



Policy Council

**FEBRUARY 16, 2010
MORRIS HALL
2:00 – 3:00 P.M.**

MEETING PACKET

**Larry Cretul
Speaker**

**Rep. Marcelo Llorente
Chair**

Council Meeting Notice
HOUSE OF REPRESENTATIVES

Policy Council

Start Date and Time: Tuesday, February 16, 2010 02:00 pm
End Date and Time: Tuesday, February 16, 2010 03:00 pm
Location: Morris Hall (17 HOB)
Duration: 1.00 hrs

Consideration of the following bill(s):

HB 545 Residential Property Sales by Patterson
HB 595 Open House Parties by Fitzgerald

NOTICE FINALIZED on 02/09/2010 15:20 by Glatfelter.Sukie

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 545 Residential Property Sales

SPONSOR(S): Patterson

TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	14 Y, 0 N	Callaway	Cooper
2)	Policy Council		Liepshutz <i>MM</i>	Ciccione <i>JC</i>
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Pursuant to current law, in November 2007 the Financial Services Commission adopted a uniform home grading scale to grade the ability of a home to withstand the wind load from a tropical storm or hurricane. The rating system scores homes on a scale of 1 to 100.

In 2008, the Legislature passed a law that established a two-part phase-in of a requirement that sellers of homes located in the state's wind borne debris region disclose the home's windstorm mitigation rating based on the grading scale:

- The first part of the phase-in was to begin January 2010 and would have required sellers of homes insured by Citizens Property Insurance Corporation for \$500,000 or more to disclose the home's windstorm mitigation rating to buyers. However, in 2009, before it took effect, this disclosure requirement was repealed.
- The second part of the phase-in, which remains law today and is scheduled to begin January 2011, will require sellers of *any* home in the windborne debris region to disclose the home's rating.

This bill proposes to repeal the second part of the disclosure phase-in before it takes effect in January 2011. Consequently, sellers of homes located in the wind borne debris region would not be required, beginning January 2011, to disclose the home's windstorm mitigation rating.

The bill has no fiscal impact on state or local government. The bill would save sellers of homes located in the wind borne debris region the cost of a windstorm mitigation inspection.

The bill is effective upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pursuant to current law, in November 2007 the Financial Services Commission adopted a uniform home grading scale to grade the ability of a home to withstand the wind load from a tropical storm or hurricane.¹ The rating system scores homes on a scale of 1 to 100. The primary factors used to calculate the home rating score include roof shape, secondary water resistance, roof cover, roof deck attachment, roof-to-wall connection, opening protection, number of stories, and roof covering type. General geographic features of wind zone location and local terrain are also used to calculate a home's score.

Although a home grading scale is in place, Florida homes are not presently required by law to be graded. The grading scale is also not currently used to calculate mitigation discounts² though will be used for discount calculations in the future.³ Today's mitigation discount amounts are based on wind loss relativities developed in a study adopted by the Office of Insurance Regulation (OIR) in 2002 and are not linked to a home's mitigation rating given by the grading scale.

In 2008, the Legislature passed a law that established a two-part phase-in of a requirement that sellers of homes located in the state's wind borne debris region disclose the home's windstorm mitigation rating based on the home grading scale to buyers⁴:

- The first part of the phase-in was to begin in January 2010 and would have required sellers of homes insured by Citizens Property Insurance Corporation for \$500,000 or more to disclose the home's

¹ Rule 690-167.015, F.A.C.

² Current law requires insurance companies to give homeowners mitigation discounts for mitigation features installed in their home. Mitigation discounts are advantageous for homeowners as they reduce the home's wind premium.

³ Section 627.0629(1)(b), F.S., requires the OIR to develop a method by February 1, 2011 for insurance companies to establish mitigation discounts that correlate to the home's rating calculated by the home grading scale. Insurance companies then have until October 1, 2011 to make rate filings to revise their mitigation discounts to new ones that correlate to the home's rating. Homeowners then have two years to obtain their home's rating in order to continue to receive mitigation discounts. Thus, by October 1, 2013, all Florida homeowners will have to have their home rated pursuant to the home grading scale or forfeit receipt of mitigation discounts. The most likely way a homeowner will have their home rated is by having a windstorm mitigation inspection that will delineate the home's mitigation features and provide a mitigation rating based on the grading scale.

