



Careers & Competition Subcommittee

Tuesday, January 30, 2018
1:00 PM – 3:00 PM
Webster Hall (212 Knott)

Meeting Packet

Richard Corcoran
Speaker

Halsey Beshears
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 1/26/2018 4:19:35PM)

Amended(1)

Careers & Competition Subcommittee

Start Date and Time: Tuesday, January 30, 2018 01:00 pm
End Date and Time: Tuesday, January 30, 2018 03:00 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 667 Beverage Law by Perez
HB 669 Beverage Law by Perez
HB 775 Beverage Law by La Rosa
HB 961 Malt Beverages by Gruters
HB 1041 Professional Regulation by Plakon
HB 1061 Community Association Fire and Life Safety Systems by Moraitis
HB 1137 Pinellas County Construction Licensing Board, Pinellas County by Peters
HB 1211 Airboat Regulation by Abruzzo
HB 1265 Alcoholic Beverages by Miller, M.
HB 1447 City of Orlando, Orange County by Miller, M.

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, January 29, 2018.

By request of Chair Beshears, all Careers & Competition Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 29, 2018.

NOTICE FINALIZED on 01/26/2018 4:19PM by Rigas.Amanda



The Florida House of Representatives

Commerce Committee

Careers & Competition Subcommittee

Richard Corcoran
Speaker

Halsey Beshears
Chair

AGENDA

Tuesday, January 30, 2018
Webster Hall (212 Knott)
1:00 PM – 3:00 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. Consideration of the following bills(s):
 - HB 667 by *Rep. Perez*
Beverage Law
 - HB 669 by *Rep. Perez*
Beverage Law
 - HB 775 by *Rep. La Rosa*
Beverage Law
 - HB 961 by *Rep. Gruters*
Malt Beverages
 - HB 1041 by *Rep. Plakon*
Professional Regulation
 - HB 1061 by *Rep. Moraitis*
Community Association Fire and Life Safety Systems

HB 1137 by *Rep. Peters*
Pinellas County Construction Licensing Board, Pinellas County

HB 1211 by *Rep. Abruzzo*
Airboat Regulation

HB 1265 by *Rep. Miller, M.*
Alcoholic Beverages

HB 1447 by *Rep. Miller, M.*
City of Orlando, Orange County

IV. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 667 Beverage Law
SPONSOR(S): Perez
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson <i>MW</i>	Anstead <i>Ja</i>
2) Commerce Committee			

SUMMARY ANALYSIS

Section 561.57(1), F.S., provides that alcoholic beverage vendors may make deliveries away from their licensed place of business for sales that are actually made at their licensed place of business, including sales originating from telephone or mail orders received at the vendor's licensed place of business.

Section 561.57(2), F.S., specifies that deliveries made by a manufacturer, distributor, or vendor (licensee) may only be made in a vehicle that is owned or leased by the licensee. Additionally, by acceptance of an alcoholic beverage license and the use of such vehicles, a licensee is presumed to agree to inspection of its delivery vehicle:

- without a search warrant by employees of the Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation or by law enforcement officers;
- for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with;
- during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

The bill provides for "electronic" orders to be construed in the same manner as telephone and mail orders.

The bill allows licensees to contract with third parties for deliveries, including common carriers, as follows:

Deliveries made by a manufacturer, distributor, or vendor away from his or her place of business may be made only in vehicles that are owned or leased by the licensee **or a third party the licensee has contracted with to make deliveries, including, but not limited to, common carriers.** By acceptance of an alcoholic beverage license and the use of such vehicles, **including contracted third party vehicles**, the licensee agrees that such vehicles are subject to be inspected and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.⁵
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Alcohol Deliveries

Section 561.57(1), F.S., allows an alcoholic beverages vendor to make deliveries away from its place of business for sales actually made at the licensed place of business. Telephone or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.⁶ Current law does not address orders received via the Internet or other electronic forms of communication.

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁷

Common carriers⁸ are allowed to transport alcoholic beverages,⁹ but current law does not authorize manufacturers, distributors, and vendors to use common carriers to make alcohol deliveries.

¹ Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 563.01, F.S.

⁵ s. 561.01(5), F.S.

⁶ s. 561.57(1), F.S.

⁷ s. 561.57(2), F.S.

⁸ Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

Effect of the Bill

The bill amends s. 561.57(1), F.S., to provide for "electronic" orders to be construed in the same manner as telephone and mail orders.

The bill amends s. 561.57(2), F.S., to provide that deliveries by licensees may also be made in vehicles that are owned by "a third party the licensee has contracted with to make deliveries, including but not limited to, common carriers." The bill also specifies that:

By acceptance of an alcoholic beverage license and the use of such vehicles, **including contracted third party vehicles**, the licensee agrees that such vehicles are subject to be inspected and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.57, F.S.; providing for electronic orders received at a vendor's licensed place of business to be construed as a sale actually made at the vendor's licensed place of business; providing for the use of vehicles contracted with a third party for deliveries.

Section 2 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 561.57(2), F.S., provides that, by acceptance of an alcoholic beverage license, a vendor is presumed to agree to the inspection of its delivery vehicle without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws. This presumption does not extend to a third party, including a common carrier, who is not an alcoholic beverage licensee, making deliveries of alcoholic beverages as authorized by the bill. Consequently, before inspecting a delivery vehicle owned or leased by a third party non-licensee, employees of the division or law enforcement may need to obtain consent from the third party before such a search, obtain a search warrant from a court based on a finding of probable cause, or conduct a warrantless search of the vehicle if it is readily mobile and law enforcement has probable cause to believe that the vehicle contains contraband or other evidence of a crime,¹⁰ or if there are exigent circumstances for the conduct of the search.¹¹

The bill may need to be amended to require that licensees may only contract with third parties that agree to subject themselves to the same warrantless search requirements imposed on licensees.

The proposed language allowing contracted third party deliveries may raise issues as to whether the duties imposed on a licensee are transferred to the third party, such as verifying sales are not made to someone under the legal age. Moreover, the vendor's liability for an underage sale may not be adequately addressed.¹²

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁰ See *State v. Ross*, 209 So.3d 606 (Fla. 2d DCA 2016); and *State v. Green*, 943 So.2d 1004 (Fla. 2d DCA 2006).

¹¹ The factors indicating exigent circumstances may include (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; and (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public. *Lee v. State*, 856 So.2d 1133 (Fla. 1st DCA 2003), citing *United States v. Standridge*, 810 F.2d 1034, 1037 (11th Cir.), cert. denied, 481 U.S. 1072, 107 S.Ct. 2468, 95 L.Ed.2d 877 (1987).

¹² DBPR, Agency Analysis of 2018 HB 667, p.5 (Dec. 6, 2017)

1 A bill to be entitled
 2 An act relating to the Beverage Law; amending s.
 3 561.57, F.S.; providing for electronic orders received
 4 at a vendor's licensed place of business to be
 5 construed as a sale actually made at the vendor's
 6 licensed place of business; providing for the use of
 7 vehicles contracted with a third party for deliveries;
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsections (1) and (2) of section 561.57,
 13 Florida Statutes, are amended to read:

14 561.57 Deliveries by licensees.—

15 (1) Vendors shall be permitted to make deliveries away
 16 from their places of business of sales actually made at the
 17 licensed place of business; provided, telephone, electronic, or
 18 mail orders received at vendor's licensed place of business
 19 shall be construed as a sale actually made at the vendor's
 20 licensed place of business.


21 (2) Deliveries made by a manufacturer, distributor, or
 22 vendor away from his or her place of business may be made only
 23 in vehicles that ~~which~~ are owned or leased by the licensee or a
 24 third party the licensee has contracted with to make deliveries,
 25 including, but not limited to, common carriers. By acceptance of

26 | an alcoholic beverage license and the use of such vehicles,
27 | including contracted third party vehicles, the licensee agrees
28 | that such vehicles are ~~vehicle shall always be~~ subject to be
29 | inspected and searched without a search warrant, for the purpose
30 | of ascertaining that all provisions of the alcoholic beverage
31 | laws are complied with, by authorized employees of the division
32 | and also by sheriffs, deputy sheriffs, and police officers
33 | during business hours or other times the vehicle is being used
34 | to transport or deliver alcoholic beverages.

35 | Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 669 Beverage Law
SPONSOR(S): Perez
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson MW	Anstead 
2) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 564.055, F.S., prohibits the sale of cider at retail in any individual container of more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

The bill amends s. 564.055, F.S., to allow for the sale of cider in 32 ounce, 64 ounce, or one gallon growlers in the same manner and with the same restrictions applicable to malt beverages.

Section 564.09, F.S. provides that restaurant patrons may take home a partially consumed bottle of wine under certain conditions, including the purchase of "a full course meal which includes an entrée, salad or vegetable, beverage, and bread." The bill simplifies the meal specifications to just "a meal", and allows restaurant patrons to take home a partially consumed bottle of wine or beer.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.⁵
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Wine Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.⁶

Cider Containers

Section 564.055, F.S., prohibits the sale of cider⁷ at retail in any individual container of more than 32 ounces of cider. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of cider, regardless of container type.

Malt Beverage Growlers

¹ Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 563.01, F.S.

⁵ s. 561.01(5), F.S.

⁶ Section 775.082, F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

⁷ Section 564.06(4), F.S., provides that "cider" is "made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears, including but not limited to flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must, that contain not less than one-half of 1 percent of alcohol by volume and not more than 7 percent of alcohol by volume." "Must" is the expressed juice of a fruit before and during fermentation. See <https://www.merriam-webster.com/dictionary/must> (last visited March 16, 2017).

Malt beverages must be sold or offered for sale in containers of no more than 32 ounces, but malt beverages may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more of malt beverages, regardless of individual container type.⁸

However, malt beverages may also be sold or offered for sale in a “growler,” which is a 32 ounce, 64 ounce, or 128 ounce malt beverage container that is filled or refilled at the point of sale. A growler must include an imprint or label that provides information specifying the name of the manufacturer, the brand, and the anticipated percentage of alcohol by volume of the malt beverage. The container must have an unbroken seal or be incapable of being immediately consumed.⁹

Growlers may be filled or refilled by the following licensees:

- Vendor-licensed malt beverage manufacturers;¹⁰
- Vendors holding a quota license¹¹ to sell alcoholic beverages only in sealed containers for consumption off-premises;¹² and
- Vendors holding a license which authorizes consumption of malt beverages on-premises, unless such license restricts consumption to on the premises only, and have held that license in current, active status on June 30, 2015, subject to the following requirements:
 - The vendor proves, to the satisfaction of the division, that the vendor had draft equipment and tapping accessories installed and had purchased kegs before June 30, 2015.
 - The growlers are filled or refilled by the vendor or the vendor’s employee aged 18 or older.
 - The taps or mechanisms used to fill or refill the growlers are not accessible to customers.
 - The growlers meet the labeling and sealing requirements.
 - The vendor does not permit consumption on-premises, including tastings or other sampling activities.¹³

Growlers must identify or be imprinted or labeled with information specifying:

- The manufacturer;
- The brand of the malt beverage; and
- The anticipated percentage of alcohol by volume.¹⁴

The container must have an unbroken seal or be incapable of being immediately consumed.¹⁵

A licensee authorized to fill or refill growlers may not use growlers for the purposes of distribution or sale outside of the licensed manufacturing premises or licensed vendor premises.¹⁶

Section 563.06(7)(d), F.S., provides a first degree misdemeanor criminal penalty for a violation of the growler requirements.¹⁷ A violation is also punishable by revocation or suspension of the alcoholic

⁸ s. 563.06(6), F.S.

⁹ s. 563.06(7)(b), F.S.

¹⁰ Licensed pursuant to s. 561.221(2), F.S.

¹¹ The term “quota license” refers to the type of license authorized under s. 561.20, F.S., which limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the population of a county, or when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

¹² Licensed pursuant to s. 561.20(1) and 565.02(1)(a), F.S.

¹³ Licensed pursuant to s. 563.02(1)(b)-(f), s. 564.02(1)(b)-(f), or s. 565.02(1)(b)-(f), F.S.

¹⁴ s. 563.06(7)(b), F.S.

¹⁵ *Id.*

¹⁶ s. 563.06(7)(c), F.S.

¹⁷ Section 775.082, F.S., provides a term of imprisonment not to exceed one year for a misdemeanor of the first degree. Section 775.083, F.S., provides a fine not to exceed \$1,000 for a misdemeanor of the first degree.

beverage license.¹⁸ A violation of the labeling and sealing requirements in s. 63.06(7)(b), F.S., by a licensee, including its agents, officers, or employees, is also punishable by a fine of up to \$250.¹⁹

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.²⁰

Effect of the Bill

Wine Containers

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Cider Containers

The bill amends s. 564.055, F.S., to allow cider to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S.

Restaurants - Off-Premises Consumption

The bill amends s. 564.09, F.S., shortening the meal specifications to simply "a meal," and allows for partially consumed bottles of beer to be taken home in the same manner as bottle of wine.

B. SECTION DIRECTORY:

- | | |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 1 | Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers. |
| Section 2 | Amends s. 564.055, F.S., authorizing the packaging, filling, refilling, or sale of cider in growlers. |
| Section 3 | Amends s. 564.09, F.S.; revising provisions authorizing a restaurant to allow a patron to remove certain containers from a restaurant for off-premises consumption. |
| Section 4 | Provides an effective date. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹⁸ s. 563.06(7)(d), F.S.

¹⁹ *Id.*

²⁰ s. 564.09, F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Cider Containers and Malt Beverage Growlers

The bill amends s. 564.055, F.S., to permit cider, which is classified as wine, to be packaged, filled, refilled, or sold in 32 ounce, 64 ounce, and one gallon growlers in the same manner and under the same restrictions authorized for malt beverages under s. 563.06(7), F.S. This subsection specifically identifies various license types that are authorized to sell "malt beverages," rather than wine. Clarification regarding the authority for wine vendors to sell cider growlers may be needed to effectively apply the specific malt beverage language within subsection 563.06(7), F.S., to cider.²¹

Additionally, s. 563.06(7), F.S., provides criminal penalties, applicable fines, and revocation or suspension of alcoholic beverage licenses for violations of the provisions relating to malt beverage growlers. Although the bill provides that cider growler sales must be conducted under in the same manner and under the same restrictions authorized for malt beverages, the bill does not specify whether these penalties apply to violations related to growlers of cider.

Restaurants - Off-Premises Consumption

²¹ Department of Business & Professional Regulation, Agency Analysis of SB 296, p. 6 (Oct. 17, 2017)

Section 564.09, F.S., of the bill permits a restaurant patron to take home a partially consumed bottle of beer and requires that the partially consumed beer be "securely sealed." The bill does not specify how a vendor can "securely reseal" a bottle of beer as required by the statute. The sealing requirement in current law is limited to bottles of wine, which have corks or screw tops which allow relatively easy resealing. However, most beer bottles have screw tops or pop tops/pop caps which cannot be securely reattached to the bottle.

Section 564.09, F.S., currently uses the term "restaurant" as reflected on lines 30, 31, and 37 of the bill. The term restaurant as applicable to the special licenses available for these types of businesses pursuant to section 561.20(2)(a)4., F.S., was amended by chapter 2016-190, Laws of Florida, to be stated as "food service establishment."²²

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²² *Id.*

1 A bill to be entitled
 2 An act relating to the Beverage Law; repealing s.
 3 564.05, F.S., relating to limitations on the size of
 4 individual wine containers; amending s. 564.055, F.S.;
 5 authorizing the packaging, filling, refilling, or sale
 6 of cider in growlers; amending s. 564.09, F.S.;
 7 revising provisions authorizing a restaurant to allow
 8 a patron to remove certain containers from a
 9 restaurant for off-premises consumption; providing an
 10 effective date.

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

13
 14 Section 1. Section 564.05, Florida Statutes, is repealed.

15 Section 2. Section 564.055, Florida Statutes, is amended
 16 to read:

17 564.055 Cider containers.—Notwithstanding any other law to
 18 the contrary, cider, as defined in s. 564.06(4), may be sold by
 19 vendors at retail in any size individual container containing no
 20 more than 32 ounces of cider; however, this section does not
 21 prohibit cider from being packaged and sold in bulk, in kegs or
 22 barrels, or in any individual container that contains 1 gallon
 23 or more of cider, regardless of container type. Cider may also
 24 be packaged, filled, refilled, or sold in 32-ounce, 64-ounce,
 25 and 1-gallon growlers in the same manner and under the same

26 restrictions as authorized for malt beverages pursuant to s.
 27 563.06(7).

28 Section 3. Section 564.09, Florida Statutes, is amended to
 29 read:

30 564.09 Restaurants; off-premises consumption of wine or
 31 beer.—Notwithstanding any other provision of law, a restaurant
 32 licensed to sell wine or beer on the premises may permit a
 33 patron to remove one unsealed bottle ~~of wine~~ for consumption off
 34 the premises if the patron has purchased a ~~full-course~~ meal
 35 ~~consisting of a salad or vegetable, entree, a beverage, and~~
 36 ~~bread~~ and consumed a portion of the bottle ~~of wine with such~~
 37 ~~meal~~ on the restaurant premises. A partially consumed bottle ~~of~~
 38 ~~wine~~ that is to be removed from the premises must be securely
 39 resealed by the licensee or its employees before removal from
 40 the premises. The partially consumed bottle ~~of wine~~ shall be
 41 placed in a bag or other container that is secured in such a
 42 manner that it is visibly apparent if the container has been
 43 subsequently opened or tampered with, and a dated receipt for
 44 the bottle ~~of wine~~ and ~~full-course~~ meal shall be provided by the
 45 licensee and attached to the container. If transported in a
 46 motor vehicle, the container with the resealed bottle ~~of wine~~
 47 must be placed in a locked glove compartment, a locked trunk, or
 48 the area behind the last upright seat of a motor vehicle that is
 49 not equipped with a trunk.

50 Section 4. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 775 Beverage Law
SPONSOR(S): La Rosa
TIED BILLS: IDEN./SIM. BILLS: CS/SB 822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson <i>MW</i>	Anstead <i>La</i>
2) Commerce Committee			

SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

The bill creates s. 561.42(15), F.S., providing that the tied house evil prohibition does not apply to a written agreement for brand naming rights, including the right to advertise collectively, between a manufacturer or importer of malt beverages and a vendor if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor;
- A distributor does not, directly or indirectly, pay any portion of the agreement; and
- Within 10 days after execution of the agreement, the vendor files a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a distributor from paying any portion of the brand naming rights agreement.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law, Generally

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.⁵
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Three-Tier System and Tied House Evil

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁶

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁷ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.⁸ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁹

¹ Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 563.01, F.S.

⁵ s. 561.01(5), F.S.

⁶ s. 561.14, F.S.

⁷ s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁸ s. 561.22(1), F.S.

⁹ ss. 563.022(14) and 561.14(1), F.S.

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁰ Florida’s Tied House Evil Law¹¹ prohibits a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever.

A manufacturer or distributor is also prohibited from:

- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; and
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

However, the Tied House Evil Law authorizes a manufacturer, distributor, importer or registrant of malt beverage to sell expendable retailer advertising specialties (such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like), to a vendor at a price not less than the actual cost to the industry member who initially purchased them.¹²

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For violations of the Beverage Law where no penalty is provided, first-time offenses are guilty of a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S. authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed \$1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

Effect of the Bill

The bill creates s. 561.42(15), F.S., providing that the tied house evil prohibition does not apply to a written agreement for brand naming rights, including the right to advertise collectively, between a manufacturer or importer of malt beverages and a vendor if:

- The agreement is negotiated at arm's length for no more than fair market value;
- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor;
- A distributor does not, directly or indirectly, pay any portion of the agreement; and

¹⁰ See Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), <http://scholarship.law.unc.edu/nclr/vol88/iss6/6>

¹¹ s. 561.42(1), F.S.

¹² s. 561.42(14), F.S.

- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill provides that "a manufacturer or importer of malt beverages which is a party to a brand naming rights agreement may not, either directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement."

B. SECTION DIRECTORY:

Section 1 Amends s. 561.42, F.S., providing an exemption from provisions relating to the tied house evil for specified financial transactions between a manufacturer or importer of malt beverages and a licensed vendor; providing conditions for the exemption; prohibiting the manufacturer or importer from soliciting or receiving any portion of certain payments from its distributors.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill requires DBPR to register financial transactions between manufacturers and vendors. It is unclear at this point how many transactions will occur and it is unclear what, if anything, the bill requires DBPR to do with the transactions once they are received.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain vendors, manufacturers and importers to benefit financially and may negatively impact certain distributors, manufacturers and importers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It may prove difficult for DBPR to determine whether a given financial transaction will, in the future, potentially limit the sale of alcoholic beverages from another manufacturer. Similarly, it is unclear how one would prove that a given transaction has or has not indirectly limited the alcoholic beverage sales of another manufacturer.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to the Beverage Law; amending s.
 561.42, F.S.; providing an exemption from provisions
 relating to the tied house evil for specified
 financial transactions between a manufacturer or
 importer of malt beverages and a licensed vendor;
 providing conditions for the exemption; prohibiting
 the manufacturer or importer of malt beverages from
 soliciting or receiving any portion of certain
 payments from its distributors; providing an effective
 date.

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

Section 1. Subsection (15) is added to section 561.42,
 Florida Statutes, to read:

561.42 Tied house evil; financial aid and assistance to
 vendor by manufacturer, distributor, importer, primary American
 source of supply, brand owner or registrant, or any broker,
 sales agent, or sales person thereof, prohibited; procedure for
 enforcement; exception.-

(15) (a) Notwithstanding any other provision of this
 section, a manufacturer or importer of malt beverages and a
 vendor may enter into a written agreement for brand naming
 rights, including the right to advertise cooperatively,

26 negotiated at arm's length for no more than fair market value
 27 if:

28 1. The vendor operates places of business where
 29 consumption on the premises is permitted, the premises are
 30 located within a theme park complex consisting of at least 25
 31 contiguous acres owned and controlled by the same business
 32 entity, and the complex contains permanent exhibitions and a
 33 variety of recreational activities and has a minimum of 1
 34 million visitors annually through a controlled entrance to and
 35 exit from the theme park complex.

36 2. Such agreement does not involve, either in whole or in
 37 part, the sale or distribution of malt beverages between the
 38 manufacturer or importer, or its distributor, and a vendor.

39 3. The vendor does not give preferential treatment to the
 40 alcoholic beverage brand or brands of the manufacturer or
 41 importer with whom the vendor has entered into such agreement.

42 4. Such agreement does not limit, either directly or
 43 indirectly, the sale of alcoholic beverages of another
 44 manufacturer or importer, or distributor.

45 5. Within 10 days after the execution of such agreement,
 46 the vendor files with the division a description of the
 47 agreement which includes the location, dates, and the name of
 48 the manufacturer or importer that entered into the agreement.

49 (b) A manufacturer or importer of malt beverages which is
 50 a party to a brand naming rights agreement may not, either

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51 directly or indirectly, solicit or receive from any of its
52 distributors any portion of the payment due from the
53 manufacturer or importer of malt beverages to the vendor
54 pursuant to such agreement.

55 Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 961 Malt Beverages
SPONSOR(S): Gruters and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson <i>MW</i>	Anstead <i>Pa</i>
2) Commerce Committee			

SUMMARY ANALYSIS

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Specifically, if a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

The bill amends s. 561.42(14), F.S., to provide that a vendor licensed to sell malt beverages for on-premises consumption may accept glassware from a distributor, at no charge, subject to the following conditions:

- The distributor has received the glassware at no direct or indirect charge from a malt beverage manufacturer, importer, brand owner or registrant of malt beverage, or any broker, sales agent, or sales person thereof;
- The glassware is for on-premises consumption;
- The glassware advertises a permanent and prominent brand name;
- The total pieces of glassware, per licensed premises, does not exceed 15 cases per calendar year; and
- The vendor may not sell the glassware or return it to a distributor for cash, credit, or replacement.

The bill provides definitions as follows:

- A "case" means a box containing up to 24 pieces of glassware.
- "Glassware" means a glass container that holds up to 23 fluid ounces.

Non-branded glassware, as well as branded glassware furnished by anyone other than a distributor, remains subject to the tied house evil prohibition in current law.

The bill further specifies that malt beverage-branded glassware used at any licensed premises is intended to be used only to serve consumers the brand advertised on the glassware.

The bill's provision allowing a vendor licensed to sell malt beverages for on-premises consumption to accept glassware from a distributor at no charge expires on June 30, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.⁴

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.⁵
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Three-Tier System and Tied House Evil

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.⁶

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁷ A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.⁸ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁹

¹ Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 563.01, F.S.

⁵ s. 561.01(5), F.S.

⁶ s. 561.14, F.S.

⁷ s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁸ s. 561.22(1), F.S.

⁹ ss. 563.022(14) and 561.14(1), F.S.

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹⁰

Florida's Tied House Evil Law¹¹ prohibits a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever.

A manufacturer or distributor is also prohibited from:

- engaging in cooperative advertising with a vendor
- naming a vendor in any advertisement for a malt beverage tasting
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer.

However, the Tied House Evil Law authorizes a manufacturer, distributor, importer or registrant of malt beverage to sell expendable retailer advertising specialties (such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like), to a vendor at a price not less than the actual cost to the industry member who initially purchased them.¹²

Currently, if an industry member provides a vendor with glasses, the vendor must pay at least the actual cost to the industry member. Specifically, s. 561.42 (14), F.S., provides that:

The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, **glasses**, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For violations of the Beverage Law where no penalty is provided, first-time offenses are guilty of a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S. authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed \$1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

¹⁰ See Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), <http://scholarship.law.unc.edu/nclr/vol88/iss6/6>

¹¹ s. 561.42(1), F.S.

¹² s. 561.42(14), F.S.

Effect of the Bill

The bill amends s. 561.42(14), F.S., to provide that a vendor licensed to sell malt beverages for on-premises consumption may accept glassware from a distributor, at no charge, subject to the following conditions:

- The distributor has received glassware at no direct or indirect charge from a malt beverage manufacturer importer, or brand owner or registrant of malt beverage, or any broker, sales agent, or sales person thereof;
- The glassware is for on-premises consumption;
- Each piece of glassware bears a permanent brand name intended to prominently advertise the brand;
- The distributor does not gift more than 15 cases of glassware per calendar year per licensed premises; and
- The vendor may not sell the glassware or return it to a distributor for cash, credit, or replacement.

The bill provides definitions as follows:

- A "case" means a box containing up to 24 pieces of glassware.
- "Glassware" means a single-service glass container that holds up to 23 fluid ounces.

The bill further specifies that malt beverage-branded glassware used at any licensed premises is intended to be used only to serve consumers the brand advertised on the glassware.

The bill's provision allowing a vendor licensed to sell malt beverages for on-premises consumption to accept glassware from a distributor at no charge expires on June 30, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Non-branded glassware, as well as branded glassware furnished by other than a manufacturer or importer, remain subject to the tied house evil prohibition in current law.

B. SECTION DIRECTORY:

- Sections 1 Amends s. 561.42, F.S.; authorizing a distributor of malt beverages to give specified glassware to vendors licensed to sell malt beverages for on-premises consumption; requiring specified glassware to bear certain branding; providing an annual limit on the amount of glassware that may be given by a distributor to a vendor; prohibiting a vendor from selling the glassware or returning it to the distributor; providing that malt beverage-branded glassware is intended to be used only to serve the brand advertised; providing for future legislative review and repeal of the exemption.
- Section 2 Provides an effective date.

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:

Vendors who receive free glassware may save money on glassware purchases. Manufacturers who offer vendors free glassware may increase sales from the advertising on the glassware.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Division,

“In current law, s. 561.42(14)(a), F.S., restricts how expendable retailer advertising specialties may be provided to any vendor by a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage. The bill’s language in lines 34 and 35 narrows the scope of this section to provide authority for expendable retailer advertising specialties provided only to a vendor licensed for the sale of malt beverages for on-premises consumption. Whether the bill intends to eliminate the authority for these industry members to continue to provide the advertising specialties at cost to other vendors (i.e., vendors licensed for package sales of malt beverages and other alcoholic beverages) is unclear; however, the narrow language in lines 34 and 35 may have such an effect.”¹³

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹³ Florida Department of Business and Professional Regulation, Agency Analysis of 2018 House Bill 961, p. 5 (Jan. 18, 2018).

1 A bill to be entitled
 2 An act relating to malt beverages; amending s. 561.42,
 3 F.S.; authorizing a distributor of malt beverages to
 4 give specified glassware to vendors licensed to sell
 5 malt beverages for on-premises consumption; requiring
 6 specified glassware to bear certain branding;
 7 providing an annual limit on the amount of glassware
 8 that may be given by a distributor to a vendor;
 9 prohibiting a vendor from selling the glassware or
 10 returning it to the distributor; providing that malt
 11 beverage-branded glassware is intended to be used only
 12 to serve the brand advertised; providing for future
 13 legislative review and repeal of the exemption;
 14 providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (a) of subsection (14) of section
 19 561.42, Florida Statutes, is amended to read:

20 561.42 Tied house evil; financial aid and assistance to
 21 vendor by manufacturer, distributor, importer, primary American
 22 source of supply, brand owner or registrant, or any broker,
 23 sales agent, or sales person thereof, prohibited; procedure for
 24 enforcement; exception.—

25 (14) The division shall adopt reasonable rules governing

26 promotional displays and advertising, which rules shall not
 27 conflict with or be more stringent than the federal regulations
 28 pertaining to such promotional displays and advertising
 29 furnished to vendors by distributors, manufacturers, importers,
 30 primary American sources of supply, or brand owners or
 31 registrants, or any sales agent or sales person thereof;
 32 however:

33 (a)1. If a manufacturer, distributor, importer, or brand
 34 owner, ~~or brand~~ registrant of malt beverage, or any broker,
 35 sales agent, or sales person thereof, provides a vendor licensed
 36 to sell malt beverages for on-premises consumption with branded,
 37 expendable retailer advertising specialties such as trays,
 38 coasters, mats, menu cards, napkins, cups, glassware ~~glasses,~~
 39 thermometers, and the like, such items may be sold only at a
 40 price not less than the actual cost to the industry member who
 41 initially purchased them, without limitation in total dollar
 42 value of such items sold to a vendor.

43 2. A distributor that has received glassware at no direct
 44 or indirect charge from a manufacturer, importer, or brand owner
 45 or registrant of malt beverage, or any broker, sales agent, or
 46 sales person thereof, may give such glassware to a vendor
 47 licensed to sell malt beverages for on-premises consumption.
 48 Each piece of glassware given to a vendor by a distributor must
 49 bear a permanent brand name intended to prominently advertise
 50 the brand. A distributor may not give a vendor more than 15

51 cases of glassware per calendar year per licensed premises. As
52 used in this paragraph, the term "case" means a box containing
53 up to 24 pieces of glassware and the term "glassware" means a
54 single-service glass container that can hold no more than 23
55 ounces of liquid volume. A vendor that receives a gift of such
56 glassware from a distributor may not sell the glassware or
57 return it to the distributor for cash, credit, or replacement.
58 Malt beverage-branded glassware used at any licensed premises is
59 intended to be used only to serve consumers the brand advertised
60 on the glassware. This subparagraph shall stand repealed on June
61 30, 2021, unless reviewed and saved from repeal through
62 reenactment by the Legislature.

63 Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 Professional Regulation
SPONSOR(S): Plakon
TIED BILLS: IDEN./SIM. BILLS: SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Wright	Anstead
2) Appropriations Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

A declaratory statement is an agency's binding interpretation of a provision of law or of a rule or order of the agency as to a particular set of facts. Currently, declaratory statements from an agency may only be obtained by a substantially affected person who states with particularity their set of circumstances and specifies the statutory provision, rule, or order the person believes may apply to the set of circumstances. Additionally, if an applicant for a professional license has a criminal background, generally, they can only be denied if the crime is a first degree misdemeanor or felony and is related to the practice of the profession for which they seek licensure.

The bill creates a declaratory statement process to permit a person considering or desiring entry into a state-regulated profession or occupation to obtain a binding determination of whether a criminal conviction or sanction will prevent licensure, registration, or certification. A person may seek the agency's opinion prior to the person possessing the required training or education for the profession or occupation.

The bill creates a process for reviewing the criminal history of applicants for barber, cosmetology, certain construction contracting, and certified nursing assistant licenses. The process:

- expressly permits a person to apply for a license while under incarceration or supervision;
- generally limits the period during which the agency may consider criminal history as an impairment to licensure to 5 years for barbers, cosmetologists, and certain contractors, or 7 years for certified nursing assistants;
- requires each agency to identify by rule the crimes that either do or do not impair a person's qualifications for licensure; and
- requires the licensing agency and the Department of Corrections to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.

The bill has an indeterminate fiscal impact on state government and does not appear to have a fiscal impact on local government.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Agency Declaratory Statements

The Administrative Procedure Act¹ (APA) provides uniform procedures for agencies to exercise their authority.² The APA is applicable to every administrative agency in Florida.³

A declaratory statement is a means under the APA for a substantially affected person⁴ (petitioner) to seek an agency's binding interpretation regarding the applicability of a statutory provision, or of any rule or order of the agency, to the petitioner's particular set of circumstances.⁵ If a petitioner does not allege or establish these facts and circumstances, the petition for a declaratory statement may be denied.⁶

Although a declaratory statement is applicable to the petitioner's specific set of circumstances, it may also serve as a guide to other people.⁷ However, if it requires a broad response that amounts to an agency rule, such statement should be denied.⁸ This does not mean that a declaratory statement is transformed into a rule because the matter at hand is of interest to more than one person.⁹

When a petition for a declaratory statement is filed with an agency, the agency must file a notice of the petition in the next available issue of the Florida Administrative Register (FAR) and transmit copies of the petition to the Joint Administrative Procedures Committee (JAPC).¹⁰ The agency must issue a declaratory statement or deny the petition within 90 days after the petition is filed, and the declaratory statement or its denial must be noticed in the next available issue of the FAR.¹¹ A declaratory statement is a final agency action¹² subject to judicial review by a district court of appeal.¹³

Currently, there is no fee for filing a petition for declaratory statement with an agency.

¹ s. 120.51, F.S.

² s. 120.515, F.S.

³ s. 120.50, F.S., states that only the Legislature and the courts are exempt from the APA.

⁴ This refers to a person whose present, not just hypothetical, circumstances are affected by a current law, rule, or order subject to interpretation by an agency. *Adventist Health System/Sunbelt, Inc. v. Agency for Health Care Admin.*, 955 So.2d 1173, 1176-7 (Fla. 1st DCA 2007); and *West Flagler Assoc., Ltd. v. Dept. of Bus. And Prof. Reg.*, 220 So.3d 1239, 1242 (Fla. 3d DCA 2017). Some agencies use the "substantially affected" balancing test for challenging an agency rule to determine standing for a declaratory statement. Fred R. Dudley, *The Importance and Proper Use of Administrative Declaratory Statements*, THE FLORIDA BAR JOURNAL, March, 2013, at 41, available at <https://www.floridabar.org/news/tfbjournal/?durl=/DIVCOM/JN/jnjournal01.nsf/cb53e80c8fabd49d85256b5900678f6c/9A0270E69C013B2285257B1E0079EF4B!opendocument>. Such test requires the party to show 1. that the rule or policy will result in a real and immediate injury in fact, and 2. that the alleged interest is within the zone of interest to be protected or regulated. *A. Alexander Jacoby, M.D. v. Fla. Bd. Of Medicine*, 917 So.2d 358, 360 (Fla. 1st DCA 2005).

⁵ s. 120.565(1), F.S.

⁶ s. 120.656(3), F.S.

⁷ Fred R. Dudley, *supra* note 4.

⁸ *Chiles v. Dept. of State, Div. of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1998).

⁹ *Id.*

¹⁰ See s. 120.545, F.S. JAPC is a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature. The primary function of JAPC is to generally review agency action pursuant to the operation of the APA related to the rulemaking process, to ensure that agency rules do not create new law and stay within their specific authority from the Legislature.

¹¹ *supra* note 6.

¹² *Id.*

¹³ ss. 120.68(1)(a) and (2)(a), F.S.

Declaratory statements are public records, subject to public inspection requirements.¹⁴ As with other public records, there are specific exemptions that limit what may be transmitted to the public, including social security numbers¹⁵ and biometric data (e.g., fingerprints).¹⁶

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), which has 12 divisions tasked with the regulation of several professions and businesses.¹⁷ Fifteen boards and programs exist within the Division of Professions,¹⁸ two boards are within the Division of Real Estate,¹⁹ and one board exists in the Division of Certified Public Accounting.²⁰

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”²¹

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.²²

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.²³

In Fiscal Year 2015-2016, there were 434,574 licensees in the Division of Professions,²⁴ including, in relevant part:

- Barbers (19,098 active and 199 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Construction industry contractors (71,818 active and 15,004 inactive); and
- Electrical contractors (11,960 active and 1,285 inactive).

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.²⁵

Licensing and Criminal Background

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license, permit, or certification for

¹⁴ s. 119.011(12), F.S.

¹⁵ s. 119.017(5)(a)5., F.S.

¹⁶ s. 119.017(5)(g)2., F.S.

¹⁷ See Section 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

¹⁸ See s. 20.165(4)(a), F.S., which enumerates the boards and programs regulated by DBPR.

¹⁹ See s. 20.165(4)(b), F.S., which enumerates the real estate boards.

²⁰ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy.

²¹ s. 455.01(6), F.S.

²² See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

²³ Section 455.01(4) and (5), F.S.

²⁴ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited January 13, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

²⁵ s. 455.219(1), F.S.

prior conviction for a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license, permit, or certificate is sought.²⁶ Notwithstanding any law to the contrary, a state agency may not deny an application for a license, permit, certificate, or employment based solely on the applicant's lack of civil rights.²⁷

Specifically, for DBPR licensed applicants, DBPR or an applicable board may deny a license application for any person having been "convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession"²⁸ or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release, nor are such individuals charged any additional fees.²⁹

Specifically, for DOH licensed applicants, DOH or an applicable board may deny a license application for any person having been "convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state"³⁰ or related to certain types of fraud,³¹ or for other reasons in the applicable practice act. There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.³²

Barbers

Barbers are regulated under ch. 476, F.S., by the Barber's Board within the DBPR. To be licensed as a barber, a person must be at least 16 years of age, satisfactorily complete a licensure examination, and pay the required application fee. In order to be eligible to sit for the licensure examination, a person must have held a license to practice barbering in another state for at least one year or have received a minimum of 1,200 hours of training.³³

"Barbering" includes any of the following practices when done for payment by the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.³⁴

Chapter 476, F.S., does not provide a basis for denial of a license application based on a person's criminal background. However, a person may be denied a license application as a barber for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a licensee's profession.³⁵ Fingerprints are not required to be submitted to DBPR for a formal background check for barber license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 8,691 applicants for a barbering license were disqualified based on criminal history.³⁶

²⁶ s. 112.011(1)(b), F.S.

²⁷ s. 112.011(1)(c), F.S.

²⁸ Section 455.227(1)(c), F.S.

²⁹ Florida Department of Business and Professional Regulation, Agency Analysis of 2018 Senate Bill 1114, p. 2 (Jan. 8, 2018).

³⁰ ss. 456.024(3)(c); 456.072(1)(c), (x), (ii), and (II); and 456.072(2)(a), F.S.

³¹ s. 456.0635, F.S.

³² Florida Department of Health, Agency Analysis of 2018 House Bill 1041, p. 2 (Jan. 24, 2018).

