because owners of third-party pole attachments may not keep pace in removing their facilities from the old poles.

(b) Pole owners that set new poles are prevented from removing redundant poles when the pole attachments of other entities remain on the old poles. Such pole owners continue to incur liability as owners of poles they no longer use or want, but which continue to be used by other entities.

(c) Redundant poles in the public rights-of-way and easements are aesthetically unappealing and potentially create overcrowding of, and unsafe conditions in, the public rights-of-way and easements.

(d) It is in the public interest to timely and sequentially remove pole attachments from redundant poles and to transfer the ownership of poles from pole owners that are no longer using the poles to entities that continue to attach facilities to the poles.

(2)(a) An attaching entity must remove its pole attachments from a redundant pole within 90 calendar days after receipt of written notice from the pole owner requesting such removal. The commission shall provide the form and requirements for such notice.

(b) If an attaching entity fails to remove a pole attachment pursuant to paragraph (a), except to the extent excused by an event of force majeure or other good cause as determined by the commission, the pole owner or its agent may transfer or relocate the pole attachment to the new pole at the

non-compliant attaching entity's expense. This subsection does not apply to an electric utility's pole attachments.

(c) If a pole attachment is abandoned or no longer in use by a noncompliant attaching entity, the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment. The noncompliant attaching entity shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of gross negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the removal, transfer, sale, or disposal of the pole attachments from a redundant pole by the pole owner.

(d) The commission may require by rule that an attaching entity post security instruments in favor of pole owners in amounts reasonably sufficient to cover the cost of the removal, transfer, sale, or disposal of pole attachments.

(3)(a) When a pole owner removes and relocates its overhead facilities or converts its overhead facilities to underground, in lieu of removal, transfer, sale, or disposal of the pole attachments as provided in subsection (2), the pole owner may transfer legal title of the redundant pole to an attaching entity that has not removed a pole attachment within 90 days after receipt of a notice to remove.

(b) Transfer of title shall occur by operation of law upon the date a written notice of title transfer is sent by the pole owner. The notice of title transfer must include pole identification numbers, if applicable, and must describe with

specificity the locations of the pole or poles to be transferred and their corresponding remaining book value.

(c) Within 60 days after transferring title, the attaching entity shall remit payment to the transferor pole owner an amount equal to the total of the remaining book value for all poles listed in the notice of title transfer.

(d) A transferor pole owner may seek to enforce its rights under this subsection, including its right to payment, in the circuit court in whose jurisdiction the transferred poles are located. The transferor pole owner is entitled to prejudgment interest at the prevailing statutory rate, and the prevailing party in any such action is entitled to recover its reasonable attorney fees and court costs.

(e) Upon transfer of title, all obligation, responsibility, and liability incumbent upon a pole owner in this state including, but not limited to, safety, vegetation management, repair, replacement, maintenance, relocation, removal, emergency response, storm restoration, taxes, and third-party liability, shall immediately become the legal obligation, responsibility, and liability of the new pole owner. The transferor pole owner is relieved of all such obligation, responsibility, and liability immediately upon transfer of title.

(4) The commission shall impose monetary penalties upon any entity subject to its jurisdiction which is found to be in violation of this section. Upon petition by a pole owner, the commission may issue orders requiring the removal or transfer of pole attachments by noncompliant attaching entities and shall impose monetary penalties in accordance with this section.

(5) All monetary penalties assessed by the commission

pursuant to this section must be used by the commission to provide grants for the installing and upgrading of broadband infrastructure in unserved and underserved rural and low-income areas of this state. The commission shall establish criteria for the award of grants from the fund to businesses and organizations that have demonstrated the ability to construct and install infrastructure and that have submitted an application and proposal detailing how the grant funds would further the objectives of this subsection to expand broadband services in unserved and underserved areas.

(6) This section may not be construed to do any of the following:

(a) Prevent a party at any time from entering into a voluntary agreement authorizing a pole owner to remove an attaching entity's pole attachment. It is the intent of the Legislature to encourage parties to enter into such voluntary agreements without commission approval.

(b) Impair the contract rights of a party to a valid pole attachment agreement in existence before the effective date of this act.

(7) The commission shall adopt rules by October 1, 2021, to implement this section, including rules providing for the sequential removal of all pole attachments from redundant poles and establishing monetary penalties to be imposed against any entity in violation of this section.