⁴ Ch. 2008-66, L.O.F.; s. 13 created the first part of the phase-in of disclosure that was to begin January 2010, and s. 15 created s. 689.262 F.S., the second part of the phase-in of disclosure that is scheduled to begin January 2011 and that is being proposed for repeal by this bill.

windstorm mitigation rating. However, in 2009, before it took effect, this disclosure requirement was repealed.⁵

- The second part of the phase-in, which remains law today⁶ and is scheduled to take effect beginning January 2011, will require sellers of any home in the wind borne debris region to disclose the home's rating.

Proposed Change

This bill proposes to repeal s. 689.262, F.S., the requirement that sellers of homes in the wind borne debris region⁷ disclose to buyers, beginning January 2011, the home's windstorm mitigation rating. Consequently, sellers of homes located in the wind borne debris region will not be subject to a new disclosure requirement that was scheduled to take effect January 2011. As a result, sellers of homes in the wind borne debris region, like sellers in other regions of Florida, will not have to disclose windstorm mitigation ratings to buyers.

B. SECTION DIRECTORY:

Section 1: Repeals s. 689.262, F.S., relating to the disclosure of a home's windstorm mitigation rating upon sale.

Section 2: Provides an effective date of "upon becoming a law."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Sellers of homes located in the specified wind-borne debris region will no longer have to obtain a wind inspection for their home in order to obtain the home's windstorm mitigation rating. Thus, these homeowners will save the cost of the inspection which typically costs \$150 - \$250.

D. FISCAL COMMENTS:

None.

⁵ Ch. 2009-87, L.O.F., s.10 removed ("repealed") the first part of the phase-in of disclosure from s. 627.351(6)(a)5., F.S.

⁶ Section 689.262, F.S.

⁷ The wind borne debris region applicable in s. 689.262, F.S., is the one defined in s. 1609.2 of the 2006 International Building Code. A map is available of the region at http://www.dca.state.fl.us/fbc/maps/Wind_borne_MAP_081208.pdf.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law does not outline a framework for a home to be inspected and rated under the grading scale. Consequently, if s. 689.262, F.S., is not repealed, it may be necessary to consider the following issues to ensure an accurate and reliable inspection and rating: the eligibility and qualifications of persons authorized to perform mitigation inspections that establish a home's rating; quality controls and enforcement that ensure inspections are accurate and reliable; and, sanctions that apply to errant inspectors and/or inspections.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

HB 545

2010

1 A bill to be entitled
2 An act relating to residential property sales; repealing
3 s. 689.262, F.S., relating to sales of residential
4 property in wind-borne debris regions and required
5 disclosures of windstorm mitigation ratings to purchasers;
6 providing an effective date.

7

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

9

10 Section 1. Section 689.262, Florida Statutes, is repealed.
11 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 595
SPONSOR(S): Fitzgerald
TIED BILLS:

Open House Parties

IDEN./SIM. BILLS: SB 1066

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Krol	Cunningham
2)	Policy Council		Varn <i>AV</i>	Ciccione <i>JC</i>
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 595 clarifies several restrictions relating to persons who are involved with open house parties and provides enhanced penalties for violating such restrictions.

Specifically, the bill:

- Creates enhanced penalties from a second to a first degree misdemeanor for persons having control of an open house party who violate statutory law a second or subsequent time; and
- Provides penalties that any violation of current law resulting in serious bodily injury or death is punishable by a first degree misdemeanor.

The bill does not appear to have a fiscal impact on state government; however the bill could have a minimal effect on local courts and jails.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In Florida, it is unlawful for any person younger than 21 years of age to possess alcoholic beverages.¹

Section 856.015, F.S., states that a person² in control of an open house party³ commits a second degree misdemeanor⁴ if they know a minor⁵ has possession of or consumed any alcoholic beverage⁶ or drug⁷ at their residence and the person had failed to take responsible steps to prevent the possession or consumption of the alcoholic beverage or drug by the minor.

This statute exempts the use of alcoholic beverages at legally protected religious observances or activities.⁸

The Florida Department of Law Enforcement reported as of February 1, 2010, the following arrests for a violation of s.856.015, F.S.: 158 in 2008, 232 in 2009 and 22 for 2010.⁹ Forty of Florida's sixty-seven counties reported arrest charges based on this statute for these years as cited.