³³ See s. 476.114, F.S.

³⁴ s. 476.034(2), F.S.

³⁵ See s. 455.227(1)(c), F.S.

³⁶ Department of Business and Professional Regulation, *Response to Senate Bill 146 Ex-Offender Report*, p. 40 (2015), (on file with the Careers and Competition Subcommittee).

Cosmetologists

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry. Individuals are prohibited from providing cosmetology services in Florida without first being registered as a cosmetologist or a specialist.³⁷

A "cosmetologist" is a person who is licensed to engage in the practice of cosmetology in Florida under the authority of ch. 477, F.S.³⁸ "Cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."³⁹

A "specialist" is defined as "any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]."⁴⁰ The term "specialty" is defined as "the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services."⁴¹

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.⁴² All cosmetology and specialty salons are subject to inspection by the DBPR.⁴³

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least one year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.⁴⁴

To qualify for a specialist license, the applicant must be at least 16 years old or have a high school diploma, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with the DBPR with the registration fee.⁴⁵

The Board of Cosmetology may deny a cosmetology license or specialty registration application based on a person's criminal background. The board may deny a license or application for any violation of s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to

³⁷ s. 477.014, F.S.

³⁸ s. 477.013(3), F.S.

³⁹ s. 477.013(4), F.S.

⁴⁰ s. 477.013(5), F.S.

⁴¹ s. 477.013(6), F.S.

⁴² s. 477.0263, F.S.

⁴³ s. 477.025, F.S.

⁴⁴ Section 477.019(2), F.S.

⁴⁵ Section 477.0201, F.S.

the practice of, or the ability to practice, a licensee's profession.⁴⁶ Fingerprints are not required to be submitted to DBPR for a formal background check for cosmetology license applicants.

For Fiscal Years 2011-12 through 2014-15, 18 out of 95,715 applicants for a cosmetology license were disqualified based on criminal history.⁴⁷

Construction Contracting Professionals

CILB and ECLB

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.⁴⁸ The CILB is divided into two divisions with separate jurisdictions:

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

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.⁴⁹

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors in this state under part II of Ch. 489, F.S.⁵⁰

Construction contractors under part I of ch. 489, F.S., and electrical contractors under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁵¹

The CILB and the ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁵² Specifically, the CILB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.⁵³

The CILB and the ECLB may also deny a registration application under s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a profession.⁵⁴

⁴⁶ See s 477.029(1)(h), F.S.

⁴⁷ *supra* note 36, at 50.

⁴⁸ See s. 489.107, F.S.

⁴⁹ For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. See Fla. Admin. Code R. 61G4-15.032 (2016).

⁵⁰ Section 489.507, F.S.

⁵¹ See ss. 489.113 and 489.516, F.S., respectively.

⁵² s. 455.227(2), F.S.

⁵³ ss. 489.129(1)(b) and 489.553(1)(d), F.S., proving the disciplinary grounds for construction contractors and electrical contractors, respectively.

⁵⁴ See s 477.029(1)(h), F.S.

For Fiscal Years 2011-12 through 2014-15, 6 out of 7,575 applicants for a ECLB license, and 29 out of 22,934 applicants for a CILB license were disqualified based on criminal history.⁵⁵

Septic Tank Contracting

Master septic tank contractors and septic tank contractors are regulated by the Department of Health (DOH) under part III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DOH before engaging in the occupation.⁵⁶ A master septic tank contractor⁵⁷ must have at least 3 years' experience as a registered septic tank contractor or a plumbing contractor certified under part I of ch. 489, F.S., who has provided septic tank contracting services for at least 3 years.

To be eligible for registration by the DOH, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DOH may consider any matter that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor.⁵⁷

Time Considerations for CILB, ECLB, and Septic Tank Contractors

The CILB must consider length of time since the commission of a crime and the rehabilitation of the applicant in denying or approving licensure.⁵⁸ The CILB may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.⁵⁹ For licensing electrical or septic tank contractors, the ECLB or DOH, respectively, are not specifically required to consider the passage of time since the disqualifying criminal offense before denying or granting a license or registration.

Certified Nursing Assistants

The Board of Nursing within the Department of Health is responsible for licensing and regulating certified nursing assistants under part II of ch. 464, F.S.⁶⁰ In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.⁶¹

The "practice of a certified nursing assistant" means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents' or patients' rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.⁶²

⁵⁵ *supra* note 36, at 55. The numbers for CILB licenses include Div. I contractors who are not the subject of this bill, but the numbers in the report are inextricable.

⁵⁶ ss. 489.552 and 489.553, F.S.

⁵⁷ ss. 489.553(4)(a) and 456.024(3)(c), F.S.

⁵⁸ s. 489.115(6), F.S.

⁵⁹ *Id.*

⁶⁰ See s. 489.107, F.S.

⁶¹ See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited January 18, 2018) at page 13.

⁶² s. 464.201(5), F.S.

The definition of “practice of a certified nursing assistant” does not restrict the ability of any person who is otherwise trained and educated from performing the tasks specified in the definition.⁶³

To be certified, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified if they have been licensed in another state and not have been found to have committed abuse, neglect, or exploitation in that state.⁶⁴

Although the practice act for certified nursing assistants does not specifically reference a person’s criminal background, applicants for certification may be disqualified based on crimes related to the practice of certified nurse assisting.⁶⁵ Additionally, applicants will automatically be disqualified for felony crimes related to health care fraud under chs. 409, 817, and 893, F.S., or similar offenses in other jurisdictions, and certain federal offenses, until the sentence and any subsequent probation has ended and for a certain time frame afterward, ranging from 5 to 15 years.⁶⁶

The applicant also must successfully pass the required background screenings⁶⁷ either pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level 2 background screening, or pursuant to s. 408.809, F.S., which also requires pre-employment, level 2 background screening for specified persons, including employees of medical facilities.⁶⁸ The background screening must be completed every five years following licensure, employment, or entering into contract in a capacity that requires background screening.⁶⁹ Both of these background screenings include checking for crimes related to various types of fraud, in addition to violent crimes.⁷⁰

Section 435.04, F.S., prohibits the licensure of any person based on 52 prohibited offenses listed in s. 435.04(2), F.S., which include violent crimes, property crimes, and sexual offenses.⁷¹ A level 2 background screening is meant to ensure a person subject to the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of (regardless of adjudication), not entered a plea of nolo contendere or guilty to, has not been adjudicated delinquent, and has not had a sealed or expunged record for, any of the listed offenses.

In addition to the crimes specified under s. 435.04, F.S., a certified nursing assistant may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.⁷²

A level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to Department of Health. The Department of Health then determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the Department of Health may grant an exemption from disqualification for:

⁶³ *Id.*

⁶⁴ s. 464.203, F.S.

⁶⁵ *supra* note 30, and s. 464.204(1)(b), F.S.

⁶⁶ s. 456.0635(2)(a), F.S.

⁶⁷ s. 464.203(1), F.S.

⁶⁸ s. 408.809(1), F.S.

⁶⁹ s. 408.809(2), F.S.

⁷⁰ ss. 400.215 and 408.809(4)(a), F.S.

⁷¹ *See* 435.04(2), F.S.

⁷² *See* 408.809(4), F.S.

1. Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
2. Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
3. Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
4. Findings of delinquency.⁷³

However, if the delinquency would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least three years have elapsed since completion or lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense.⁷⁴

To be granted an exemption, a person must have paid any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.⁷⁵

However, the Department of Health may not grant an exemption to an individual who is found guilty of, or who has entered a plea of *nolo contendere* or guilty to, regardless of adjudication, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.⁷⁶

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).⁷⁷ The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.⁷⁸

Effect of the Bill

Declaratory Statements

The bill amends s. 120.565, F.S., to create a declaratory statement process to permit a person considering or desiring entry into a state-regulated profession or occupation to obtain a binding determination of whether a criminal conviction or sanction will prevent licensure, registration, or certification in the profession or occupation based on the applicable statutes or rules.

A person may seek the agency's opinion prior to the person possessing the training or education required for the license, registration, or certificate in the profession or occupation.

The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to:

⁷³ s. 435.07(1)(a), F.S.

⁷⁴ *Id.*

⁷⁵ s. 435.07(1)(b), F.S.

⁷⁶ See s. 435.07(4)(a), F.S.

⁷⁷ See s. 435.07(4)(b), F.S.

⁷⁸ See s. 435.07(4)(c), F.S.

- The time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; and
- The petitioner's standing in his or her community.

A person may request the agency's determination while under criminal confinement or supervision.

If the agency concludes that the petitioner's criminal background is disqualifying, the declaratory statement must state whether the agency's conclusion may be reversed upon the petitioner's presentation of evidence of rehabilitation or mitigation identified by the agency in the declaratory statement at any time subsequent to the issuance of the declaratory statement.

The declaratory statement must also indicate whether any federal laws or regulations or any conditions or restrictions imposed by the court on the petitioner may impede the petitioner's licensure, registration, or certification in the profession or occupation.

Although the agency's conclusion is binding on the agency as to the petitioner, the petitioner's subsequent criminal history may form an independent basis for denial of an application for a license, registration, or certificate.

The petitioner must submit to the agency:

- a fee of not more than \$100,
- a certified copy of each criminal judgment rendered against the petitioner, and
- a complete set of fingerprints. (Along with the required fingerprint fee.)

The agency must submit the fingerprints to the Department of Law Enforcement (FDLE) for a state criminal history record check and the FDLE must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The petitioner is responsible for the actual cost of state and federal fingerprint processing in addition to the fee for the declaratory statement.

Licensing and Criminal Background

The bill creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH).

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Certified Nursing Assistants.
- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals:
 - Electrical Contractors;
 - Alarm System Contractors;
 - Septic Tank Contractors;
 - Swimming pool and spa contractors;
 - Sheet metal contractors;
 - Roofing contractors;
 - Air-conditioning contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Underground utility and excavation contractors;
 - Solar contractors;

- Pollutant storage systems contractor; and
- Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The process created in the bill:

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to a conviction for a crime less than 5 years ago for barbers, cosmetologists, and certain contractors, or 7 years for certified nursing assistants. This does not change license qualifications in current law for the DBPR professions, including any disqualifications in current law based on the applicant's criminal history or moral character.
- Requires each agency to identify by rule the crimes that do not impair a person's qualifications for licensure.
- Requires each agency to identify by rule the crimes that do impair a person's qualifications for licensure.
- Requires the licensing agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
- Requires the Department of Corrections to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the license applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

DOH may deny a certified nursing assistant application even if the applicant has a criminal history more than 7 years from the date of the application if the criminal history includes a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S. The bill does not allow applicants to be excluded if they have committed health care fraud-related felonies or other crimes that affect the profession that occurred more than 7 years before application.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

- | | |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Section 1 | Amends s. 120.656, F.S., adding a means of obtaining a declaratory statement from an agency regarding eligibility for licensure. |
| Section 2 | Amends s. 455.213, F.S., providing specific standards for certain DBPR professional licenses regarding an applicant's criminal background. |
| Section 3 | Amends s. 464.203, F.S., providing specific standards for certified nursing assistant licenses regarding an applicant's criminal background. |
| Section 4 | Amends s. 400.211, F.S., making a conforming change. |
| Section 5 | Provides an effective date. |

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminate impact on revenue for administrative agencies because it is unknown how many people will request the new declaratory statements and how much it will use in agency resources to produce the new declaratory statements.

2. Expenditures:

DOH states that they will have a recurring increase in rulemaking costs and technology costs for teleconferencing at board meetings, but the current budget authority is adequate to absorb.⁷⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The new declaratory statements will cost petitioners \$100, plus fingerprinting costs, to obtain.

D. FISCAL COMMENTS:

The fiscal impact to state government is indeterminate because it is unknown how many people will request the new declaratory statements.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DBPR and DOH will need to promulgate rules regarding crimes that affect each practice and amending license applications. Current rulemaking authority is sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not take into account change in law in binding an agency to declaratory statements they issue regarding a petitioner's criminal background and licensure. This could hold an agency accountable for a declaratory statement that was made pursuant to amended or repealed.

The bill is unclear whether it would require a petitioner for the new declaratory statements to admit to or submit documentation of expunged or sealed criminal records, which are records that go beyond what some professions require in an application for licensure.

The bill is unclear as to whether the time limitation for considering a criminal convictions in licensure determinations is drawn from the date of conviction or the date that the crime was committed.

⁷⁹ *supra* note 32, at 4.

The bill does not require certified nursing assistant applicants to be excluded from licensure if they have committed health care fraud felony crimes or other crimes that affect the profession if they are more than 7 years old. This conflicts with current requirements that apply to all health care practitioners. This may create confusion with current background check requirements that take into account these crimes from longer than 7 years ago because cross references to background screenings in the certified nurse assistant practice act are not conformed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
An act relating to professional regulation; amending
s. 120.565, F.S.; authorizing a person to seek a
declaratory statement from an agency as to the effect
of the person's criminal background on his or her
eligibility for certain licenses, registrations, or
certificates; specifying that a person may seek a
declaratory statement before meeting any prerequisites
for the license, registration, or certification;
requiring that an agency's conclusion in the
declaratory statement contain certain statements;
providing that the agency's conclusion is binding
except under certain circumstances; requiring a person
seeking a declaratory statement to submit certain
items to the agency and pay certain fees and costs;
providing requirements for the processing of the
fingerprints; requiring the petitioner to pay the
actual cost of processing the fingerprints; amending
s. 455.213, F.S.; conforming a cross-reference;
requiring the board to use a specified process for the
review of an applicant's criminal record to determine
the applicant's eligibility for certain licenses;
prohibiting the conviction of a crime before a
specified date from being grounds for the denial of
certain licenses; defining the term "conviction";

26 | authorizing a person to apply for a license before his
 27 | or her lawful release from confinement or supervision;
 28 | prohibiting additional fees for an applicant confined
 29 | or under supervision; prohibiting the board from
 30 | basing a denial of a license application solely on the
 31 | applicant's current confinement or supervision;
 32 | authorizing the board to stay the issuance of an
 33 | approved license under certain circumstances;
 34 | requiring the board to verify an applicant's release
 35 | with the Department of Corrections; providing
 36 | requirements for the appearance of certain applicants
 37 | at certain meetings; requiring the board to adopt
 38 | rules specifying how certain crimes affect an
 39 | applicant's eligibility for licensure; amending s.
 40 | 464.203, F.S.; prohibiting the conviction of a crime
 41 | before a specified date from being grounds for the
 42 | denial of a certification under certain circumstances;
 43 | prohibiting the conviction of a crime before a
 44 | specified date from being grounds for the failure of a
 45 | background screening; defining the term "conviction";
 46 | authorizing a person to apply for certification before
 47 | his or her lawful release from confinement or
 48 | supervision; prohibiting additional fees for an
 49 | applicant confined or under supervision; prohibiting
 50 | the board from basing the denial of a certification

51 solely on the applicant's current confinement or
 52 supervision; authorizing the board to stay the
 53 issuance of an approved certificate under certain
 54 circumstances; requiring the board to verify an
 55 applicant's release with the Department of
 56 Corrections; providing requirements for the appearance
 57 of certain applicants at certain meetings; requiring
 58 the board to adopt rules specifying how certain crimes
 59 may affect an applicant's eligibility for
 60 certification; amending s. 400.211, F.S.; conforming a
 61 cross-reference; providing an effective date.

62

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

64

65 Section 1. Subsection (4) is added to section 120.565,
 66 Florida Statutes, to read:

67 120.565 Declaratory statement by agencies.—

68 (4) (a) Any person may seek a declaratory statement
 69 regarding an agency's opinion as to the effect of the
 70 petitioner's criminal background on his or her eligibility for a
 71 specific occupational or professional license, registration, or
 72 certificate issued by the agency based on the applicable
 73 statutes and rules for the occupation or profession. The
 74 petition may include mitigating factors or other information the
 75 petitioner believes relevant to establish the petitioner's

76 eligibility, including, but not limited to, the time elapsed
 77 since completion of or lawful release from confinement,
 78 supervision, or nonmonetary condition imposed by the court for a
 79 disqualifying offense, and the petitioner's standing in his or
 80 her community. A person may seek a declaratory statement under
 81 this subsection before attaining any education, training,
 82 experience, or other prerequisites for the license,
 83 registration, or certification.

84 (b) The agency's conclusion in the declaratory statement
 85 must indicate whether:

86 1. The petitioner is disqualified from obtaining the
 87 license, registration, or certification due to the petitioner's
 88 criminal background, regardless of the petitioner's education,
 89 training, experience, or other prerequisites required for the
 90 license, registration, or certification.

91 2. The petitioner is not eligible for a specified
 92 occupational or professional license, registration, or
 93 certification because of his or her criminal background, but
 94 that the conclusion may be reversed upon the petitioner's
 95 presentation of evidence of rehabilitation or mitigation
 96 identified by the agency in the declaratory statement at any
 97 time subsequent to the issuance of the declaratory statement.

98 3. Federal laws or regulations may impede the petitioner's
 99 licensure, registration, or certification in the profession or
 100 occupation.

101 4. Conditions or restrictions imposed by the court on the
 102 petitioner for a disqualifying offense may impede the
 103 petitioner's licensure, registration, or certification in the
 104 profession or occupation.

105 (c) The agency's conclusion in the declaratory statement
 106 shall be binding on the agency as to the petitioner, unless the
 107 petitioner's subsequent criminal history constitutes an
 108 independent basis for denial of the petitioner's application for
 109 a license, registration, or certification in the profession or
 110 occupation. The agency's conclusion is subject to judicial
 111 review pursuant to s. 120.68.

112 (d) A person seeking a declaratory statement under this
 113 subsection must submit to the agency, in addition to the
 114 petition for a declaratory statement:

- 115 1. A fee set by the agency not to exceed \$100;
- 116 2. A certified copy of each criminal judgment rendered
 117 against the petitioner; and
- 118 3. A complete set of electronic fingerprints.

119 (e) The agency shall submit the fingerprints to the
 120 Department of Law Enforcement for a state criminal history
 121 record check, and the Department of Law Enforcement shall
 122 forward the fingerprints to the Federal Bureau of Investigation
 123 for a national criminal history record check. The agency shall
 124 review the criminal history record results to determine if the
 125 petitioner meets licensure, registration, or certification

126 requirements. The petitioner shall pay the actual cost of state
 127 and federal processing in addition to the fee in subparagraph
 128 (d)1.

129 Section 2. Present subsections (3) through (12) of section
 130 455.213, Florida Statutes, are redesignated as subsections (4)
 131 through (13), respectively, subsection (2) of that section is
 132 amended, and a new subsection (3) is added to that section, to
 133 read:

134 455.213 General licensing provisions.—

135 (2) Before the issuance of any license, the department may
 136 charge an initial license fee as determined by rule of the
 137 applicable board or, if no such board exists, by rule of the
 138 department. Upon receipt of the appropriate license fee, except
 139 as provided in subsection (4) ~~(3)~~, the department shall issue a
 140 license to any person certified by the appropriate board, or its
 141 designee, or the department when there is no board, as having
 142 met the applicable requirements imposed by law or rule. However,
 143 an applicant who is not otherwise qualified for licensure is not
 144 entitled to licensure solely based on a passing score on a
 145 required examination. Upon a determination by the department
 146 that it erroneously issued a license, or upon the revocation of
 147 a license by the applicable board, or by the department when
 148 there is no board, the licensee must surrender his or her
 149 license to the department.