Section 4. 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 5. This act shall take effect upon becoming a law.

Background on Storm-related Cost Recovery Mechanisms and Review of Storm Preparedness and Restoration

Florida Public Service Commission Staff

April 10, 2018

Utility Storm Hardening Plans, Monitoring, and Recovery of Plan Costs

Utility Storm Hardening Plans

In 2007, the Florida Public Service Commission (Commission) adopted Rule 25-6.0342, Florida Administrative Code (F.A.C.), requiring each investor-owned electric utility (IOU) to file a detailed storm hardening plan every three years for the Commission's review and approval. The intent of the rule is to require cost-effective strengthening of critical electric infrastructure, to increase extreme weather resilience, and to reduce restoration cost and outage times to end-use customers. Each plan filed is required to contain a detailed description of the IOU's construction standards, policies, and practices and procedures employed to enhance the reliability of overhead and underground electric transmission and distribution facilities. For overhead distribution facilities, the IOU is required to address the extent to which its plan will implement extreme wind loading standards. These plans must detail how the standards will be applied to new construction, major planned work (including rebuild or relocation projects), critical infrastructure facilities, and infrastructure along major thoroughfares. For underground distribution facilities, the IOU is required to address the extent to which its plan mitigates damage due to flooding and storm surge. In general, the placement, or replacement, of electric facilities should facilitate safe and efficient access for installation and maintenance purposes.

In 2006, prior to adoption of the rule, the Commission ordered IOUs to implement cyclical eight-year wooden pole inspection programs, as well as the following storm preparedness initiatives:[1,2]

- Three-year Vegetation Management Cycle for Distribution Circuits
- Audit of Joint-Use Attachment Agreements
- Six-year Transmission Structure Inspection Program
- Hardening of Existing Transmission Structures
- Development of Transmission and Distribution Geographic Information System
- Collection of Post-Storm Data and Forensic Analysis
- Collection of Detailed Outage Data Differentiating Between the Reliability Performance of Overhead and Underground Systems
- Increased Utility Coordination with Local Governments
- Collaborative Research on Effects of Hurricane Winds and Storm Surge
- Development of Natural Disaster Preparedness and Recovery Program Plans

Since the Commission adoption of Rule 25-6.0342, F.A.C., was in response to the extensive storm restoration costs and long-term electric service interruptions experienced in 2004 and 2005, the storm hardening plans filed by the IOUs also included the wooden pole inspection program and

[1] Order No. PSC-06-0144-PAA-EI, issued February 27, 2006, in Docket No. 060078-EI, *In re: Proposal to require investor-owned electric utilities to implement ten-year wood pole inspection program.*

[2] Order No. PSC-06-0351-PAA-EI, issued April 25, 2006, in Docket No. 060198-EI, *In re: Requirement for investor-owned electric utilities to file ongoing storm preparedness plans and implementation cost estimates.*

the storm preparedness initiatives. While not explicitly required by Commission order or rule, this consolidated reporting of the storm hardening plans continues to be practiced.

The Commission establishes a unique docket each time it reviews an IOU's proposed storm hardening plan. The review considers utility specific information such as estimated timelines for implementing the activities, program methodology, estimated costs, and rate impacts. The Commission encourages utilities and interested persons to identify additional initiatives and to suggest alternative plans, so long as, the same objectives are achieved in a cost effective manner. Plans that contain the information required by Rule 25-6.0342, F.A.C., and applicable Commission Orders can be approved for implementation.

Implementation Monitoring of Utility Storm Hardening Plans

Monitoring of an IOU's implementation of its storm hardening plan is done through reviewing annual filings. IOUs are required to file annual reliability performance reports pursuant to Rule 25-6.0455, F.A.C.[3] These reports include storm hardening implementation updates, the status of the wooden pole inspection program, achievements in the storm preparedness initiatives, and a series of standardized reliability metrics associated with system outages and end-use customer service interruptions. Impacts of the prior year storms, forensic analysis, and lessons learned are also topics included in the utilities' reports. Commission staff reviews these reports, then seeks additional information as necessary, and finally publishes an annual report of its findings.[4] The Commission staff also audits utility processes to ensure the quality of the information provided.[5]

Recovery of Plan Costs

Recovery of plan costs are a factor considered during an IOU's general rate case proceeding, because these costs are considered a normal cost of providing electric service in Florida. Plan implementation and its costs are considered in the process that sets each IOU's base rate charges. Approval of a plan by the Commission does not mean the IOU is assured recovery of all actual costs incurred to implement the plan.