There have been instances of young, underage drivers attending open house parties, drinking alcoholic beverages and being allowed to drive home. Many of these parties have resulted in death or severe injury to the underage participants under a variety of circumstances, including drunk driving and physical altercations. In one instance in Sarasota a fight erupted and a child was killed when two rival high school groups attended the same open house party and a fight, using baseball bats, broke out.

¹ Section 562.111, F.S.

² Section 856.015(1)(f), F.S., defines "person" as "an individual 18 years of age or older."

³ Section 856.015(1)(e), F.S., defines "open house party" as "a social gathering at a residence."

⁴ Sections 775.082 and 775.083, F.S., state that a second degree misdemeanor is punishable by potential incarceration up to 60 days in jail and/or a fine not exceeding \$500.

⁵ Section 856.015(1)(d), F.S., defines "minor" as "an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

⁶ Section 856.015(1)(a), F.S., defines "alcoholic beverage" as "distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of s. 561.01(4)(b)."

⁷ Section 856.015(1)(c), F.S., defines "drug" as "a controlled substance, as that term is defined in ss. 893.02(4) and 893.03, F.S."

⁸ Section 856.015(3), F.S.

⁹ Statistics thru January, 2010 only.

Both groups were underage and had been drinking and the adults at the party appeared to be aware of the underage drinking.¹⁰

Proposed Changes

HB 595 amends present law to make a second or subsequent violation of s. 856.015(2), F.S., a first degree misdemeanor, which is punishable by a fine not to exceed \$1000 and/or up to 1 year in jail.¹¹

This bill also provides that any violation of s. 856.015(2), F.S., which results in serious bodily injury, as defined in s. 316.1933,¹² or death, will be punishable by a first degree misdemeanor.

B. SECTION DIRECTORY:

Section 1. Amends s. 856.015, F.S., relating to open house parties.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The bill creates the penalty of a first degree misdemeanor for a second or subsequent violation of s. 856.015(2). The change in penalty for a second or subsequent violation would increase the potential fine from \$500 to \$1000 and the potential jail time from 60 days to 1 year.

The bill also creates a penalty of a first degree misdemeanor if a violation of 856.015(2), F.S., results in seriously bodily injury or death.

¹⁰ Sarasota Herald-Tribune, July 31, 2008, news article on file with the Policy Council

¹¹ Sections 775.082 and 775.083, F.S., respectively.

¹² Section 316.1933(b), F.S., defines the term "serious bodily injury" as "an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

The combination of increasing the penalty and fines for a second or subsequent violation, plus the impact of a potential incident of a death or serious bodily injury violation could have an impact on local jails.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to open house parties; amending s.
 3 856.015, F.S.; providing that a person who violates the
 4 open house party statute a second or subsequent time
 5 commits a misdemeanor of the first degree; providing that
 6 a person commits a misdemeanor of the first degree if the
 7 violation of the open house party statute results in
 8 serious bodily injury or death; providing criminal
 9 penalties; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsections (2) and (4) of section 856.015,
 14 Florida Statutes, are amended, and subsection (5) is added to
 15 that section, to read:

16 856.015 Open house parties.—

17 (2) A ~~No~~ person having control of any residence may not
 18 ~~shall~~ allow an open house party to take place at the said
 19 residence if any alcoholic beverage or drug is possessed or
 20 consumed at the said residence by any minor where the person
 21 knows that an alcoholic beverage or drug is in the possession of
 22 or being consumed by a minor at the said residence and where the
 23 person fails to take reasonable steps to prevent the possession
 24 or consumption of the alcoholic beverage or drug.

25 (4) Any person who violates any of the provisions of
 26 subsection (2) commits a misdemeanor of the second degree,
 27 punishable as provided in s. 775.082 or s. 775.083. A person who
 28 violates subsection (2) a second or subsequent time commits a

HB 595

2010

29 | misdemeanor of the first degree, punishable as provided in s.
30 | 775.082 or s. 775.083.

31 | (5) If a violation of subsection (2) results in serious
32 | bodily injury, as defined in s. 316.1933, or death, it is a
33 | misdemeanor of the first degree, punishable as provided in s.
34 | 775.082 or s. 775.083.

35 | Section 2. This act shall take effect July 1, 2010.