150 (3)(a) Notwithstanding any other provision of law, the

151 board shall use the process in this subsection for review of an
 152 applicant's criminal record to determine his or her eligibility
 153 for licensure as a:

- 154 1. Barber under chapter 476;
- 155 2. Cosmetologist or cosmetology specialist under chapter
 156 477; or
- 157 3. Any of the following construction professions under
 158 chapter 489:
 - 159 a. Air-conditioning contractor;
 - 160 b. Electrical contractor;
 - 161 c. Mechanical contractor;
 - 162 d. Plumbing contractor;
 - 163 e. Pollutant storage systems contractor;
 - 164 f. Roofing contractor;
 - 165 g. Septic tank contractor;
 - 166 h. Sheet metal contractor;
 - 167 i. Solar contractor;
 - 168 j. Swimming pool and spa contractor;
 - 169 k. Underground utility and excavation contractor; and
 - 170 l. Other specialty contractors.

171 (b) A conviction for a crime more than 5 years before the
 172 date of the application may not be grounds for denial of a
 173 license specified in paragraph (a). For purposes of this
 174 paragraph, the term "conviction" means a determination of guilt
 175 that is the result of a plea or trial, regardless of whether

176 adjudication is withheld.

177 (c)1. A person may apply for a license before his or her
178 lawful release from confinement or supervision. The department
179 may not charge an applicant an additional fee for being confined
180 or under supervision. The board may not deny an application for
181 a license solely on the basis of the applicant's current
182 confinement or supervision.

183 2. After a license application is approved, the board may
184 stay the issuance of a license until the applicant is lawfully
185 released from confinement or supervision and the applicant
186 notifies the board of such release. The board must verify the
187 applicant's release with the Department of Corrections before it
188 issues a license.

189 3. If an applicant is unable to appear in person due to
190 his or her confinement or supervision, the board must permit the
191 applicant to appear by teleconference or video conference, as
192 appropriate, at any meeting of the board or other hearing by the
193 agency concerning his or her application.

194 4. If an applicant is confined or under supervision, the
195 Department of Corrections and the board shall cooperate and
196 coordinate to facilitate the appearance of the applicant at a
197 board meeting or agency hearing in person, by teleconference, or
198 by video conference, as appropriate.

199 (d) The board shall adopt rules specifying the crimes
200 that, if committed, and regardless of adjudication, do not

201 relate to the practice of the profession or the ability to
202 practice the profession and do not constitute grounds for denial
203 of a license.

204 (e) The board shall adopt rules specifying the crimes
205 that, if committed, and regardless of adjudication, relate to
206 the practice of the profession or the ability to practice the
207 profession and may constitute grounds for denial of a license.

208 Section 3. Present subsections (2) through (8) of section
209 464.203, Florida Statutes, are redesignated as subsections (3)
210 through (9), respectively, and a new subsection (2) is added to
211 that section, to read:

212 464.203 Certified nursing assistants; certification
213 requirement.—

214 (2)(a)1. Except as provided in s. 435.07(4), a conviction
215 for a crime more than 7 years before the date of the application
216 may not be grounds for denial of a certificate to practice as a
217 certified nursing assistant.

218 2. Except as provided in s. 435.07(4), a conviction for a
219 crime more than 7 years before the date of the application may
220 not be grounds for failure of a required background screening.

221 3. For purposes of this paragraph, the term "conviction"
222 means a determination of guilt that is the result of a plea or
223 trial, regardless of whether adjudication is withheld.

224 (b)1. A person may apply for a certificate to practice as
225 a certified nursing assistant before his or her lawful release

226 from confinement or supervision. The department may not charge
 227 an applicant an additional fee for being confined or under
 228 supervision. The board may not deny an application for a
 229 certificate solely on the basis of the person's current
 230 confinement or supervision.

231 2. After a certification application is approved, the
 232 board may stay the issuance of a certificate until the applicant
 233 notifies the board of his or her lawful release from confinement
 234 or supervision. The board must verify the applicant's release
 235 with the Department of Corrections before it issues a
 236 certificate.

237 3. If an applicant is unable to appear in person due to
 238 his or her confinement or supervision, the board must permit the
 239 applicant to appear by teleconference or video conference, as
 240 appropriate, at any meeting of the board or other hearing by the
 241 agency concerning his or her application.

242 4. If an applicant is confined or under supervision, the
 243 Department of Corrections and the board shall cooperate and
 244 coordinate to facilitate the appearance of the applicant at a
 245 board meeting or agency hearing in person, by teleconference, or
 246 by video conference, as appropriate.

247 (c) The board shall adopt rules specifying the crimes
 248 that, if committed, and regardless of adjudication, do not
 249 relate to the practice of the profession or the ability to
 250 practice the profession and do not constitute grounds for denial

251 of a certification.

252 (d) The board shall adopt rules specifying the crimes
 253 that, if committed, and regardless of adjudication, relate to
 254 the practice of the profession or the ability to practice the
 255 profession and may constitute grounds for denial of a
 256 certification.

257 Section 4. Subsection (4) of section 400.211, Florida
 258 Statutes, is amended to read:

259 400.211 Persons employed as nursing assistants;
 260 certification requirement.-

261 (4) When employed by a nursing home facility for a 12-
 262 month period or longer, a nursing assistant, to maintain
 263 certification, shall submit to a performance review every 12
 264 months and must receive regular inservice education based on the
 265 outcome of such reviews. The inservice training must meet all of
 266 the following requirements:

267 (a) Be sufficient to ensure the continuing competence of
 268 nursing assistants and must meet the standard specified in s.
 269 464.203(8). ~~s. 464.203(7);~~

270 (b) Include, at a minimum:

- 271 1. Techniques for assisting with eating and proper
- 272 feeding;
- 273 2. Principles of adequate nutrition and hydration;
- 274 3. Techniques for assisting and responding to the
- 275 cognitively impaired resident or the resident with difficult

276 behaviors;

277 4. Techniques for caring for the resident at the end-of-
278 life; and

279 5. Recognizing changes that place a resident at risk for
280 pressure ulcers and falls. ~~and~~

281 (c) Address areas of weakness as determined in nursing
282 assistant performance reviews and may address the special needs
283 of residents as determined by the nursing home facility staff.

284

285 Costs associated with this training may not be reimbursed from
286 additional Medicaid funding through interim rate adjustments.

287 Section 5. This act shall take effect July 1, 2018.

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(a)

CAREERS & COMPETITION SUBCOMMITTEE

HB 1041 by Rep. Plakon
Professional Regulation

AMENDMENT SUMMARY January 30, 2018

Amendment 1 by Rep. Plakon (Strike-all): The amendment:

- removes provisions related to declaratory statements issued by agencies;
- provides requirements for DBPR and DOH, with regard to barbers, cosmetologists, certain construction contractors, and certified nurse assistants (CNA), to list crimes on their respective websites that do or do not affect an applicant's eligibility for licensure;
- removes the requirement that DBPR and DOH promulgate certain rules;
- clarifies that CNAs may be denied a license for having a criminal history which includes certain health care-related fraud crimes, even if they occurred longer than 7 years prior to application; and
- provides a later effective date of October 1, 2018.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Careers & Competition
 2 Subcommittee

3 Representative Plakon offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 2. Present subsections (3) through (12) of section
 8 455.213, Florida Statutes, are redesignated as subsections (4)
 9 through (13), respectively, subsection (2) of that section is
 10 amended, and a new subsection (3) is added to that section, to
 11 read:

12 455.213 General licensing provisions.—

13 (2) Before the issuance of any license, the department may
 14 charge an initial license fee as determined by rule of the
 15 applicable board or, if no such board exists, by rule of the
 16 department. Upon receipt of the appropriate license fee, except



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17 as provided in subsection (4) ~~(3)~~, the department shall issue a
18 license to any person certified by the appropriate board, or its
19 designee, or the department when there is no board, as having
20 met the applicable requirements imposed by law or rule. However,
21 an applicant who is not otherwise qualified for licensure is not
22 entitled to licensure solely based on a passing score on a
23 required examination. Upon a determination by the department
24 that it erroneously issued a license, or upon the revocation of
25 a license by the applicable board, or by the department when
26 there is no board, the licensee must surrender his or her
27 license to the department.

28 (3) (a) Notwithstanding any other provision of law, the
29 board shall use the process in this subsection for review of an
30 applicant's criminal record to determine his or her eligibility
31 for licensure as a:

32 1. Barber under chapter 476;

33 2. Cosmetologist or cosmetology specialist under chapter
34 477; or

35 3. Any of the following construction professions under
36 chapter 489:

37 a. Air-conditioning contractor;

38 b. Electrical contractor;

39 c. Mechanical contractor;

40 d. Plumbing contractor;

41 e. Pollutant storage systems contractor;

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- 42 f. Roofing contractor;
43 g. Septic tank contractor;
44 h. Sheet metal contractor;
45 i. Solar contractor;
46 j. Swimming pool and spa contractor;
47 k. Underground utility and excavation contractor; and
48 l. Other specialty contractors.

49 (b) A conviction, or any other adjudication, for a crime
50 more than 5 years before the date of the application may not be
51 grounds for denial of a license specified in paragraph (a). For
52 purposes of this paragraph, the term "conviction" means a
53 determination of guilt that is the result of a plea or trial,
54 regardless of whether adjudication is withheld.

55 (c)1. A person may apply for a license before his or her
56 lawful release from confinement or supervision. The department
57 may not charge an applicant an additional fee for being confined
58 or under supervision. The board may not deny an application for
59 a license solely on the basis of the applicant's current
60 confinement or supervision.

61 2. After a license application is approved, the board may
62 stay the issuance of a license until the applicant is lawfully
63 released from confinement or supervision and the applicant
64 notifies the board of such release. The board must verify the
65 applicant's release with the Department of Corrections before it
66 issues a license.



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67 3. If an applicant is unable to appear in person due to
68 his or her confinement or supervision, the board must permit the
69 applicant to appear by teleconference or video conference, as
70 appropriate, at any meeting of the board or other hearing by the
71 agency concerning his or her application.

72 4. If an applicant is confined or under supervision, the
73 Department of Corrections and the board shall cooperate and
74 coordinate to facilitate the appearance of the applicant at a
75 board meeting or agency hearing in person, by teleconference, or
76 by video conference, as appropriate.

77 (d) Each board shall compile a list of crimes that, if
78 committed and regardless of adjudication, do not relate to the
79 practice of the profession or the ability to practice the
80 profession and do not constitute grounds for denial of a
81 license. This list shall be made available on the department's
82 website and be updated annually. Beginning October 1, 2018, each
83 board shall compile a list of crimes that although reported by
84 an applicant for licensure, were not used as a basis for denial.
85 The list must identify the crime reported and the date of
86 conviction, finding of guilt, plea, or adjudication entered or
87 the date of sentencing for each such license application.

88 (e) Each board shall compile a list of crimes that have
89 been used as a basis for denial of a license in the past 2
90 years, which shall be made available on the department's
91 website. Starting October 1, 2018, and updated quarterly

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92 thereafter, the applicable board shall compile a list indicating
93 each crime used as a basis for denial. For each crime listed,
94 the board must identify the date of conviction, finding of
95 guilt, plea, or adjudication entered, or date of sentencing.
96 Such denials shall be available to the public upon request.

97 Section 3. Present subsections (2) through (8) of section
98 464.203, Florida Statutes, are redesignated as subsections (3)
99 through (9), respectively, and a new subsection (2) is added to
100 that section, to read:

101 464.203 Certified nursing assistants; certification
102 requirement.—

103 (2) (a) 1. Except as provided in s. 435.07(4) and s.
104 456.0635, a conviction, or any other adjudication, for a crime
105 more than 7 years before the date of the application may not be
106 grounds for denial of a certificate to practice as a certified
107 nursing assistant.

108 2. Except as provided in s. 435.07(4) and s. 456.0635, a
109 conviction, or any other adjudication, for a crime more than 7
110 years before the date of the application may not be grounds for
111 failure of a required background screening.

112 3. For purposes of this paragraph, the term "conviction"
113 means a determination of guilt that is the result of a plea or
114 trial, regardless of whether adjudication is withheld.

115 (b) 1. A person may apply for a certificate to practice as
116 a certified nursing assistant before his or her lawful release



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117 from confinement or supervision. The department may not charge
118 an applicant an additional fee for being confined or under
119 supervision. The board may not deny an application for a
120 certificate solely on the basis of the person's current
121 confinement or supervision.

122 2. After a certification application is approved, the
123 board may stay the issuance of a certificate until the applicant
124 notifies the board of his or her lawful release from confinement
125 or supervision. The board must verify the applicant's release
126 with the Department of Corrections before it issues a
127 certificate.

128 3. If an applicant is unable to appear in person due to
129 his or her confinement or supervision, the board must permit the
130 applicant to appear by teleconference or video conference, as
131 appropriate, at any meeting of the board or other hearing by the
132 agency concerning his or her application.

133 4. If an applicant is confined or under supervision, the
134 Department of Corrections and the board shall cooperate and
135 coordinate to facilitate the appearance of the applicant at a
136 board meeting or agency hearing in person, by teleconference, or
137 by video conference, as appropriate.

138 (c) The board shall compile a list of crimes that, if
139 committed and regardless of adjudication, do not relate to the
140 practice of the profession or the ability to practice the
141 profession and do not constitute grounds for denial of a

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142 license. This list shall be made available on the department's
143 website and be updated annually. Beginning October 1, 2018, the
144 board shall compile a list of crimes that although reported by
145 an applicant for licensure were not used as a basis for denial.
146 The list must identify the crime reported and the date of
147 conviction, finding of guilt, plea, or adjudication entered or
148 the date of sentencing for each such license application.

149 (d) The board shall compile a list of crimes that have been
150 used as a basis for denial of a license in the past 2 years,
151 which shall be made available on the department's website.
152 Starting October 1, 2018, and updated quarterly thereafter, the
153 board shall compile a list indicating each crime used as a basis
154 for denial. For each crime listed the board must identify the
155 date of conviction, finding of guilt, plea, or adjudication
156 entered, or date of sentencing. Such denials shall be available
157 to the public upon request.

158 Section 4. Subsection (4) of section 400.211, Florida
159 Statutes, is amended to read:

160 400.211 Persons employed as nursing assistants;
161 certification requirement.-

162 (4) When employed by a nursing home facility for a 12-
163 month period or longer, a nursing assistant, to maintain
164 certification, shall submit to a performance review every 12
165 months and must receive regular inservice education based on the



Amendment No. 1

166 outcome of such reviews. The inservice training must meet all of
167 the following requirements:

168 (a) Be sufficient to ensure the continuing competence of
169 nursing assistants and must meet the standard specified in s.
170 464.203(8). ~~s. 464.203(7);~~

171 (b) Include, at a minimum:

172 1. Techniques for assisting with eating and proper
173 feeding;

174 2. Principles of adequate nutrition and hydration;

175 3. Techniques for assisting and responding to the
176 cognitively impaired resident or the resident with difficult
177 behaviors;

178 4. Techniques for caring for the resident at the end-of-
179 life; and

180 5. Recognizing changes that place a resident at risk for
181 pressure ulcers and falls. ~~and~~

182 (c) Address areas of weakness as determined in nursing
183 assistant performance reviews and may address the special needs
184 of residents as determined by the nursing home facility staff.

185
186 Costs associated with this training may not be reimbursed from
187 additional Medicaid funding through interim rate adjustments.

188 Section 5. This act shall take effect October 1, 2018.

189

190



Amendment No. 1

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

191
192 Remove everything before the enacting clause and insert:
193 An act relating to professional regulation; amending s. 455.213,
194 F.S.; conforming a cross-reference; requiring the board to use a
195 specified process for the review of an applicant's criminal
196 record to determine the applicant's eligibility for certain
197 licenses; prohibiting the conviction of a crime before a
198 specified date from being grounds for the denial of certain
199 licenses; defining the term "conviction"; authorizing a person
200 to apply for a license before his or her lawful release from
201 confinement or supervision; prohibiting additional fees for an
202 applicant confined or under supervision; prohibiting the board
203 from basing a denial of a license application solely on the
204 applicant's current confinement or supervision; authorizing the
205 board to stay the issuance of an approved license under certain
206 circumstances; requiring the board to verify an applicant's
207 release with the Department of Corrections; providing
208 requirements for the appearance of certain applicants at certain
209 meetings; requiring the board to provide a list on its website
210 specifying how certain crimes affect an applicant's eligibility
211 for licensure; amending s. 464.203, F.S.; prohibiting the
212 conviction of a crime before a specified date from being grounds
213 for the denial of a certification under certain circumstances;
214 prohibiting the conviction of a crime before a specified date
215 from being grounds for the failure of a background screening;

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216 defining the term "conviction"; authorizing a person to apply
217 for certification before his or her lawful release from
218 confinement or supervision; prohibiting additional fees for an
219 applicant confined or under supervision; prohibiting the board
220 from basing the denial of a certification solely on the
221 applicant's current confinement or supervision; authorizing the
222 board to stay the issuance of an approved certificate under
223 certain circumstances; requiring the board to verify an
224 applicant's release with the Department of Corrections;
225 providing requirements for the appearance of certain applicants
226 at certain meetings; requiring the board provide a list on its
227 website specifying how certain crimes may affect an applicant's
228 eligibility for certification; amending s. 400.211, F.S.;

229 conforming a cross-reference; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1061 Community Association Fire and Life Safety Systems
SPONSOR(S): Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Brackett <i>OB</i>	Anstead <i>Je</i>
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located within the Department of Business and Professional Regulation, has regulatory authority over condominium and cooperative associations.

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code) by rule every three years. The Fire Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire officials within each county, municipality, and special fire districts in the state. The Fire Code requires existing multi-family buildings 75 feet or taller to be retrofitted with a fire sprinkler system or an engineered life safety system.

Currently, residential condominium and cooperative associations may vote to waive the requirement to retrofit a building with a fire sprinkler system by a majority vote of the total voting interests. Local governments may not require an association to retrofit a building before the end of 2019.

The bill:

- Provides that an association may vote to waive the requirement to retrofit a building with an engineered life safety system in addition to the current ability to waive a fire sprinkler system;
- Delays the start date that local governments may require an association to retrofit from 2019 to 2022;
- Allows professional engineers to issue certificates of compliance;
- Requires associations to post signs on buildings that do not retrofit;
- Increases the voting percentage necessary to forego retrofitting;
- Extends deadlines for associations to apply for a building permit to retrofit;
- Authorizes electronic voting to forego retrofitting;
- Removes the requirement that a vote to retrofit may only be called once every three years if there has been a previous vote to forego retrofitting; and
- Increases the voting percentage necessary to retrofit if there has been a previous vote to forego retrofitting.

The bill is not expected to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.³ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

State Fire Prevention – State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.⁴ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

¹ s. 718.103(11), F.S.

² s. 718.104(2), F.S.

³ s. 719.103(2)(26), F.S.

⁴ s. 633.104, F.S.

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Code every three years.⁵ The most recent Fire Code is the 6th edition, which is referred to as the 2017 Florida Fire Prevention Code. When adopting the Fire Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).⁶

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.⁷

The State Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.⁸

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.⁹ These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.¹⁰

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.¹¹ Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.¹²

Section 633.208(5), F.S. states "With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety." Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

⁵ s. 633.202, F.S.

⁶ s. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on Dec. 7, 2017).

⁷ *Id.*

⁸ s. 633.104(6), F.S.

⁹ ss. 633.108 and 633.208, F.S.

¹⁰ ss. 633.208 and 633.214(4), F.S.

¹¹ s. 633.118, F.S.

¹² s. 633.216(1), F.S.