Cost Recovery for Utility Storm Restoration

Extreme wind events like hurricanes and tornados can destroy electric infrastructure by direct contact because of the excessive forces that the high wind speed place on the structures. High winds can snap poles and collapse transmission towers. Severe weather can also indirectly damage electric infrastructure by driving debris or trees into above ground structures such as substations, towers, and pole-mounted circuits. Such foreign materials coming in contact with electrical systems may result in the equipment de-energizing or causing structural damage. Therefore, severe weather can damage not only towers and poles, but also associated electrical hardware, damage customer service connections, sever energized wires, and cause electrical short circuits that may cause further damage to electric infrastructure. Underground electric systems are susceptible to the upending of fallen tree roots and erosion. Additionally, flooding and storm surge may damage both underground and overhead electric facilities. Consequently, an extreme weather

[3] http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability

[4] http://www.floridapsc.com/Files/PDF/Utilities/Electricgas/DistributionReliabilityReports/2016/Review%20of%20Florida's%20Investor-Owned%20Electric%20Utilities'%20Service%20Reliability%20in%202016.pdf

[5] http://www.floridapsc.com/Files/PDF/Publications/Reports/General/Electricgas/DataAccuracy2015.pdf

event may damage one or more components of electric infrastructure that must be repaired before service can be restored to a given customer experiencing an outage.

An IOU's response to such potentially diverse and widespread weather impact begins with pre-storm preparation. A preliminary assessment of the extent of damages is performed after the storm has passed and it is safe to perform the assessment. Restoration resources are allocated in a manner intended to restore electric service to customers as quickly as reasonably possible. In general, this means the IOU's approach is "top down." Restoration efforts tend to focus on the transmission system and substations, and then migrate to the primary arterial networks before concentrating on individual customer outages. A high restoration priority is assigned to pre-identified critical infrastructure such as police stations, fire stations, lift-pumps and other facilities. Sometimes temporary repairs are implemented in an effort to minimize total customer outage time. How quickly service restoration can be accomplished is dependent on the nature and extent of the damage, the available field crews, whether critical infrastructure has been affected, and how many customers are impacted.

Development of Storm Damage Self Insurance

Prior to Hurricane Andrew in 1992, IOUs were able to purchase commercial insurance for their transmission and distribution facilities at reasonable and affordable prices. Consequently, the IOUs had relatively small storm damage reserves. The costs of carrying this insurance was recovered through base rates. However, Hurricane Andrew fundamentally changed the landscape for property insurance risk management for electric utilities in Florida. For example, prior to Hurricane Andrew, Florida Power and Light (FPL) had a per occurrence insurance limit for its transmission and distribution system of $350 million. This coverage cost $3.5 million in annual premiums. In other words, FPL could request a claim, if needed, for $350 million for each storm that occurred in any given year. After Hurricane Andrew, the best available coverage rate was an aggregate limit of $100 million for any given year with a $23 million annual premium. Other IOU's were having to address similar changes in available commercial insurance. Exploration of an electric industry-wide insurance was expected to only provide a coverage level of $35 million. Given the changes in the commercial insurance market, the IOUs asked the Commission to allow them to self-insure.

In 1993, the Commission began addressing each individual request. The Commission determined that it was reasonable to pursue self-insurance and that an IOU file a study to determine the appropriate target level for its property insurance reserve and its annual accrual amount to achieve

and maintain that target level over time.[6,7,8,9] In addition, the Commission required IOUs to file annual reports addressing efforts in obtaining reasonably priced alternatives to self-insurance.

The Commission considered various aspects of self-insurance and affirmed an approach that consisted of three parts:[10,11]

- A storm damage reserve balance adequate to accommodate most, but not all, storm years
- A provision for an IOU to seek recovery of costs that exceed the storm damage reserve balance
- An annual storm accrual, adjusted over time as circumstances change.

A storm damage reserve balance typically addresses the restoration costs of less severe damage levels while special assessments, or surcharges, address the extreme storm damage events that exhaust the storm damage reserve. The annual accrual amount tends to reduce dependency on special assessments, or surcharges. Also, the annual accrual amount can be suspended when the reserve balance is deemed sufficient.[12] Beginning in 2005, consumer advocates have supported suspending annual storm accruals.[13,14] Without an annual accrual, self-insurance becomes a "pay-as-you-go" policy that relies on the Commission approving petitions for relief on an as-needed basis to address storm damage and restoration costs.