Fire Sprinklers and Engineered Life safety systems

The Fire Code requires existing multi-family buildings 75 feet or taller (approximately seven stories),¹³ including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.¹⁴ All condominiums and cooperatives built since 1994 that are three stories or more have sprinkler systems and thus are in compliance.¹⁵

According to DFS, the height requirement to retrofit a building is 75 feet because the majority of fire apparatuses are not capable of reaching a height greater than 75 feet.¹⁶

The Fire Code allows a building to have an engineered lifesafety system (ELSS) as an alternative to a sprinkler system. The Fire Code defines an ELSS as a system that consists of a combination of:

- partial automatic sprinkler protection;
- smoke detection alarms;
- smoke control; and
- compartmentation or other approved systems.¹⁷

The Fire Code also does not require existing multi-family buildings 75 feet or taller to retrofit if every dwelling unit in the building has an exterior exit access.¹⁸

For condominium and cooperative associations that complete retrofitting a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence of compliance of the units with the Fire Code.¹⁹ Certified electrical contractors must be certified by the Board of Electrical Contracting. Registered electrical contractors are licensed by a local jurisdiction, and may practice within that locality.²⁰

History and Current law of retrofitting fire sprinklers and engineered life safety systems

In 2000, the State Fire Marshal adopted the national fire and life safety standards set forth by the NFPA into the Fire Code. This required existing multi-family buildings 75 feet or taller (approximately seven stories) including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.

In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that:

- Unit owners in residential condominium and cooperative associations may vote to forego retrofitting a building with a fire sprinkler system or an ELSS. A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected association.
- Local governments may not require an association to retrofit before the end of 2014.
- However, associations could not vote to forego retrofitting a sprinkler system in any “common area” of a “high rise” building.
 - The common area of a high-rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway.

¹³ Department of Financial Services, Agency Analysis of 2018 House Bill 1061, p. 1 (Jan. 17, 2018).

¹⁴ Section 13.3.2.26 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

¹⁵ s. 553.895(2), F.S.

¹⁶ Email from Kimberly Renspie, Deputy Director of Legislative Affairs, Department of Financial Services, High-Rise Answers (Jan. 26, 2018).

¹⁷ 101:31.3.5.12.3 and 101: 31.3.5.12.4 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

¹⁸ 101:31.3.5.12.2 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

¹⁹ ss. 718.112(2)(1), & 719.1055(5), F.S.

²⁰ s. 489.505(4)(8)(16), F.S.

- A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.²¹

In 2006, Governor Bush vetoed House Bill 391 of the 2006 Legislative Session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025.

In 2009, Governor Crist vetoed Senate Bill 714 of the 2009 Legislative Session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025. Governor Crist, also directed DBPR to initiate a review of the costs to retrofit and the impacts retrofitting may have on insurance premiums.²²

In October 2009, DBPR completed their report. DBPR estimated that retrofitting a condominium with sprinklers would cost from \$595 to \$8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.²³ According to DBPR, an association could expect to receive a 5% discount on the "all other perils" portion of their property and casualty insurance policy. DBPR also stated that "many associations have foregone retrofits because they are cash strapped in the current economy. With many units sitting empty or in foreclosure and not paying assessments, some condominiums are scraping by just paying their normal expenses."²⁴

In 2010, the Legislature amended the law regarding retrofitting by:

- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high rise building.
- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Removing the ability of residential condominium or cooperative associations to vote to forego retrofitting an ELSS.
- Prohibiting local governments from requiring retrofitting before the end of 2019.²⁵

In 2017, the Governor vetoed House Bill 653 of the 2017 Legislative Session, which included similar language to House Bill 1061 of the 2018 Legislative Session including the following:

- Allowed condominium or cooperative associations to vote to forego retrofitting an ELSS as well as a fire sprinkler system.
- Provided that a vote to forego retrofitting requires a two-thirds vote of all voting interests.
- Provided that all condominium or cooperative associations that operate buildings that are greater than 75 feet in height may vote to waive retrofitting requirements.
- Prohibited local governments from requiring associations to retrofit until on or after January 1, 2022.
- Extended the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting, from December 31, 2016, to December 31, 2018.
- Required a board that operates a building that has not installed a sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a sprinkler system in the building;
- Required the State Fire Marshal to promulgate rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. However, the rules

²¹ ss. 718.112(2)(l) & 719.1055(5) (2003), F.S.

²² Letter from Charlie Crist, Governor of the state of Fla., to Kurt S. Browning, Sec'y of State (June 1, 2009), http://www.butler.legal/files/2009_sb714.pdf (last visited Jan. 25, 2018).

²³ Department of Business & Professional Regulation, Condominium Sprinkler Retrofit Report, October 2009.

²⁴ *Id.*

²⁵ ss. 718.112(2)(l), 719.1055(5), F.S.

may not require a condominium or cooperative to post a sign that diminishes the aesthetic value of a building.

Governor Scott stated his reasons for vetoing were:

"Fire sprinklers and enhanced life safety systems are particularly effective in improving the safety of occupants in high-rise buildings and ensure the greatest protection to the emergency responders who bravely conduct firefighting and rescue operations. While I am particularly sensitive to regulations that increase the cost of living, the recent London high-rise fire, which tragically took at least 79 lives, illustrates the importance of life safety protections."²⁶

Current law provides that:

- An association, residential condominium, or unit owner is not required to retrofit common elements, association property, or units of a residential condominium with a sprinkler system in a building if:
 - The building has been certified for occupancy by the applicable government entity; and
 - The unit owners vote to forego retrofitting by a majority vote of all voting interests.
- Local governments may not require an association to retrofit a fire sprinkler system before the end of 2019.
- An association that has not retrofitted with a sprinkler system or an ELSS, and has not voted to waive retrofitting must initiate an application for a building permit with the local government to begin retrofitting.
- Current law only applies to fire sprinkler systems. There is no statutory authority for associations to forego retrofitting an ELSS.
- Current law only applies to residential condominiums. Nonresidential condominiums may not vote to forego any retrofitting requirements.²⁷
 - Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium.²⁸ Residential cooperatives consist of units, which are intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.²⁹

Current law does not specify whether an association has to retrofit or vote to forego retrofitting for a building that is 75 feet or less in height. According to DFS, this has led to numerous interpretations regarding whether an association must retrofit or vote to forego retrofitting a building that is 75 feet or less in height.³⁰

Vote to Forego Retrofitting

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of a written consent by the member. An association's vote to forego retrofitting is effective upon recording a certificate attesting to such vote in the public records for the county of the association.³¹

An association must mail or hand deliver each unit owner written notice of the vote. After the vote to forego, notice of the results must be mailed or hand delivered to all unit owners. After notice is provided

²⁶ Letter from Rick Scott, Governor of the state of Fla., to Ken Detzner, Sec'y of State (June 26, 2017), <https://www.flgov.com/wp-content/uploads/2017/06/HB-653-Veto-Letter.pdf> (last visited Jan. 25, 2018).

²⁷ ss. 718.112(2)(l), & 719.1055(5), F.S.

²⁸ s. 718.103(23), F.S.

²⁹ s. 719.103(22), F.S.

³⁰ See Department of Financial Services, Agency Analysis of 2018 House Bill 1061, p. 1 (Jan. 17, 2018).

³¹ ss. 718.112(2)(l), & 719.1055(5), F.S.

to each owner, a copy must be provided by the current owner to a new owner before closing, and by a unit owner to a renter before signing a lease.³²

If there has been a previous vote to forego retrofitting then a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every 3 years. Electronic transmission may not be used to provide notice of the special meeting.³³

The Division must require condominium and cooperative associations to report the membership vote and recording of a certificate and, if retrofitting has been undertaken, the per-unit cost of such work. The Division must annually report to the State Fire Marshal the number of associations that have elected to forego retrofitting.³⁴

Fire safety Signs on Buildings

In 2008, the Legislature passed the Aldridge/Benge Firefighter Safety Act. The Firefighter Safety Act required any building constructed of light-frame truss-type material to be marked by a sign on the outside of the building.³⁵ These signs served to warn emergency personnel of the construction material of the building when entering, as truss-type construction tends to suffer structural collapses during fires. The Firefighter Safety Act requires the State Fire Marshal to create rules regarding the color, size, and placement of these signs on all buildings with light-frame truss-type construction.³⁶ The State Fire Marshal and local fire officials are responsible for the enforcement of these rules.³⁷ Owners who do not follow these rules are subject to penalties pursuant to the Fire Code.³⁸

Fire safety requirements for Time Shares

Pursuant to s. 721.24, F.S., timeshare facilities are required to install a fire sprinkler system for buildings that have been let after September 1, 1983 and are:

- Three stories or more with interior corridors, which do not have direct access from the timeshare unit to an exterior means of egress; or
- Over 75 feet in height that has direct access from the timeshare unit to an exterior means of egress.

Timeshare facilities are required to do the following for buildings that been let before October 1, 1983:

- Install a fire sprinkler system; or
- Install a fire sprinkler for the interior corridors, public areas, storage rooms, closets, kitchen areas, and laundry rooms if:
 - There is a minimum 1-hour separation between each timeshare unit and between each timeshare unit and a corridor;
 - The building is constructed of noncombustible materials;
 - The means of egress meet the requirements of the NFPA Life Safety Code; and
 - The building has a complete automatic fire detection system.³⁹

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ s. 633.222(1), F.S.

³⁶ s. 633.222(2), F.S.

³⁷ s. 633.222(3), F.S.

³⁸ *Id.*, citing to s. 633.228, F.S.

³⁹ s. 721.24, F.S.

Effect of the Bill

Engineered Life Safety System and Fire Sprinkler Retrofitting

The bill:

- Provides that an association may vote to forego retrofitting an ELSS as well as a fire sprinkler system.
- Provides that a vote to forego retrofitting requires a two-thirds vote of all voting interests.
- Provides that a vote to retrofit after an affirmative vote to forego retrofitting requires a two-thirds vote of all voting interests.
- Provides that associations do not have to retrofit buildings that are 75 feet or less in height, and therefore, do not have vote to forego retrofitting.
- Allows all associations that operate buildings that are greater than 75 feet in height to vote to waive retrofitting requirements, instead of just residential associations.
- Prohibits a local authority from requiring retrofitting of a fire sprinkler system or an ELSS until on or after January 1, 2022.
- Extends the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting, from December 31, 2016, to December 31, 2018.
- Provides that timeshare condominiums are subject to the fire safety standards found in s. 721.24, F.S., not the provisions of ch. 718, F.S.
- Allows a professional engineer, in addition to an electrical contractor or electrician, to provide a certificate of compliance. Professional engineers must be certified by the Board of Professional Engineers.⁴⁰

Vote to Forego Retrofitting

The bill:

- Adds electronic voting as a means to vote to forego retrofitting.
- Removes the requirement that notice of a vote to forego retrofitting and such results be hand delivered or mailed and instead requires that a notice of a vote to forego retrofitting shall be delivered or mailed to each unit owner.
- Clarifies that failure to timely notice unit owners of the results of a vote to forego retrofitting does not invalidate the results of the vote as long as notice of the results is provided to the unit owners.
- Provides that a majority of the board may hold a special owners meeting to vote to retrofit if there has already been a vote to forego retrofitting.
- Removes the provision that electronic transmission notice may not be used to notice the special meeting.
- Repeals the requirement that a vote to require retrofitting may only be called once every three years if there has already been a previous vote to forego retrofitting.
- Provides that failure to notify the Division of a vote to forego and record the certificate will not affect the validity of the vote to forego.

Fire safety Signs on Buildings

The bill:

- Requires the board of a condominium or cooperative that operates a building that is three stories or more and has not installed a fire sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a fire sprinkler system in the building; and
- Requires the State Fire Marshal to promulgate rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. However, the rules

may not require an association to post a sign that diminishes the aesthetic value of a building. The State Fire Marshal and local fire officials are in charge of enforcement of the law and rules. Associations who fail to comply with the requirements are subject to penalties pursuant to the Fire Code.

B. SECTION DIRECTORY:

- Section 1.** Creating s. 633.2225, F.S., providing sign requirements for certain condominium and cooperative buildings, requiring the State Fire Marshal to adopt rules governing such signs.
- Section 2.** Amending s. 718.112, F.S., revising requirements to retrofit a condominium building.
- Section 3.** Amending s. 719.1055, F.S., revising requirements to retrofit a cooperative building.
- Section 4.** Providing an effective date.

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:

Unknown. The bill may have a positive economic impact on condominium and cooperative owners, and a corresponding negative impact on contractors. Property insurance costs and rates may factor into the economic cost. The impact is unknown because it is dependent upon how many associations opt out.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise

revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes rulemaking by the State Fire Marshal relating to signage for condominium and cooperative buildings without a sprinkler system in common areas.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DFS,

"Within 2017, there were three significant fires in high-rise residential units that are pertinent to this legislation. On June 14, 2017, a fire broke out in one of the residential units of the twenty-four (24) story Grenfell Tower in London, England. Seventy (70) people died in the building in which fire sprinklers were not installed. One month later, on July 14, 2017, three (3) people died in a fire in a thirty-six (36) story Honolulu apartment complex (Marco Polo), which did not have fire sprinklers either. The complex was built in 1971, before fire sprinklers were required and had not been retrofitted with the systems. Even more recent and closer to home, an eighty-six (86)-year old woman died in a fire on the seventeenth (17th) floor of a twenty-five (25) story apartment complex in Sunny Isles, Florida on December 7, 2017. The complex did not have fire sprinklers. The events and conditions surrounding these tragic fire deaths should most certainly be examined when reviewing this legislation."⁴¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the Pinellas County Construction
3 Licensing Board; amending ch. 75-489, Laws of Florida,
4 as amended; revising the composition of the Pinellas
5 County Construction Licensing Board; revising the
6 terms of the board members; providing for termination
7 of members; providing for the election and terms of a
8 chair and vice chair; providing that board staff are
9 employees of Pinellas County; providing that the board
10 is a dependent agency of the Board of County
11 Commissioners of Pinellas County; authorizing the
12 board of county commissioners to adopt rules;
13 requiring the board to provide an annual report on
14 finances and administrative activities; subjecting the
15 board to periodic audits; requiring members of the
16 board to file financial disclosure statements;
17 specifying the board is eligible for state funding to
18 support its operations during transition to the
19 county; providing for dissolution of board upon
20 approval at referendum; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsections (1) and (3) of section 12 of part

25 II of chapter 75-489, Laws of Florida, as amended by chapters
 26 89-504, 93-387, and 2003-319, Laws of Florida, are amended, and
 27 subsections (13) through (17) are added to that section, to
 28 read:

29 Section 12. Pinellas County Construction Licensing Board;
 30 organization; meetings, and powers.-

31 (1) The Pinellas County Construction Licensing Board is
 32 created, within the county of Pinellas, consisting of 15
 33 members, as follows:

34 (a) Eight members, each of whom practices as or, as
 35 appropriate, is primarily engaged in business as not more than
 36 one of the following: a licensed general contractor, a Florida
 37 registered architect, a licensed residential building
 38 contractor, a licensed electrical contractor or a licensed
 39 plumbing contractor, a mechanical contractor or a Class A air
 40 conditioning contractor, a licensed roofing contractor, a
 41 licensed sheet metal contractor, or a licensed swimming pool,
 42 aluminum, or veneer specialty contractor.

43 (b) The Pinellas County building official.

44 (c) Two consumer representatives not affiliated with the
 45 construction industry.

46 (d) A fire official.

47 (e) Three building officials, as follows:

48 1. A North county building official from one of the

49 following municipalities: Clearwater, Tarpon Springs, Dunedin,
 50 Oldsmar, Safety Harbor, Belleair, Belleair Bluffs, or Largo;

51 2. A South county building official from one of the
 52 following municipalities: St. Petersburg, South Pasadena,
 53 Gulfport, Seminole, Kenneth City, or Pinellas Park; and

54 3. A Beach Community building official from one of the
 55 following municipalities: the Town of Belleair Beach, the Town
 56 of Belleair Shores, the City of Redington Beach, the City of
 57 North Redington Beach, the City of Madeira Beach, the City of
 58 Indian Rocks Beach, the Town of Indian Shores, the Town of
 59 Redington Shores, the City of Treasure Island, and the City of
 60 St. Pete Beach ~~twenty one (21) members, two (2) of whom are~~
 61 ~~primarily engaged in business as general contractors; two (2) of~~
 62 ~~whom are primarily engaged in business as building contractors,~~
 63 ~~two (2) of whom are primarily engaged in business as residential~~
 64 ~~contractors, one (1) who is a Florida registered architect doing~~
 65 ~~business in Pinellas County, one (1) who is an electrical~~
 66 ~~contractor, one (1) who is a plumbing contractor, one (1) who is~~
 67 ~~a mechanical contractor, one who is a roofing or sheet metal~~
 68 ~~contractor, one (1) who is a swimming pool, aluminum or veneer~~
 69 ~~specialty contractor, two (2) fire marshals, the three (3)~~
 70 ~~building directors of the following: City of St. Petersburg,~~
 71 ~~City of Clearwater and County of Pinellas, one (1) North county~~
 72 ~~building director from one of the following municipalities;~~

73 ~~Tarpon Springs, Dunedin, Oldsmar, Safety Harbor, Belleair,~~
 74 ~~Belleair Bluffs, or Largo, one (1) South county building~~
 75 ~~director from one of the following municipalities: South~~
 76 ~~Pasadena, Gulfport, Seminole, Kenneth City, or Pinellas Park,~~
 77 ~~one (1) Beach Community building director from one of the~~
 78 ~~following: the Town of Belleair Beach, the Town of Belleair~~
 79 ~~Shores, the City of Redington Beach, the City of North Redington~~
 80 ~~Beach, the City of Madeira Beach, the City of Indian Rocks~~
 81 ~~Beach, the Town of Indian Shores, the Town of Redington Shores,~~
 82 ~~the City of Treasure Island, and the City of St. Pete Beach, and~~
 83 ~~one (1) consumer member who is a resident and citizen of~~
 84 ~~Pinellas County and who is not and never has been a member or~~
 85 ~~practitioner of any of the trades or professions regulated by~~
 86 ~~the board or a member or practitioner of any closely related~~
 87 ~~trade or profession. All members of the board must shall be~~
 88 ~~residents of Pinellas County and are appointed by the Chairman~~
 89 ~~of the Board of County Commissioners.~~

90 (3) (a) A board member may not serve more than two
 91 consecutive terms of 4 years, but may be reappointed after a 2-
 92 year hiatus. Board members may be terminated for cause by the
 93 Board of County Commissioners. This limitation shall not apply
 94 to any of the governmental building official or fire marshal
 95 appointees. Members of the board shall be selected as follows:
 96 ~~The three (3) building directors of the City of Clearwater, City~~

97 | ~~of St. Petersburg and the County of Pinellas; one (1) North~~
 98 | ~~county building director and one (1) South county building~~
 99 | ~~director selected by the Chairman of the Board of County~~
 100 | ~~Commissioners from the municipalities listed in subsection (1);~~
 101 | ~~one (1) Beach Community building director appointed from a list~~
 102 | ~~of three (3) nominees submitted by The Barrier Island~~
 103 | ~~Governmental Council; a Florida Registered Architect appointed~~
 104 | ~~from a list of three recommended architects submitted by the~~
 105 | ~~American Institute of Architects Florida Central Chapter, St.~~
 106 | ~~Petersburg and Clearwater Sections; two (2) of whom are~~
 107 | ~~primarily engaged in business as general contractors from a list~~
 108 | ~~of five (5) submitted by The Associated General Contractors of~~
 109 | ~~Mid-Florida, Inc.; two (2) of whom are primarily engaged in~~
 110 | ~~business as Building Contractors from a list of five (5)~~
 111 | ~~submitted by the Contractors and Builders Association of~~
 112 | ~~Pinellas County; two (2) of whom are primarily engaged in the~~
 113 | ~~business as residential building contractors from a list of five~~
 114 | ~~(5) submitted by the Contractors and Builders Association of~~
 115 | ~~Pinellas County; one (1) who is an electrical contractor from a~~
 116 | ~~list of five (5) supplied by the Electrical Council of Florida,~~
 117 | ~~Pinellas County Chapter; one (1) who is a Plumbing contractor~~
 118 | ~~from a list of five (5) supplied by the Pinellas Association of~~
 119 | ~~Plumbing Heating Cooling Contractors, Inc.; two (2) of whom are~~
 120 | ~~fire marshals, who shall be active members of the Tampa Bay Area~~

121 ~~Fire Marshals Association, from a list of five (5) supplied by~~
 122 ~~said association, one (1) of whom shall serve an initial term of~~
 123 ~~three (3) years, the other to serve an initial term of two (2)~~
 124 ~~years, with successors to serve for a term of two (2) years~~
 125 ~~thereafter; one (1) who is a mechanical or Class A air~~
 126 ~~conditioning contractor from a list of five (5), supplied by the~~
 127 ~~Refrigeration and Air Conditioning Contractors' Association~~
 128 ~~("RACCA"); one (1) roofing or sheet metal contractor and one (1)~~
 129 ~~swimming pool, aluminum or veneer specialty contractor selected~~
 130 ~~by the Chairman of the Board of County Commissioners; one~~
 131 ~~consumer member to be appointed by the Chairman of the Board of~~
 132 ~~County Commissioners in accordance with paragraph 2(a). The~~
 133 ~~building director members from the City of Clearwater, from the~~
 134 ~~City of St. Petersburg and Pinellas County, shall be permanent~~
 135 ~~members of the board. All other members shall serve terms of two~~
 136 ~~(2) years.~~

137 (b) The terms of the following members expire shall
 138 commence their terms in even-numbered years: the licensed
 139 general contractor, the Florida registered architect, the
 140 licensed residential ~~one (1) general contractor, one (1)~~
 141 ~~building contractor, the licensed or, one (1) residential~~
 142 ~~building contractor, one (1) electrical or licensed plumbing~~
 143 ~~contractor, a consumer representative, and one (1) fire marshal,~~
 144 ~~the North county, South county, and Beach Community building~~

145 officials ~~directors~~. The terms of the following members expire
 146 ~~shall commence their terms~~ in odd-numbered years: the one (1)
 147 ~~general contractor, one (1) building contractor, one (1)~~
 148 ~~residential building contractor, one (1) mechanical contractor~~
 149 ~~or Class A air conditioning contractor; the, one (1) plumbing~~
 150 ~~contractor, one (1) fire~~ official; the licensed marshal, one (1)
 151 ~~roofing or sheet metal contractor; the, one (1) swimming pool,~~
 152 ~~aluminum, or veneer specialty contractor; the sheet metal~~
 153 ~~contractor, a, and one (1) consumer~~ representative; and the
 154 South county building official member.

155 (c) As the terms of members expire, the ~~Chairman of the~~
 156 Board of County Commissioners of Pinellas County shall appoint a
 157 member to fill the vacancy for a term of 4 ~~two (2)~~ years in the
 158 ~~same manner as that membership was originally filled. The~~
 159 ~~architect, contractor, electrical, plumbing and mechanical~~
 160 ~~members shall be selected from the county at large. The board~~
 161 shall elect from one of its members a chair to serve as chairman
 162 and a vice chair one of its members to serve as vice chairman,
 163 for terms of up to 2 years a term to be set by the board. All
 164 terms of office expire on September 30 of the last year of the
 165 term. Vacancies in the membership occurring prior to the end of
 166 a member's term for any cause shall be filled by the Pinellas
 167 County Board of County Commissioners ~~appointment in the same~~
 168 ~~manner as that membership was originally filled.~~

169 (13) Board staff are employees of Pinellas County, and
 170 Pinellas County is responsible for all costs associated
 171 therewith. The board is a dependent agency of the Board of
 172 County Commissioners. The Board of County Commissioners may
 173 adopt rules to implement this act, including, but not limited
 174 to, rules relating to board finances and contribution for costs
 175 associated with this act to be borne by the county, and may
 176 remove any member of the board at will.

177 (14) (a) The board shall submit to all local governments in
 178 Pinellas County, and make available to the public, a complete
 179 report on finances and administrative activities of the board as
 180 of the end of each fiscal year.

181 (b) The board is subject to periodic audits performed by a
 182 certified auditor chosen by the Board of County Commissioners.

183 (15) Each member of the board who is not otherwise
 184 required to file a financial disclosure statement pursuant to s.
 185 8, Art. II of the State Constitution or s. 112.3144, Florida
 186 Statutes, must file an annual disclosure of financial interests
 187 pursuant to s. 112.3145, Florida Statutes.

188 (16) The board is eligible for state funding for 3 years
 189 after April 1, 2018, to support its operations and staff costs
 190 as it transitions to Pinellas County.

191 (17) Notwithstanding any law to the contrary, if the
 192 qualified electors of Pinellas County voting in a referendum

HB 1137

2018

193 | approve the transfer of all authority of the board to the Board
194 | of County Commissioners, the board shall stand dissolved as of
195 | the effective date of the referendum.

196 | Section 2. This act shall take effect April 1, 2018.

Se
DB

CAREERS AND COMPETITION SUBCOMMITTEE

HB 1061 by Rep. Moraitis
COMMUNITY ASSOCIATIONS

AMENDMENT SUMMARY
January 30, 2018

Amendment 1 by Rep. Moraitis (line 32):

- Replaces the term "aesthetic value of the building" with "aesthetic appearance of the building."



Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Careers & Competition
 2 Subcommittee

3 Representative Moraitis offered the following:

4

5 **Amendment**

6 Remove line 32 and insert:

7 or symbol do not diminish the aesthetic appearance of the
 8 building;

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1137 Pinellas County Construction Licensing Board, Pinellas County
SPONSOR(S): Peters
TIED BILLS: IDEN./SIM. BILLS: SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	8 Y, 0 N	Renner	Miller
2) Careers & Competition Subcommittee		Brackett <i>VB</i>	Anstead <i>La</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Pinellas County Construction Licensing Board (Board) was created by ch. 75-489, Laws of Florida, as amended. The Board is an independent agency and is not funded or operated by Pinellas County government. The function of the Board is to regulate certain construction and home improvement contractors practicing in all Pinellas County jurisdictions. The Board also provides countywide certification and registration of contractors and countywide certification of journeymen.

Currently, the Board is comprised of 21 members who must be nominated by various associations and organizations. Members are appointed to two-year terms by the Chairman of the Pinellas County Board of Commissioners.

The bill makes numerous revisions to the Board. Specifically, the bill:

- Reduces the number of Board members from 21 to 15 and revises how Board members must be selected;
- Provides that members cannot serve more than two consecutive terms of four years and can be terminated for cause by the Pinellas County Board of Commissioners (PCBC);
- Provides that the Board is a dependent agency of the PCBC;
- Authorizes PCBC to adopt rules;
- Requires the Board to submit a complete report on finances and administrative activities of the Board at the end of each fiscal year to all local governments in Pinellas County and to the public;
- Provides that the Board will be subjected to periodic audits;
- Requires Board members to file a financial disclosure statement and an annual disclosure of financial interests; and
- Provides for dissolution of the Board if qualified electors of Pinellas County vote in a referendum.

The bill provides that the Board is eligible for state funding for three years after April 1, 2018, to support its operations and staff costs as it transitions to Pinellas County.

The Economic Impact Statement estimates the bill will have a \$987,500 fiscal impact on local expenditures and a \$862,500 fiscal impact on state expenditures for Fiscal Year 2018-2019 and a \$987,500 fiscal impact on local expenditures and a \$912,500 fiscal impact on state expenditures for Fiscal Year 2019-2020 for personnel and operating costs, as well as licensing and compliance software.

The bill has an effective date of April 1, 2018.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Pinellas County Construction Licensing Board (Board) was created by Chapter 75-489, Laws of Florida, as amended. The Board is an independent agency and is not funded or operated by Pinellas County government. The function of the Board is to regulate certain construction and home improvement contractors practicing in all Pinellas County jurisdictions.¹ The Board also provides countywide certification and registration of contractors and countywide certification of journeymen.² The Board is funded through the collection of money, such as fines and fees, from the registration, certification, and regulation of countywide contractors and journeyman.³

The Board consists of 21 members:⁴

- Two general contractors;
- Two building contractors;
- Two residential contractors;
- One Florida registered architect doing business in Pinellas County;
- One electrical contractor;
- One plumbing contractor;
- One mechanical contractor;
- One roofing or sheet metal contractor;
- One swimming pool, aluminum or veneer specialty contractor;
- Two fire marshals;
- Three building directors. One each from St. Petersburg, Clearwater and Pinellas County;
- One North county building director from one of the following municipalities: Tarpon Springs, Dunedin, Oldsmar, Safety Harbor, Belleair, Belleair Bluffs, or Largo;
- One South county building director from one of the following municipalities: South Pasadena, Gulfport, Seminole, Kenneth City, or Pinellas Park;
- One Beach Community building director from one of the following: the Town of Belleair Beach, the Town of Belleair Shores, the City of Redington Beach, the City of North Redington Beach, the City of Madeira Beach, the City of Indian Rocks Beach, the Town of Indian Shores, the Town of Redington Shores, the City of Treasure Island, and the City of St. Pete Beach, and
- One consumer member who is a resident and citizen of Pinellas County and who is not and never has been a member or practitioner of any of the trades or professions regulated by the board or a member or practitioner of any closely related trade or profession.

Members of the Board are selected by the Chairman of the Pinellas County Board of Commissioners (Chairman), and must be selected as follows:⁵

- Three building directors of the City of Clearwater, City of St. Petersburg and the County of Pinellas;
- One north county building director from one of the following municipalities: Tarpon Springs, Dunedin, Oldsmar, Safety Harbor, Belleair, Belleair Bluffs, or Largo;
- One south county building director from one the following municipalities: South Pasadena, Gulfport, Seminole, Kenneth City, or Pinellas Park;
- One Beach Community building director from a list of three nominees submitted by The Barrier Island Governmental Council;

¹ Pinellas County Construction Licensing Board website, available at http://www.pccclb.com/about_us.htm (last access Jan. 7, 2018).

² *Id.*

³ Ch. 75-489, Laws of Fla.

⁴ Ch. 75-489, Laws of Fla. as amended by Ch. 03-319, Laws of Fla.

⁵ Ch. 75-489, Laws of Fla. as amended by Ch. 03-319, Laws of Fla.

- A Florida Registered Architect from a list of three recommended architects submitted by the American Institute of Architects Florida Central Chapter, St. Petersburg and Clearwater Sections;
- Two who are primarily engaged in business as general contractors from a list of five submitted by the Associated General Contractors of Mid-Florida, Inc.;
- Two who are primarily engaged in business as building contractors from a list of five submitted by the Contractors and Builders Association of Pinellas County;
- Two who are primarily engaged in the business as residential building contractors from a list of five submitted by the Contractors and Builders Association of Pinellas County;
- One who is an electrical contractor from a list of five supplied by the Electrical Council of Florida, Pinellas County Chapter;
- One who is a plumbing contractor from a list of five supplied by the Pinellas Association of Plumbing-Heating-Cooling Contractors, Inc.;
- Two who are fire marshals, who are active members of the Tampa Bay Area Fire Marshals Association, from a list of five supplied by said association, one of whom shall serve an initial term of three years, the other to serve an initial term of two years, with successors to serve for a term of two years thereafter;
- One who is a mechanical or Class A air conditioning contractor from a list of five, supplied by the Refrigeration and Air Conditioning Contractors' Association ("RACCA");
- One roofing or sheet metal contractor and one swimming pool, aluminum or veneer specialty contractor;
- One consumer member.

The building director members from the City of Clearwater, the City of St. Petersburg, and Pinellas County, must be permanent members of the Board. All other members are appointed to two-year terms by the Chairman.⁶

The following members must commence their terms in even-numbered years:

- the Florida registered architect;
- One general contractor;
- One building contractor;
- One residential building contractor;
- The electrical contractor;
- One fire marshal;
- The north county building director;
- The south county building director; and
- The Beach Community building director.⁷

The following members must commence their terms in odd-numbered years:

- One general contractor;
- One building contractor;
- One residential building contractor;
- The mechanical or Class A air-conditioning contractor;
- The plumbing contractor;
- One fire marshal;
- The roofing or sheet metal contractor;
- The swimming pool, aluminum, or veneer specialty contractor; and
- The consumer member.⁸

Pinellas County Audit and Grand Jury Report

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

In 2017, an audit was performed and a grand jury convened to investigate past management, operations and practices of the PCCLB after numerous complaints were made.

On September, 20, 2017, the Pinellas County Division of Inspector General released an audit of the PCCLB⁹ that outlined 93 problems at the agency including governance, finance, information technology, investigative process, licensing of contractors and journeymen, and administrative deficiencies. The audit concluded "that there is weak oversight, poor management, and inadequate controls over PCCLB processes. The current governance structure does not support the organization."¹⁰

On the same day, a grand jury released a report¹¹ and recommended the PCCLB remain an independent agency but with "significant changes." Some of those changes include:

- Reducing the board from 21 members to 15;
- Subjecting the Board to a county audit;
- Issuing an annual report on its operations and finances to the public; and
- Requiring Board members to file financial disclosures.¹²

Effect of Proposed Changes

The bill reduces the number of Board members from 21 to 15 and makes the following changes for how a member must be selected:

- Eight members, "each of whom practices or is primarily engaged in business but is not more than one of the following:"
 - A licensed general contractor;
 - A Florida registered architect;
 - A licensed residential building contractor;
 - A licensed electrical contractor or a licensed plumbing contractor;
 - A mechanical contractor or a Class A air conditioning contractor;
 - A licensed roofing contractor;
 - A licensed sheet metal contractor; and
 - A licensed swimming pool, aluminum, or veneer specialty contractor
- The Pinellas County building official;
- Two consumer representatives not affiliated with the construction industry;
- A fire official;
- Three building officials including:
 - A north county building official from one of the following municipalities: Clearwater, Tarpon Springs, Dunedin, Oldsmar, Safety Harbor, Belleair, Belleair Bluffs, or Largo;
 - A south county building official from one of the following municipalities: St. Petersburg, South Pasadena, Gulfport, Seminole, Kenneth City, or Pinellas Park; and
 - A beach community building official from one of the following municipalities: the Town of Belleair Beach, the Town of Belleair Shores, the City of Redington Beach, the City of North Redington Beach, the City of Madeira Beach, the City of Indian Rocks Beach, the Town of Indian Shores, the Town of Redington Shores, the City of Treasure Island, and the City of St. Pete Beach.

⁹ Pinellas County, Division of Inspector General, *Audit of the Pinellas County Construction Licensing Board*, September 20, 2017, available at http://www.pinellasclerk.org/aspInclude2/pdf/inspector_general/RPT2017-14.pdf (last accessed Jan. 8, 2018).

¹⁰ *Id.* at 2.

¹¹ Grand Jury Presentment to the Honorable Anthony Rondolino, Judge of the Sixth Judicial Circuit Court (Pinellas County, Sept. 20, 2017), available at https://www.pinellasclerk.org/aspInclude2/pdf/inspector_general/GrandJuryPresentmentPCCLB.pdf (last accessed Jan. 9, 2018)

¹² *Id.*

All members of the board are appointed by the Pinellas County Board of Commissioners (PCBC), and must be residents of Pinellas County. The PCBC shall appoint members to four-year terms. Board members cannot serve more than two consecutive terms, but may be reappointed after a two-year hiatus. However, the limitation does not apply to any of the governmental building official or fire marshal appointees. The Board must elect a chair and vice chair to serve two-year terms in those positions. Board members can be terminated for cause by the PCBC.

The bill revises which Board members' terms expire in even-numbered years and which expire in odd-numbered years. All terms of office expire on September 30th of the last year of the term. The following members' terms expire in even-numbered years:

- The licensed general contractor;
- The registered architect;
- The licensed residential building contractor;
- The licensed electrical or plumbing contractor;
- One of the consumer representatives;
- The North County building official; and
- The Beach Community building official.

The following members' terms expire in odd-numbered years:

- The mechanical or Class A air-conditioning contractor;
- The fire official;
- The licensed roofing contractor;
- The swimming pool, aluminum, or veneer specialty contractor;
- The sheet metal contractor;
- One of the consumer representatives; and
- The South County building official.

The bill provides that the Board is a dependent agency of the PCBC. The PCBC is authorized to adopt rules to implement this act, including, but not limited to rules relating to Board finances and contribution for costs associated with this act to be borne by the county, and to remove any Board member at will. The authority of the PCBC over selection of the members of the Board renders the Board a dependent district of the County.¹³ However, the bill does not reduce the Board's regulatory authority, which apparently will continue to control over any conflicting municipal ordinances.¹⁴

The bill provides that Board staff are employees of Pinellas County, which is responsible for all costs associated with the Board. The Board must submit a complete report on finances and administrative activities of the Board as of the end of each fiscal year to all local governments in Pinellas County and to the public. The Board will be subjected to periodic audits performed by a certified auditor chosen by the PCBC.

All Board members are required to file a financial disclosure statement¹⁵ and an annual disclosure of financial interests.¹⁶ The Board is eligible for state funding for three years after April 1, 2018, to support its operations and staff costs as it transitions to Pinellas County. Lastly, the bill provides for dissolution of the Board if qualified electors of Pinellas County vote in a referendum.

¹³ Section 189.012(2), F.S.

¹⁴ The Pinellas County Charter was created by special act in 1980 and approved by county referendum. *See* ch. 80-590, Laws of Fla. Under the Charter, if a county ordinance conflicts with a municipal ordinance, the county ordinance prevails when it concerns a power of local government lawfully enacted by special law as of the time the Charter was adopted, but the County subsequently could not amend such special law to increase or expand its power, jurisdiction, or services over the municipalities. Art. II, s. 2.01, Pinellas County Charter. As the power of the Board constitutes a power of local government existing as of the date the Charter was adopted, the continuation of its authority in a dependent district of the County by special act of the Legislature would appear to meet the Charter requirements.

¹⁵ *See* FLA. CONST. art. II, s. 8 or s. 112.3144, F.S.

¹⁶ *See* s. 112.3145, F.S.

The Economic Impact Statement drafted by Pinellas County, estimates the bill will have a \$987,500 fiscal impact on local expenditures and a \$862,500 fiscal impact on state expenditures for Fiscal Year 2018-2019 and a \$987,500 fiscal impact on local expenditures and a \$912,500 fiscal impact on state expenditures for Fiscal Year 2019-2020 for personnel and operating costs, as well as licensing and compliance software. These estimates include "\$300,000 per year for implementation of software solution as needed as documented in Pinellas County Inspector General Audit Report (2017-14)." The statement also indicates that the estimate "does not include costs associated with continuation of 6-month pilot program by Pinellas County Sheriff for enforcement as results of pilot are pending analysis and recommendations."

B. SECTION DIRECTORY:

Section 1 Amends ch. 75-489, Laws of Florida, relating to the Pinellas County Construction Licensing Board.

Section 2 Provides an effective date of April 1, 2018.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 1, 2017

WHERE? *Tampa Bay Times*

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to the Pinellas County Construction
 Licensing Board; amending ch. 75-489, Laws of Florida,
 as amended; revising the composition of the Pinellas
 County Construction Licensing Board; revising the
 terms of the board members; providing for termination
 of members; providing for the election and terms of a
 chair and vice chair; providing that board staff are
 employees of Pinellas County; providing that the board
 is a dependent agency of the Board of County
 Commissioners of Pinellas County; authorizing the
 board of county commissioners to adopt rules;
 requiring the board to provide an annual report on
 finances and administrative activities; subjecting the
 board to periodic audits; requiring members of the
 board to file financial disclosure statements;
 specifying the board is eligible for state funding to
 support its operations during transition to the
 county; providing for dissolution of board upon
 approval at referendum; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 12 of part

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

25 II of chapter 75-489, Laws of Florida, as amended by chapters
 26 89-504, 93-387, and 2003-319, Laws of Florida, are amended, and
 27 subsections (13) through (17) are added to that section, to
 28 read:

29 Section 12. Pinellas County Construction Licensing Board;
 30 organization; meetings, and powers.—

31 (1) The Pinellas County Construction Licensing Board is
 32 created, within the county of Pinellas, consisting of 15
 33 members, as follows:

34 (a) Eight members, each of whom practices as or, as
 35 appropriate, is primarily engaged in business as not more than
 36 one of the following: a licensed general contractor, a Florida
 37 registered architect, a licensed residential building
 38 contractor, a licensed electrical contractor or a licensed
 39 plumbing contractor, a mechanical contractor or a Class A air
 40 conditioning contractor, a licensed roofing contractor, a
 41 licensed sheet metal contractor, or a licensed swimming pool,
 42 aluminum, or veneer specialty contractor.