In 2008, the Commission adopted Rule 25-6.0143, F.A.C., clarifying that only incremental costs can be charged to the storm damage reserve, because certain costs are addressed by base rates. Examples of incremental costs are overtime payroll, the additional contract labor hired for storm restoration activities, logistics costs of providing meals and other associate staging area costs, and materials and supplies used to repair and restore service and facilities to pre-storm condition.

Storm Damage and Restoration Surcharge Process

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[6] Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, in Docket No. 930405-EI, *In re: Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power and Light Company*.

[7] Order No. PSC-93-1522-FOF-EI, issued October 15, 1993, in Docket No. 930867-EI, *In re: Petition of Florida Power Corporation for authorization to implement a self- insurance program for storm damage to its T&D Line and to increase annual storm damage expenses*.

[8] Order No. PSC-93-0337-FOF-EI, issued March 23, 1994, in Docket No. 930987-EI, *In re: Investigation into Currently Authorized Return on Equity of TAMPA ELECTRIC COMPANY*.

[9] Order No. PSC-96-1334-FOF-EI, issued November 5, 1996, in Docket No. 951433-EI, *In re: Petition for approval of special accounting treatment of expenditures related to Hurricane Erin and Hurricane Opal by Gulf Power Company*.

[10] Order No. PSC-95-0918-FOF-EI, issued February 27, 1995, in Docket No. 930405-EI, *In re: Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power and Light Company*.

[11] Order No. PSC-94-0852-FOF-EI, issued July 13, 1994, in Docket No. 930867-EI, *In re: Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power and Light Company*.

[12] Order No. PSC-10-0131-FOF-EI, issued March 5, 2010, in Docket No. 090079-EI, *In re: Petition for increase in rates by Progress Energy Florida, Inc*.

[13] Order No. PSC-05-0902-S-EI, issued September 14, 2005, in Docket No. 050045-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

[14] Order No. PSC-13-0443-FOF-EI, issued September 30, 2013, in Docket No. 130040-EI, *In re: Petition for rate increase by Tampa Electric Company*.

All costs to secure the incremental resources and labor required to repair and restore electric service are initially borne by the IOU. While an IOU is still reconciling its charges for repairs and mutual aid, it can file a petition to initiate a surcharge for a specific period of time based on an estimated total. The Commission dockets the matter and interim recovery can occur while a review is performed on actual costs eligible for recovery. Revenues collected by the Commission-approved surcharge are held subject to true-up to match the total actual amount of storm damage and restoration costs that are found eligible for recovery pursuant to Rule 25-6.0143, F.A.C. It is conceivable that successive hurricane seasons can deplete the storm damage reserve resulting in an ongoing surcharge or multiple surcharges.

Recent IOU Storm Damage and Restoration Surcharge Petitions

On December 29, 2016, FPL filed a petition seeking authority to implement an interim storm restoration recovery charge to recover an estimated total of $318.5 million for the incremental restoration costs related to Hurricane Matthew and to replenish its storm reserve, effective March 1, 2017, for a 12-month period. On February 20, 2017, the Commission approved the interim charge. A hearing has been set for May 22-23, 2018, that will address costs eligible for recovery.[15]

On December 28, 2017, Tampa Electric Company and Duke Energy Florida, LLC., filed separate petitions requesting Commission approval of a surcharge to recover incremental storm restoration costs and replenishment of their respective storm damage reserves.

Duke Energy Florida, LLC (DEF) requested an estimated total of $513 million to address storm restoration costs due to 2017 Hurricanes Nate and Irma.[16] On February 6, 2018, the Commission approved an agreement between DEF, the Office of Public Counsel, other customer representatives and an advocacy group to utilize annual tax reform benefits resulting from the 2017 Tax Act as a direct offset to storm restoration costs. The Commission will review the actual storm restoration costs during a hearing on October 15-19, 2018.

Tampa Electric Company (TECO) requested an estimated total of $102 million to address storm restoration costs associated with tropical storm systems named by the National Hurricane Center during the 2015 through the 2017 hurricane seasons.[17] The named storms during this period are Erika, Colin, Hermine, Matthew and Irma. On March 1, 2018, the Commission approved an agreement between TECO, the Office of Public Counsel and other customer representatives to utilize annual tax reform benefits resulting from the 2017 Tax Act as a direct offset to storm restoration costs. The Commission will review the actual storm restoration costs during a hearing on October 15-19, 2018.

Review of Utility Storm Preparedness and Restoration

Due to the extreme weather events of 2004 and 2005, the Commission established various requirements that are now included in each IOU's storm hardening plans as previously discussed. Namely, IOUs are required to implement wooden pole inspections, 10 storm preparedness initiatives, and storm hardening that considers extreme wind loading as well as flood and surge protection for new construction. In addition, beginning in 2006, the Commission and its staff have

[15] http://www.floridapsc.com/ClerkOffice/DocketFiling?docket=20160251
[16] http://www.floridapsc.com/ClerkOffice/DocketFiling?docket=20170272
[17] http://www.floridapsc.com/ClerkOffice/DocketFiling?docket=20170271

held annual workshops where all IOUs, municipal utilities, and rural electric cooperative utilities address their hurricane season preparedness.

The 2017 hurricane season was the first notable season since 2004/2005 that had a state-wide impact on IOUs, municipal utilities, and rural electric cooperative utilities. In light of the impact to electric utilities' facilities and their customers, the Commission has opened Docket No. 20170215-EU titled *Review of electric utility hurricane preparedness and restoration actions*.[18] This generic docket will review the utilities' storm preparedness plans and activities, as well as efforts to restore service to customers. This process is designed to collect and analyze forensic data from all electric utilities, receive input from all stakeholders, including customers, in order to explore the potential to further minimize infrastructure damage, resulting outages and recovery timelines in the future. Various data requests have been issued to the electric utilities exploring topics such as:

- Description of the pre-storm staging process and any resulting delays
- Damage assessments and communication processes
- Workload priority assignment and manpower management
- Staffing considerations
- Materials considerations
- Customer communication issues
- Comparative performance of hardened vs. non-hardened structures
- Overhead vs. underground performance comparisons
- Critical infrastructure restoration results.

The objective of this docket is to ultimately identify additional potential damage mitigation options and improvements to utility restoration practices. Upon the conclusion of data collection and analysis, and consideration of public comment, staff will present the Commission with options for future action. A Commission workshop is tentatively scheduled for May 2-3, 2018.

[18] http://www.floridapsc.com/ClerkOffice/DocketFiling?docket=20170215

Date: March 15, 2021

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

RE: SB 1944/HB 1567

I. SUMMARY:

SB 1944, filed by Senator Albritton, and HB 1567, filed by Representative DiCeglie, have identical language. For editorial purposes SB 1944 and HB 1567 are referred to collectively as the bill. The bill amends Section 366.02, Florida Statutes (F.S.), by adding definitions for terms "attaching entity," "communications services," "pole," "pole attachments," "pole owner," and "redundant pole." Section 366.04, F.S., is amended to grant the Florida Public Service Commission (Commission or FPSC) jurisdiction over rates, charges, terms, and conditions of pole attachments in situations in which a pole owner is unable to reach an agreement with a party seeking pole attachments. The bill establishes Chapter 366.97, F.S., which expresses the Legislative finding that it is in the public interest for poles to be hardened to withstand extreme weather conditions and for pole attachments to be relocated to hardened poles in a timely manner. The FPSC is also given authority to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, and other equipment of communications services providers. The FPSC shall also require communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters. Section 366.97, F.S., also grants a pole owner the right to relocate attached facilities to new storm hardened poles at the attaching entity's expense, as well as outlines the process in which ownership of poles can be transferred to entities that continue to attach facilities to redundant poles. The bill becomes effective upon becoming law.

The FPSC must adopt rules to implement the bill by October 1, 2021. All penalties assessed and collected by the PSC for non-compliance with agency rules will be used to provide grants to deploy broadband in rural and under-served areas. The FPSC must also establish criterion to evaluate the location in which grants should be deployed to install or upgrade broadband infrastructure, and which business or organization should receive the grant.

II. PRESENT SITUATION:

In 1978, Congress passed the Pole Attachment Act, which added Section 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC) to establish subsidized rates for pole attachments for the cable industry. The Telecommunications Act of 1996 amended Section 224 to mandate access to poles, conduits, and rights of way to telecommunications service providers. Under the federal law, municipalities and rural electric cooperatives were exempted from this requirement "because the pole attachment rates charged by municipally owned and cooperated utilities were already subject to a decision-making process based upon constituent needs and interests."