43 (b) The Pinellas County building official.

44 (c) Two consumer representatives not affiliated with the
 45 construction industry.

46 (d) A fire official.

47 (e) Three building officials, as follows:

48 1. A North county building official from one of the

49 following municipalities: Clearwater, Tarpon Springs, Dunedin,
 50 Oldsmar, Safety Harbor, Belleair, Belleair Bluffs, or Largo;

51 2. A South county building official from one of the
 52 following municipalities: St. Petersburg, South Pasadena,
 53 Gulfport, Seminole, Kenneth City, or Pinellas Park; and

54 3. A Beach Community building official from one of the
 55 following municipalities: the Town of Belleair Beach, the Town
 56 of Belleair Shores, the City of Redington Beach, the City of
 57 North Redington Beach, the City of Madeira Beach, the City of
 58 Indian Rocks Beach, the Town of Indian Shores, the Town of
 59 Redington Shores, the City of Treasure Island, and the City of
 60 St. Pete Beach ~~twenty-one (21) members, two (2) of whom are~~
 61 ~~primarily engaged in business as general contractors; two (2) of~~
 62 ~~whom are primarily engaged in business as building contractors,~~
 63 ~~two (2) of whom are primarily engaged in business as residential~~
 64 ~~contractors, one (1) who is a Florida registered architect doing~~
 65 ~~business in Pinellas County, one (1) who is an electrical~~
 66 ~~contractor, one (1) who is a plumbing contractor, one (1) who is~~
 67 ~~a mechanical contractor, one who is a roofing or sheet metal~~
 68 ~~contractor, one (1) who is a swimming pool, aluminum or veneer~~
 69 ~~specialty contractor, two (2) fire marshals, the three (3)~~
 70 ~~building directors of the following: City of St. Petersburg,~~
 71 ~~City of Clearwater and County of Pinellas, one (1) North county~~
 72 ~~building director from one of the following municipalities:~~

73 ~~Tarpon Springs, Dunedin, Oldsmar, Safety Harbor, Belleair,~~
 74 ~~Belleair Bluffs, or Largo, one (1) South county building~~
 75 ~~director from one of the following municipalities: South~~
 76 ~~Pasadena, Gulfport, Seminole, Kenneth City, or Pinellas Park,~~
 77 ~~one (1) Beach Community building director from one of the~~
 78 ~~following: the Town of Belleair Beach, the Town of Belleair~~
 79 ~~Shores, the City of Redington Beach, the City of North Redington~~
 80 ~~Beach, the City of Madeira Beach, the City of Indian Rocks~~
 81 ~~Beach, the Town of Indian Shores, the Town of Redington Shores,~~
 82 ~~the City of Treasure Island, and the City of St. Pete Beach, and~~
 83 ~~one (1) consumer member who is a resident and citizen of~~
 84 ~~Pinellas County and who is not and never has been a member or~~
 85 ~~practitioner of any of the trades or professions regulated by~~
 86 ~~the board or a member or practitioner of any closely related~~
 87 ~~trade or profession. All members of the board must ~~shall~~ be~~
 88 ~~residents of Pinellas County and are appointed by the ~~Chairman~~~~
 89 ~~of the Board of County Commissioners.~~

90 (3) (a) A board member may not serve more than two
 91 consecutive terms of 4 years, but may be reappointed after a 2-
 92 year hiatus. Board members may be terminated for cause by the
 93 Board of County Commissioners. This limitation shall not apply
 94 to any of the governmental building official or fire marshal
 95 appointees. Members of the board shall be selected as follows:
 96 ~~The three (3) building directors of the City of Clearwater, City~~

97 ~~of St. Petersburg and the County of Pinellas; one (1) North~~
 98 ~~county building director and one (1) South county building~~
 99 ~~director selected by the Chairman of the Board of County~~
 100 ~~Commissioners from the municipalities listed in subsection (1);~~
 101 ~~one (1) Beach Community building director appointed from a list~~
 102 ~~of three (3) nominees submitted by The Barrier Island~~
 103 ~~Governmental Council; a Florida Registered Architect appointed~~
 104 ~~from a list of three recommended architects submitted by the~~
 105 ~~American Institute of Architects Florida Central Chapter, St.~~
 106 ~~Petersburg and Clearwater Sections; two (2) of whom are~~
 107 ~~primarily engaged in business as general contractors from a list~~
 108 ~~of five (5) submitted by The Associated General Contractors of~~
 109 ~~Mid-Florida, Inc.; two (2) of whom are primarily engaged in~~
 110 ~~business as Building Contractors from a list of five (5)~~
 111 ~~submitted by the Contractors and Builders Association of~~
 112 ~~Pinellas County; two (2) of whom are primarily engaged in the~~
 113 ~~business as residential building contractors from a list of five~~
 114 ~~(5) submitted by the Contractors and Builders Association of~~
 115 ~~Pinellas County; one (1) who is an electrical contractor from a~~
 116 ~~list of five (5) supplied by the Electrical Council of Florida,~~
 117 ~~Pinellas County Chapter; one (1) who is a Plumbing contractor~~
 118 ~~from a list of five (5) supplied by the Pinellas Association of~~
 119 ~~Plumbing Heating Cooling Contractors, Inc.; two (2) of whom are~~
 120 ~~fire marshals, who shall be active members of the Tampa Bay Area~~

121 ~~Fire Marshals Association, from a list of five (5) supplied by~~
 122 ~~said association, one (1) of whom shall serve an initial term of~~
 123 ~~three (3) years, the other to serve an initial term of two (2)~~
 124 ~~years, with successors to serve for a term of two (2) years~~
 125 ~~thereafter; one (1) who is a mechanical or Class A air~~
 126 ~~conditioning contractor from a list of five (5), supplied by the~~
 127 ~~Refrigeration and Air Conditioning Contractors' Association~~
 128 ~~("RACCA"); one (1) roofing or sheet metal contractor and one (1)~~
 129 ~~swimming pool, aluminum or veneer specialty contractor selected~~
 130 ~~by the Chairman of the Board of County Commissioners; one~~
 131 ~~consumer member to be appointed by the Chairman of the Board of~~
 132 ~~County Commissioners in accordance with paragraph 2(a). The~~
 133 ~~building director members from the City of Clearwater, from the~~
 134 ~~City of St. Petersburg and Pinellas County, shall be permanent~~
 135 ~~members of the board. All other members shall serve terms of two~~
 136 ~~(2) years.~~

137 **(b)** The terms of the following members expire shall
 138 commence their terms in even-numbered years: the licensed
 139 general contractor, the Florida registered architect, the
 140 licensed residential ~~one (1) general contractor, one (1)~~
 141 building contractor, the licensed ~~or, one (1) residential~~
 142 building contractor, ~~one (1) electrical~~ or licensed plumbing
 143 contractor, a consumer representative, ~~and one (1) fire marshal,~~
 144 ~~the North county, South county, and Beach Community building~~

145 officials ~~directors~~. The terms of the following members expire
 146 ~~shall commence their terms~~ in odd-numbered years: the one (1)
 147 ~~general contractor, one (1) building contractor, one (1)~~
 148 ~~residential building contractor, one (1) mechanical contractor~~
 149 ~~or Class A air conditioning contractor; the, one (1) plumbing~~
 150 ~~contractor, one (1) fire~~ official; the licensed marshal, one (1)
 151 ~~roofing or sheet metal contractor; the, one (1) swimming pool,~~
 152 ~~aluminum, or veneer specialty contractor; the sheet metal~~
 153 ~~contractor, a, and one (1) consumer~~ representative; and the
 154 South county building official member.

155 (c) As the terms of members expire, the ~~Chairman of the~~
 156 Board of County Commissioners of Pinellas County shall appoint a
 157 member to fill the vacancy for a term of 4 ~~two (2)~~ years in the
 158 ~~same manner as that membership was originally filled. The~~
 159 ~~architect, contractor, electrical, plumbing and mechanical~~
 160 ~~members shall be selected from the county at large. The board~~
 161 shall elect from one of its members a chair to serve as chairman
 162 and a vice chair one of its members to serve as vice chairman,
 163 for terms of up to 2 years a term to be set by the board. All
 164 terms of office expire on September 30 of the last year of the
 165 term. Vacancies in the membership occurring prior to the end of
 166 a member's term for any cause shall be filled by the Pinellas
 167 County Board of County Commissioners ~~appointment in the same~~
 168 ~~manner as that membership was originally filled.~~

169 (13) Board staff are employees of Pinellas County, and
 170 Pinellas County is responsible for all costs associated
 171 therewith. The board is a dependent agency of the Board of
 172 County Commissioners. The Board of County Commissioners may
 173 adopt rules to implement this act, including, but not limited
 174 to, rules relating to board finances and contribution for costs
 175 associated with this act to be borne by the county, and may
 176 remove any member of the board at will.

177 (14) (a) The board shall submit to all local governments in
 178 Pinellas County, and make available to the public, a complete
 179 report on finances and administrative activities of the board as
 180 of the end of each fiscal year.

181 (b) The board is subject to periodic audits performed by a
 182 certified auditor chosen by the Board of County Commissioners.

183 (15) Each member of the board who is not otherwise
 184 required to file a financial disclosure statement pursuant to s.
 185 8, Art. II of the State Constitution or s. 112.3144, Florida
 186 Statutes, must file an annual disclosure of financial interests
 187 pursuant to s. 112.3145, Florida Statutes.

188 (16) The board is eligible for state funding for 3 years
 189 after April 1, 2018, to support its operations and staff costs
 190 as it transitions to Pinellas County.

191 (17) Notwithstanding any law to the contrary, if the
 192 qualified electors of Pinellas County voting in a referendum

193 | approve the transfer of all authority of the board to the Board
194 | of County Commissioners, the board shall stand dissolved as of
195 | the effective date of the referendum.

196 | Section 2. This act shall take effect April 1, 2018.

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DB

CAREERS AND COMPETITION SUBCOMMITTEE

HB 1137 by Rep. Peters PINELLAS COUNTY CONSTRUCTION LICENSING BOARD

AMENDMENT SUMMARY

January 30, 2018

Amendment 1 by Rep. Peters (lines 34 - 141):

- Provides that eight of the fifteen members of the board must include the following:
 - A general contractor licensed to do business in Florida and actively engaged in the profession.
 - An architect registered in Florida and actively engaged in the profession.
 - A residential contractor licensed to do business in Florida and actively engaged in the profession.
 - An electrical or plumbing contractor licensed to do business in Florida and actively engaged in the profession.
 - A mechanical or Class A air-conditioning contractor licensed to do business in Florida and actively engaged in the profession.
 - A roofing contractor licensed to do business in Florida and actively engaged in the profession.
 - A sheet metal contractor licensed to do business in Florida and actively engaged in the profession.
 - A pool contractor, aluminum specialty contractor, or veneer specialty contractor licensed to do business in Florida and actively engaged in the profession.
- Removes the provision that the Pinellas Board of County Commissioners may terminate a board member for cause, but continues to allow terminations at will.
- Replaces the term "fire marshal" with "fire official" to conform the language in the bill.
- Makes other technical and conforming changes.

Amendment 2 by Rep. Peters (lines 189 - 196):

- Amends the date the board is eligible for state funding from "after April 1, 2018" to "after July 1, 2018."
- Amends the effective date from April 1, 2018 to July 1, 2018.



Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Careers & Competition
 2 Subcommittee

3 Representative Peters offered the following:

4

5 **Amendment**

6 Remove lines 34-141 and insert:

7 (a) Eight members including the following:

8 1. One general contractor licensed to do business in this
 9 state and actively engaged in the profession.

10 2. One architect registered to practice in this state and
 11 actively engaged in the profession.

12 3. One residential contractor licensed to do business in
 13 this state and actively engaged in the profession.

14 4. One electrical contractor or plumbing contractor who
 15 is licensed to do business in this state and actively engaged in
 16 the profession.



Amendment No. 1.

17 5. One mechanical contractor or Class A air-conditioning
18 contractor who is licensed to do business in this state and
19 actively engaged in the profession.

20 6. One roofing contractor who is licensed in this state
21 and actively engaged in the profession.

22 7. One sheet metal contractor who is licensed in this
23 state and actively engaged in the profession.

24 8. One swimming pool contractor, aluminum specialty
25 contractor, or veneer specialty contractor who is licensed in
26 this state and actively engaged in the profession.

27 (b) The Pinellas County building official.

28 (c) Two consumer representatives not affiliated with the
29 construction industry.

30 (d) A fire official.

31 (e) Three building officials, as follows:

32 1. A North county building official from one of the
33 following municipalities: Clearwater, Tarpon Springs, Dunedin,
34 Oldsmar, Safety Harbor, Belleair, Belleair Bluffs, or Largo;

35 2. A South county building official from one of the
36 following municipalities: St. Petersburg, South Pasadena,
37 Gulfport, Seminole, Kenneth City, or Pinellas Park; and

38 3. A Beach Community building official from one of the
39 following municipalities: the City of Belleair Beach, the Town
40 of Belleair Shore, the Town of Redington Beach, the Town of
41 North Redington Beach, the City of Madeira Beach, the City of

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Amendment No. 1.

42 Indian Rocks Beach, the Town of Indian Shores, the Town of
43 Redington Shores, the City of Treasure Island, or the City of
44 St. Pete Beach ~~twenty-one (21) members, two (2) of whom are~~
45 ~~primarily engaged in business as general contractors; two (2) of~~
46 ~~whom are primarily engaged in business as building contractors,~~
47 ~~two (2) of whom are primarily engaged in business as residential~~
48 ~~contractors, one (1) who is a Florida registered architect doing~~
49 ~~business in Pinellas County, one (1) who is an electrical~~
50 ~~contractor, one (1) who is a plumbing contractor, one (1) who is~~
51 ~~a mechanical contractor, one who is a roofing or sheet metal~~
52 ~~contractor, one (1) who is a swimming pool, aluminum or veneer~~
53 ~~specialty contractor, two (2) fire marshals, the three (3)~~
54 ~~building directors of the following: City of St. Petersburg,~~
55 ~~City of Clearwater and County of Pinellas, one (1) North county~~
56 ~~building director from one of the following municipalities:~~
57 ~~Tarpon Springs, Dunedin, Oldsmar, Safety Harbor, Belleair,~~
58 ~~Belleair Bluffs, or Largo, one (1) South county building~~
59 ~~director from one of the following municipalities: South~~
60 ~~Pasadena, Gulfport, Seminole, Kenneth City, or Pinellas Park,~~
61 ~~one (1) Beach Community building director from one of the~~
62 ~~following: the Town of Belleair Beach, the Town of Belleair~~
63 ~~Shores, the City of Redington Beach, the City of North Redington~~
64 ~~Beach, the City of Madeira Beach, the City of Indian Rocks~~
65 ~~Beach, the Town of Indian Shores, the Town of Redington Shores,~~
66 ~~the City of Treasure Island, and the City of St. Pete Beach, and~~

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Amendment No. 1.

67 ~~one (1) consumer member who is a resident and citizen of~~
68 ~~Pinellas County and who is not and never has been a member or~~
69 ~~practitioner of any of the trades or professions regulated by~~
70 ~~the board or a member or practitioner of any closely related~~
71 ~~trade or profession. All members of the board must shall be~~
72 ~~residents of Pinellas County and are appointed by the Chairman~~
73 ~~of the Board of County Commissioners.~~

74 (3) (a) A board member may not serve more than two
75 consecutive terms of 4 years, but may be reappointed after a 2-
76 year hiatus. This limitation shall not apply to any of the
77 governmental building official or fire official appointees.
78 ~~Members of the board shall be selected as follows: The three (3)~~
79 ~~building directors of the City of Clearwater, City of St.~~
80 ~~Petersburg and the County of Pinellas; one (1) North county~~
81 ~~building director and one (1) South county building director~~
82 ~~selected by the Chairman of the Board of County Commissioners~~
83 ~~from the municipalities listed in subsection (1); one (1) Beach~~
84 ~~Community building director appointed from a list of three (3)~~
85 ~~nominees submitted by The Barrier Island Governmental Council; a~~
86 ~~Florida Registered Architect appointed from a list of three~~
87 ~~recommended architects submitted by the American Institute of~~
88 ~~Architects Florida Central Chapter, St. Petersburg and~~
89 ~~Clearwater Sections; two (2) of whom are primarily engaged in~~
90 ~~business as general contractors from a list of five (5)~~
91 ~~submitted by The Associated General Contractors of Mid-Florida,~~



Amendment No. 1.

92 ~~Ine.; two (2) of whom are primarily engaged in business as~~
93 ~~Building Contractors from a list of five (5) submitted by the~~
94 ~~Contractors and Builders Association of Pinellas County; two (2)~~
95 ~~of whom are primarily engaged in the business as residential~~
96 ~~building contractors from a list of five (5) submitted by the~~
97 ~~Contractors and Builders Association of Pinellas County; one (1)~~
98 ~~who is an electrical contractor from a list of five (5) supplied~~
99 ~~by the Electrical Council of Florida, Pinellas County Chapter;~~
100 ~~one (1) who is a Plumbing contractor from a list of five (5)~~
101 ~~supplied by the Pinellas Association of Plumbing Heating Cooling~~
102 ~~Contractors, Inc.; two (2) of whom are fire marshals, who shall~~
103 ~~be active members of the Tampa Bay Area Fire Marshals~~
104 ~~Association, from a list of five (5) supplied by said~~
105 ~~association, one (1) of whom shall serve an initial term of~~
106 ~~three (3) years, the other to serve an initial term of two (2)~~
107 ~~years, with successors to serve for a term of two (2) years~~
108 ~~thereafter; one (1) who is a mechanical or Class A air~~
109 ~~conditioning contractor from a list of five (5), supplied by the~~
110 ~~Refrigeration and Air Conditioning Contractors' Association~~
111 ~~("RACCA"); one (1) roofing or sheet metal contractor and one (1)~~
112 ~~swimming pool, aluminum or veneer specialty contractor selected~~
113 ~~by the Chairman of the Board of County Commissioners; one~~
114 ~~consumer member to be appointed by the Chairman of the Board of~~
115 ~~County Commissioners in accordance with paragraph 2(a). The~~
116 ~~building director members from the City of Clearwater, from the~~

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Amendment No. 1.

117 ~~City of St. Petersburg and Pinellas County, shall be permanent~~
118 ~~members of the board. All other members shall serve terms of two~~
119 ~~(2) years.~~

120 (b) The terms of the following members expire shall
121 ~~commence their terms~~ in even-numbered years: the licensed
122 general contractor, the Florida registered architect, the
123 licensed residential one (1) general contractor, one (1)
124 ~~building contractor, the licensed or, one (1) residential~~



Amendment No. 2.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Careers & Competition
2 Subcommittee
3 Representative Peters offered the following:

Amendment

6 Remove lines 189-196 and insert:
7 after July 1, 2018, to support its operations and staff costs as
8 it transitions to Pinellas County.

9 (17) Notwithstanding any law to the contrary, if the
10 qualified electors of Pinellas County voting in a referendum
11 approve the transfer of all authority of the board to the Board
12 of County Commissioners, the board shall stand dissolved as of
13 the effective date of the referendum.