The FPSC has rate-setting jurisdiction over electric public utilities.[1] A public utility is commonly referred to as investor-owned utility (IOU). There are currently five electric IOUs providing retail services in Florida.[2] As of year-end 2020, Florida's electric IOUs owned a collective 2,867,025 poles, which had 2,837,881

[1] See Sections 366.02, 366.04, and 366.05, F.S.

[2] FPSC, 2020 Annual Report,
[2] http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf, page 13.

attachments from other entities.[3]

Under Chapter 366, F.S., the Commission has authority over electric safety relating to poles. Section 366.04(6), F.S., provides that the Commission has exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. The Commission has the authority to determine that a pole attachment connection has violated the National Electrical Safety Code (NESC).

In accordance with the FPSC's Division of Engineering 2019 Standard Operating Procedures, inspections are performed by an electric safety engineering specialist. The Electric Safety Supervisor will send a certified letter to the electric IOU when there is a determination that an attachment does not meet NESC standards. The notification cites the NESC code section and the location of the violation. The utility must inform the FPSC that corrections have been completed 90 days after the letter was sent, and the Commission can then re-inspect. Under the current process, the Commission will notify the regulated utility of a safety violation, and the regulated utility will contact the third-party attacher who violates the safety standard.

Following the hurricane seasons of 2004-2005, the Commission implemented several initiatives to harden utility infrastructure to better withstand extreme weather events. Among these were requirements to conduct wooden pole inspection and vegetation management programs. In addition, the Commission found that Florida's electric IOUs had not provided adequate assurance that their practices and procedures governing joint-use facilities serve to mitigate storm damages and customer outages. Consequently, each electric IOU was required to establish a plan, an implementation timeline, and a calculation of rate impacts to audit joint-use agreements that include pole strength assessments. Each electric IOU's plan for performing pole strength assessments includes the stress impacts of all pole attachments as an integral part of its eight-year pole inspection program. The electric IOUs' plans were found to be consistent with the Commission's intent; nevertheless, the Commission required that each utility reevaluate its plan annually to assess the need for any adjustment.[4]

In 2006, the Commission also ordered each local exchange telecommunications company to implement an 8-year inspection program of its wooden poles based on the requirements of the NESC.[5] However, in 2011 the Legislature amended Chapter 364, F.S., to deregulate telecommunications companies. Consequently, the Commission did not require the local exchange telecommunications companies to continue performing pole inspections after July 1, 2011.

Section 364.011, F.S., highlights telecommunications service offerings that are exempt from Commission oversight, such as wireless telecommunications service providers.[6] Telecommunications companies offering services not defined in Section 364.011, F.S., must acquire a Certificate of Authority to provide telecommunications service in the state of Florida, and are subject to regulatory assessment fees (RAF).[7]

The FPSC does not currently have jurisdiction over the rates, charges, terms, and conditions of pole attachments or detachments. Pole attachment agreements between the pole owner and attachers govern the price, terms, and conditions. Disputes are adjudicated before the FCC.

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[3] FPSC, 2019 Distribution Reliability Reports for IOUs in Florida, *Initiative 2,* http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability, accessed March 5, 2021.

[4] http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Electricgas/stormhardening2007.pdf, at page 21.

[5] See Order No. PSC-2006-0168-PAA-TL, issued March 1, 2006, in Docket No. 20060077-TP, In re: Proposal to require local exchange telecommunications companies to implement ten-year wood pole inspection program.

[6] See Section 364.011, F.S.

[7] See Sections 364.33, and 364.336, F.S.

III. EFFECT OF PROPOSED CHANGES:

The bill amends Section 366.02, F.S., by adding definitions for several terms. “Attaching entity” is defined as “a person that is a local exchange carrier, a public utility or an electric utility, a communications services provider, or a cable television operator who owns or controls pole attachments.” “Communications services” is defined as having the same meaning as in Section 202.11(1), F.S., which are “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.” “Pole” is defined as “a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner, or a streetlight fixture that is owned in whole or in part by a public utility.” “Pole attachments” is defined as a “local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner.” “Pole owner” is defined as a “local exchange carrier, a public utility or an electric utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or for any wire or wireless communications.” “Redundant pole” is defined as:

- A pole that is owned or controlled by a pole owner that is within 50 feet of a new pole that is intended to replace the old pole from which some or all pole attachments have yet to be removed from;
- A pole that is left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or
- A pole that is left standing after a pole owner’s attachments have been removed from that route or location to accommodate a new route or design for the delivery service.

These definitions will be added as subsections (4) through (9) of the Section 366.02, F.S.

The bill adds subsections (8) and (9) to Section 366.04, F.S. Subsection (8) would grant the Commission authority to regulate and enforce the rates, charges, terms, and conditions of pole attachments in situations in which a pole owner is unable to reach an agreement with a party seeking pole attachments. This includes pole attachments regulated under 47 U.S.C. 224(a)(4), which governs attachments by cable television systems, or telecommunications service providers, to a pole, duct, conduit, or right-of-way owned or controlled by a utility. The bill also addresses attachments to streetlight fixtures and attachments to poles owned by an entity providing communications services. Parties will remain encouraged to enter into voluntary pole attachment agreements, and the bill does not intend to prevent parties from entering these agreements without Commission approval.

Paragraph (8)(e) would authorize the Commission to hear and resolve complaints regarding rates, charges, terms and conditions of pole attachments, and that previous FCC decisions do not act as precedent. The Commission, at the request of an affected party, shall assume jurisdiction over complaint proceedings currently pending before the FCC. The Commission must adopt rules to implement this subsection using one or more appropriate formulae to apportion costs and set pole attachment rates. The Commission does not currently have jurisdiction to set rates for communications providers.

Subsection (9) would grant the Commission authority to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers. The Commission must adopt rules to require communications services providers to conduct mandatory pole inspections, vegetation management, and establish storm reserve funds. The Commission does not currently have jurisdiction over communications providers in these areas, including communications services providers who are not exempt under Section 364.011, F.S., and subject to the Commission’s jurisdiction.

The bill establishes Section 366.97, F.S., addressing redundant poles created by the process of

converting overhead electric facilities to underground or the replacement of existing poles. The bill would state the Legislative finding that it is in the public interest to timely and sequentially remove pole attachments from redundant poles. Paragraph (2)(a) requires pole attachers to remove attachments from a redundant pole within 90 days of written notice by the pole owner. The form and requirements of the written notice must be established by the Commission. If an attaching entity fails to comply with the 90-day deadline, paragraph (2)(b) permits a pole owner to transfer pole attachments to the new pole at the non-compliant attaching entity's expense. Paragraph (2)(c) permits a pole owner to remove an abandoned pole attachment and sell or dispose of the attachment, with no recourse from the pole attachment owner unless a finding of gross negligence or willful misconduct is apparent. Paragraph (2)(d) would authorize the Commission to adopt rules that require security instruments to be posted by attaching entities in amounts reasonably sufficient to cover the costs of disposition of pole attachments. Paragraph (3)(a) would allow a pole owner to transfer ownership of the pole to an attaching entity that has failed to meet the 90-day deadline to remove pole attachments, effective upon written notice. The new owner would be required to pay the remaining book value of the pole and assume the obligations of owning the new pole.

Subsections 366.97(4) and (5), F.S., would authorize the Commission to impose monetary penalties upon any entity subject to its jurisdiction under this section that is found to be in violation of its requirements. The assessed penalties must be used to provide grants to install and upgrade broadband infrastructure in rural communities. The Commission is required to establish criteria for evaluating the business or organization that will receive these grants.

By October 1, 2021, the Commission must adopt rules to ensure compliance with pole inspection requirements by communications services providers, and establish monetary penalties for failure to comply with any of the aforementioned rules. While the bill is explicit regarding imposing monetary penalties upon violators that are communications services providers, the bill is silent regarding other types of attachers, such as electric utilities.

The bill becomes effective upon becoming law.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

Pole attachment disputes will be adjudicated at the FPSC, rather than at the FCC. The fiscal impacts on the FPSC is listed below, the fiscal impacts on other state agencies is unknown. Beyond the rate associated with the new positions, this legislation could require additional pay additives or increases to existing FPSC staff. To effectively manage penalties and grant administration a new trust fund may need to be established.

	(FY 20-21) Amount / FTE	(FY 21-22) Amount / FTE	(FY 22-23) Amount / FTE
A. Revenues			
1. Recurring	$656,919/13 FTE	$656,919/13 FTE	$656,919/13 FTE
2. Non-Recurring	$0/0 FTE	$0/0 FTE	$0/0 FTE
B. Expenditures			
1. Recurring	$133,159/0 FTE	$133,159/0 FTE	$133,159/0 FTE
2. Non-Recurring	$186,123/0 FTE	$0/0 FTE	$0/0 FTE

Rate need 686,607

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

Pole attachment disputes will be adjudicated at the FPSC, rather than at the FCC. The fiscal impacts on local governments is unknown.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

Pole attachment disputes will be adjudicated at the FPSC, rather than at the FCC. The fiscal impacts of on private sector is unknown.

VII. LEGAL ISSUES:

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

No, if the Commission lawfully assumes jurisdiction over the federal pole attachment program. The Federal Communications Commission (FCC) regulates the rates, terms, and conditions of pole attachments under 47 USC § 224, unless a state, through state legislation, expressly asserts jurisdiction over the program, as provided by federal law. The process of state assumption of federal pole attachment regulation is called “reverse preemption.” Once federal pole attachment program is lawfully assumed by a state, the state must certify pursuant to 47 USC § 224(c)(2) that it has adopted pole attachment regulations before being able to enforce such state regulations. A state may only adopt the federal program pursuant to 47 USC § 224(c)(2) in its entirety, and is not permitted to assume control over only parts of the federal program. However, states that have asserted jurisdiction over the rates, terms, and conditions of pole attachments may also add on additional laws, specifying further detail on pole related issues, such as relocation issues.

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

No.

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

Yes. Litigation may occur between a pole owner and an attaching entity. Disputes can arise over pole access, redundant poles, the attachment removal process, relocation and transfer of poles, and pole attachment contract subject matter such as payments. Litigation may also occur during the rulemaking process. Attaching entities and interested persons will want to be involved in the process of setting of rates, terms, and conditions to ensure they are just and reasonable. The Commission’s enforcement activities may lead to litigation as well as the Commission’s provision of grants. Finally, litigation may arise from the Commission’s authority to hear and resolve complaints concerning rate charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments.

D. Other:

VIII. COMMENTS:

The bill gives the FPSC jurisdiction over entities defined as “communications services” providers. The bill would require the Commission to assert jurisdiction over telecommunications providers in the areas governed by the bill, which have not been regulated by the Commission since 2011. The bill would also appear to require the Commission to assert similar jurisdiction over wireless communications and cable-television providers, which have never been regulated by the Commission. The definitions of “pole owner,” and “attaching entity” in the bill include electric utilities, which pursuant to Section 366.02(2), F.S., includes municipal and rural cooperative electric utilities. This appears to give the Commission jurisdiction to address pole attachment disputes that involve municipal and cooperative utilities, which is an extension of the Commission’s limited jurisdiction over these entities.

The bill provides for the imposition of monetary penalties on any communications services provider that fails to comply with any such rule of the Commission. The bill is silent regarding monetary penalties on electric IOUs and other electric utilities that may be attached to a pole and fails to comply with Commission rules.

The bill references electricity distribution in its definition of a pole but does not define what is meant by electricity distribution. It is generally industry practice that electrical distribution is defined as 69 kV or less, poles included. However, distribution wires are sometimes attached to transmission poles. It is unclear whether such transmission poles would be a pole under the bill.

Because of the bill’s complexity, and the noticing requirements provided by Chapter 120, F.S., it is not possible to adopt rules by October 1, 2021.

The bill does not establish authority to assess RAFs to the communications services providers that would become subject to the Commission’s authority under the bill. The cost associated with the regulatory requirements established in Florida law have traditionally been assessed to the utilities and telecommunications companies subject to the Commission’s authority. Also, the establishment of a trust fund may be required to deposit penalties assessed for non-compliance with Commission rules and for disbursements associated with broadband grants. Finally, it does not appear that the Commission would have access to the books and records of communications services providers, as it does over jurisdictional electric, gas, and water and wastewater utilities. Lacking such access may limit the Commission’s ability to verify compliance with rules, including the communications services providers’ storm reserve funds. Absent this authority, the Commission may utilize physical inspections of poles and associated facilities, and discovery in evidentiary proceedings to meet the requirements of this bill.

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