14 Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1211 Airboat Regulation
SPONSOR(S): Abruzzo
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson <i>MW</i>	Anstead <i>La</i>
2) Natural Resources & Public Lands Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill creates "Ellie's Law," which, beginning December 31, 2018, prohibits a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard an airboat:

- A photographic identification card.
- Proof of compliance with the boating safety education course requirements, as provided in s. 327.395, F.S.
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule.
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain's license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain's license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

The bill provides that a person who violates the airboat operating provisions commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment or a \$500 fine.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Airboats¹

Airboats are primarily used to navigate shallow waters and wetlands, and this purpose is reflected in their design. Airboats typically have a flat-bottomed hull, little displacement, and are powered by an aircraft-like engine and propeller unit that is mounted above the stern.² This design creates a high center of gravity and relatively poor flotation, making airboats susceptible to capsizing or sinking. Unlike conventional vessels which use water for propulsion, airboats cannot go in reverse.

Airboats are considered vessels³ and are subject to vessel safety and operation regulations pursuant to state and federal law. According to recent news reports, “Though an impressive 12,164 airboats, 1,025 of which are commercial, are registered in Florida, the industry is virtually unregulated. Despite high speeds, there's no requirement to wear seat belts or life vests, and airboat pilots rarely take boating safety classes.”⁴

Florida Vessel Safety Law

All vessels, with the exception of non-motor-powered vessels less than 16 feet in length, non-motor-powered canoes, kayaks, racing shells or rowing sculls, regardless of length, must be registered in the state of Florida through the local Tax Collector's Office. Florida leads the nation in the number of vessels registered in any state with close to one million vessels.⁵ The Fish and Wildlife Conservation Commission (FWC) is charged with coordinating and managing the waterways of the state to provide for safe and enjoyable boating.⁶ Specifically, the Division of Law Enforcement within the FWC provides protection to those who enjoy Florida's waterways, while also enforcing resource protection and boating safety laws.⁷

Chapter 327, F.S., titled the “Florida Vessel Safety Law,” includes laws relating to vessel safety, such as boating safety education course requirements and vessel operation requirements. The Florida Vessel Safety Law, as well as vessel titling, certificate, and registration requirements, are authorized to be enforced by the following entities or officers:

- The Division of Law Enforcement within the FWC and its officers;
- Sheriffs of the various counties and their deputies;
- Municipal police officers; and

¹ See Fish and Wildlife Conservation Commission (FWC), *The Florida Boaters Guide: A handbook of Boating Laws and Responsibilities*, 15 https://www.boat-ed.com/assets/pdf/handbook/fl_handbook_entire.pdf (last visited Jan. 16, 2018).

² Section 327.02(1), F.S., defines “Airboat” as a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.

³ Section 327.02, F.S., defines the term “vessel” as being “synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.”

⁴ The Miami New Times, *Florida Airboat Accidents Have Killed Seven and Injured Dozens in Recent Years*, Dec. 12, 2017, <http://www.miaminewtimes.com/news/floridas-unregulated-airboat-industry-9903095>.

⁵ FWC, 2016 Boating Accident Statistical Report, *Introduction*, II (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

⁶ FWC, *Boating in Florida*, <http://myfwc.com/boating/> (last visited Jan. 8, 2018).

⁷ FWC, 2016 Boating Accident Statistical Report, *Introduction*, I (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

- Any other law enforcement officer described in s. 943.10, F.S.⁸

Any individual who operates a vessel with a willful disregard for the safety of persons or property will be cited for reckless operation of a vessel, which is a first degree misdemeanor punishable by a fine of up to \$1,000 or a term of imprisonment not exceeding one year. All operators are responsible for operating his or her vessel in a reasonable and prudent manner with regard for other vessel traffic, posted restrictions, the presence of divers-down flags, and other circumstances so as not to endanger people or property. Failure to do so is considered careless operation, which is a noncriminal infraction punishable by a penalty of \$50.⁹

Safety Equipment

All vessels are required to have size-specific safety equipment on board. The following safety items are required by state and federal law to be aboard a vessel, and if found to be missing during a safety inspection, can result in a vessel citation:

- Visible distress signals;
- Fire extinguishers;
- Navigation lights;
- Personal floatation devices; and
- Sound-producing devices.¹⁰

Additionally, airboats must be equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel.¹¹ Such flag must be orange in color and be displayed so that the visibility of the flag is not obscured in any direction.¹² An airboat is also required to have a device manufactured to effectively muffle the sound of engine exhaust.¹³ These airboat specific requirements do not apply to a person participating in an event for which a permit is required, or which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions.¹⁴

Boating Safety Identification Cards

In order to operate a vessel of 10 horsepower or greater, Florida law requires anyone who was born on or after January 1, 1988, to have aboard the vessel photographic identification and an FWC-issued boater safety identification card.¹⁵ The card is proof that the holder has:

- Completed a commission-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;
- Passed a course equivalency examination approved by the FWC; or
- Passed a temporary certificate examination developed or approved by the FWC.¹⁶

⁸ Section 327.70, F.S.; Section 943.10, F.S., defines the term “law enforcement officer” as “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state...”

⁹ s. 327.73, F.S.

¹⁰ See s. 327.50, F.S., and FWC, *Boating Regulations, Equipment and Lighting Requirements*, available at <http://myfwc.com/boating/regulations/#nogo> (last visited Jan. 8, 2018) and U.S. Coast Guard Auxiliary, *Vessel Safety Checks*, available at <http://cgaux.org/vsc/> (last visited Jan. 8, 2018).

¹¹ s. 327.391(3), F.S.

¹² *Id.*

¹³ s. 327.391, F.S.

¹⁴ *Id.*

¹⁵ s. 327.395(1), F.S.

¹⁶ *Id.*

The FWC may appoint liveries, marinas, or other persons as its agents to administer the course or examinations and issue identification cards.¹⁷ An agent is required to charge a \$2 examination fee, which must be forwarded to the FWC with proof of passage of the examination, and may charge and keep a \$1 service fee.¹⁸ The boating courses include coverage related to:

- Vessel safety regulations, including personal flotation device requirements;
- State divers-down flag requirements;
- Boating restricted areas;
- Boating accidents; and
- Manatee and ecosystem awareness.

An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life.¹⁹ A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.²⁰

A person is exempt from the boater safety identification card requirement if he or she:

- Is licensed by the United States Coast Guard to serve as master of a vessel;
- Operates a vessel only on a private lake or pond;
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel;
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the Florida requirements;
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a valid bill of sale;
- Is operating a vessel within 90 days after completing a commission-approved boater education course or passed a course equivalency examination approved by the commission, and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination; or
- Is exempted by rule of the commission.²¹

The penalty for operating a vessel in violation of the boating safety identification card requirements is a noncriminal infraction, which is punishable by a civil penalty of \$50.²²

Vessels and Passengers for Hire

On federal waters, a United States Coast Guard (USCG) issued license is required in order to legally carry passengers for hire.²³ This includes charters for fishing, sightseeing, diving, transportation, teaching or any use which is considered a passenger for hire situation.²⁴ When carrying 6 passengers or less, an operator of uninspected vessels (OUPV) license is required. When carrying more than 6 passengers, a Master license is required and the vessel itself must be built in accordance with strict

¹⁷ s. 327.395(4), F.S.

¹⁸ *Id.*

¹⁹ s. 327.395(5), F.S.

²⁰ *Id.*

²¹ s. 327.395(6), F.S.

²² s. 327.73(1)(s), F.S.

²³ U.S. Department of Homeland Security, United States Coast Guard Auxiliary, *Captains' License Information*, <http://wow.uscgaux.info/content.php?unit=054-09&category=captains-license-info> (last visited Jan. 17, 2018).

²⁴ *Id.*

inspection standards.²⁵ All USCG issued licenses must be renewed every 5 years, which requires a renewal physical examination and an approved drug test.²⁶

To obtain either an OUPV license or a Master license, an individual must submit an application; have a physical examination taken within 12 months of submitting the application; have an approved drug test taken within 6 months of submitting the application; and have received CPR and First Aid certification within 12 months of submitting the application. Additionally, for an OUPV license an individual must have 90 days of service in the last 3 years on vessels of appropriate tonnage, and have 360 days of deck service in the operation of vessels.²⁷

Additionally, an FWC-issued charter captain or boat license is required to carry passengers for hire for the purpose of taking, attempting to take, or possessing saltwater fish or organisms.²⁸ In order to purchase a charter captain or boat license, an individual must have a USCG captain's license.²⁹

Currently, to operate an airboat for hire that offer tours to passengers in state waters, only a boating safety identification card would be required. A charter boat captain or a USCG issued license would not be required.

Boating Accidents and Citations

In 2016, there were 714 reportable³⁰ boating accidents and 67 boating related fatalities in Florida.³¹ Seventy percent of the operators involved in fatal accidents had no formal boater education.³² The top three primary causes of the accidents reported in 2016 included no proper look-out, operator inexperience, and excessive speed.³³

According to recent news reports, "more than 75" accidents in airboats have taken place in the past three years in Florida. In that period, "at least seven people died" and "at least 102 airboat passengers have been seriously injured."³⁴ Passengers have suffered severed fingers and ears, lacerated livers, ruptured spleens, fractured skulls, cracked spines, and head gashes. "Though 90 percent of those involved in accidents weren't wearing life jackets, three in ten told investigators they couldn't swim," and "more than two-fifths of all injured passengers were ejected from their seats."³⁵ According to one newspapers' examination of accident records, "64 percent assigned fault to the airboat driver, citing infractions such as violation of navigation rules, improper lookout, or alcohol use.' While others were cited for careless and reckless driving.³⁶

The following chart provides a summary of the citations that were issued in 2016 relating to violations for registration and numbering requirements; safety equipment and regulations; boating safety education requirements; and the negligent operation of a vessel.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ FWC, *Charter and Headboat Operators' and Guides'*, <http://myfwc.com/license/saltwater/commercial-fishing/charter/> (last visited Jan. 17, 2018).

²⁹ *Id.*

³⁰ Boating accidents must meet at least one of the five criteria to be classified as reportable: a person dies; a person disappears under circumstances that indicate possible death or injury; a person receives an injury requiring medical treatment beyond immediate first aid; there is at least \$2,000 in aggregate property damage to the vessel or other property; or there is a total loss of a vessel.

³¹ FWC, 2016 Boating Accident Statistical Report, *Violation Summary*, IV (2016) available at <http://myfwc.com/media/4215167/2016BoatStatBook.pdf> (last visited Jan. 3, 2018).

³² *Id.*

³³ *Id.* at 11.

³⁴ Isabella Vi Gomes, *Florida Airboat Accidents Have Killed Seven and Injured Dozens in Recent Years*, The Miami New Times, Dec. 12, 2017, <http://www.miaminewtimes.com/news/floridas-unregulated-airboat-industry-9903095>.

³⁵ *Id.*

³⁶ *Id.*

2016 Uniform Boating Citation Summary³⁷

Citation Type	Number of Citations Issued	
	FWC	Other
Registration and Numbering Operation of unregistered/unnumbered vessels Application, certificate, number or decal violation Special manufacturer and dealer numbers Violation relating to vessel titling Violation relating to Hull Identification Numbers	1,970	556
Safety Equipment and Regulations Equipment and lighting requirements	3,260	432
Boating Safety Education Boating safety education I.D. cards	455	285
Negligent Operation of a Vessel Reckless operation of a vessel Careless operation of a vessel Navigation rule violation resulting in an accident Navigation rule violation not resulting in an accident Failure to report an accident	420	173

Effect of the Bill

The bill creates “Ellie’s Law” in honor of Elizabeth “Ellie” Goldenberg who died on Saturday, May 13, 2017, from injuries she sustained after being thrown from an airboat on an Everglades airboat tour.³⁸

The bill prohibits, beginning December 31, 2018, a person from operating an airboat to carry passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

- A photographic identification card;
- Proof of compliance with the boating safety education course requirements, as provided in s. 327.395, F.S.;
- Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by the Fish and Wildlife Conservation Commission (FWC) rule; and
- A certificate of successful course completion in cardiopulmonary resuscitation and first aid.

A person issued a captain’s license by the United States Coast Guard is not required to complete the boating safety education course. However, proof of such captain’s license is required to be onboard the airboat when carrying passengers for hire on waters of the state.

Additionally, the airboat operator requirements do not apply to a person participating in an event for which a permit is required, or which notice must be given under s. 327.48, F.S., relating to regattas, races, marine parades, tournaments, or exhibitions, due to an existing section wide exemption in present s. 327.391(4), F.S.

The bill provides that a person who violates the airboat operating provisions commits a misdemeanor of the second degree, punishable by up to 60 days imprisonment or a \$500 fine.

³⁷ *Id.* at 35.

³⁸ Howard Cohen, *A day after she graduated, UM student dies in Everglades boat crash*, THE MIAMI HERALD, May 15, 2017, available at <http://www.miamiherald.com/news/local/education/article150577537.html> (last visited Jan. 17, 2018).

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

- Section 1 Provides a short title.
- Section 2 Amends s. 327.391, F.S.; requiring a commercial airboat operator to have specified documents onboard the airboat while carrying passengers for hire; providing an exception; providing a penalty.
- Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have a negative, indeterminate impact on FWC as the bill requires the FWC to adopt rules establishing minimum standards for approved airboat operator courses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative, indeterminate impact on airboat operators who do not already have a United States Coast Guard Captains' License and who will, therefore, have to complete a FWC-approved airboat operator course to continue carrying passengers for hire.

The bill may have an indeterminate positive impact on the private sector by reducing the amount of injuries sustained in airboats and assuring tourists that airboat operators in Florida are sufficiently trained to ensure their safety.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FWC to establish minimum standards for airboat operator courses. There is sufficient existing rulemaking authority for FWC to promulgate these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to airboat regulation; providing a
 3 short title; amending s. 327.391, F.S.; requiring a
 4 commercial airboat operator to have specified
 5 documents onboard the airboat while carrying
 6 passengers for hire; providing an exception; providing
 7 a penalty; providing an effective date.

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

10
 11 Section 1. This act may be cited as "Ellie's Law."

12 Section 2. Subsection (5) is added to section 327.391,
 13 Florida Statutes, to read:

14 327.391 Airboats regulated.—

15 (5) (a) Beginning December 31, 2018, a person may not
 16 operate an airboat to carry passengers for hire on waters of the
 17 state unless he or she has all of the following onboard the
 18 airboat:

- 19 1. A photographic identification card.
 20 2. Proof of compliance with s. 327.395.
 21 3. Proof of successful completion of a commission-approved
 22 airboat operator course that meets the minimum standards
 23 established by commission rule.

24 4. A certificate of successful course completion in
 25 cardiopulmonary resuscitation and first aid.

26 (b) A person issued a captain's license by the United
27 States Coast Guard is not required to complete the boating
28 safety education course required under s. 327.395. Proof of the
29 captain's license must be onboard the airboat when carrying
30 passengers for hire on waters of the state.

31 (c) A person who violates this subsection commits a
32 misdemeanor of the second degree, punishable as provided in s.
33 775.082 or s. 775.083.

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

CAREERS & COMPETITON SUBCOMMITTEE

**HB 1211 by Rep. Abruzzo
Airboat Regulation**

**AMENDMENT SUMMARY
January 30, 2018**

Amendment 1 by Rep. Abruzzo (Lines 16-24): Clarifies the list of items that an airboat operator must have onboard when carrying passengers for hire on waters of the state.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Careers & Competition
 2 Subcommittee

3 Representative Abruzzo offered the following:

4

5 **Amendment**

6 Remove lines 16-24 and insert:

7 operate an airboat to carry one or more passengers for hire on
 8 waters of the state unless he or she has all of the following
 9 onboard the airboat:

10 1. Photographic identification.

11 2. Proof of completion of a boater education course
 12 compliant with s. 327.395(1)(a). No operator shall be exempt
 13 from this requirement, regardless of age or exemptions provided
 14 in s. 327.395, except as provided in this section.



Amendment No. 1

15 3. Proof of successful completion of a commission-approved
16 airboat operator course that meets the minimum standards
17 established by commission rule.

18 4. Proof of successful course completion in
19

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1265 Alcoholic Beverages
SPONSOR(S): Miller
TIED BILLS: **IDEN./SIM. BILLS:** SB 922

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson <i>MW</i>	Anstead <i>La</i>
2) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Currently, it is unlawful for licensees that are operators of railroads or sleeping cars in this state to purchase or sell liquor on a passenger train except in miniature bottles of not more than two ounces.

The bill exempts licensees that are operators of railroads or sleeping cars from this size limitation.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

In Florida, the Beverage Law¹ regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.² The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.³

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume."

Quota Licenses

The term "quota license" refers to the type of license authorized under s. 561.20, F.S., which limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the population of a county, or when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

Quota License Exceptions

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exceptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports. Quota license exceptions are known as "special licenses."

Currently, special licenses exist for airports, trains and train stations.

The Division may issue special airport licenses to restaurants that are a part of, or serve, publicly owned or leased airports. The special airport license permits the general public to purchase alcoholic beverages for consumption within designated areas of the airport terminal. The license further permits the vendor to sell wine and distilled spirits to the airlines in sealed miniature containers and other alcoholic beverages for consumption on the aircraft by the passengers of the plane while the plane is airborne.⁴

The Beverage Law also provides a limited exception to the quota license limitation to permit the division to issue an alcoholic beverage license (for the sale of beer, wine, and liquor) to an operator of railroads or sleeping cars and a vendor in railroad transit stations.

¹ Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

² See s. 561.14, F.S.

³ s. 561.02, F.S.

⁴ s. 561.20(2)(d), F.S.

Operators of railroads and sleeping cars may only purchase and sell liquor in miniature bottles of not more than two ounces. However, alcoholic beverages sold within the licensed premises of a railroad transit station are not subject to the miniature bottle requirement.⁵

A "railroad transit station" is a platform or terminal facility where passenger trains operating on a guided rail system according to a fixed schedule between two or more cities regularly stop to load and unload passengers or goods. The term includes the passenger waiting lounge or dining, retail, entertainment, or recreational facilities within the premises owned or leased by the railroad operator or owner.⁶

Section 565.02(2), F.S., permits the division to issue a license for the sale of beer, wine, and liquor to:

- The operator of railroads or sleeping cars; and
- A vendor in a railroad transit station.⁷

The annual license tax for these licenses is \$2,500. These licenses are an exception to the quota license limitation. A municipality or county may not require an additional license or levy a tax for the privilege of selling alcoholic beverages for consumption in such cars.⁸

The license issued to the operator of railroads and sleeping cars is good throughout the state for the sale of beer, wine, and liquor **for consumption on** any dining, club, parlor, buffet, or observation car of a passenger train operated by the licensee. Alcoholic beverages can be sold only on cars in which certified copies of the licenses are posted.⁹ It currently appears that passengers are limited from taking the alcoholic beverages off of the railroad cars.¹⁰

The operators of railroads or sleeping cars are required to keep records and make monthly reports on the 15th of every month, regarding the sale of alcoholic beverages within Florida. The licensees are required to pay excise taxes on alcoholic beverages for which excise taxes have not already been paid.¹¹

All Aboard Florida

All Aboard Florida is the operator of "Brightline," the under-construction, express passenger rail service between Miami and Orlando that uses the existing Florida East Coast Railway corridor between Miami and Cocoa. It is also building a new track along State Road 528 between Cocoa and Orlando. Portions of the service, between Miami and West Palm Beach, started operating in January, 2018.¹² The full-service route from Miami to Orlando is set to open later this year. The Orlando station is under construction at the Intermodal Transportation Center at Orlando International Airport.¹³

Effect of the Bill

The bill exempts liquor sold within the "licensed premises of an operator" of a railroad or sleeping car from the limitation that liquor may only be purchased and sold in miniature bottles of not more than two ounces.

⁵ *Id.*

⁶ See s. 561.01(22), F.S.

⁷ s. 565.02(2), F.S.

⁸ *Id.*

⁹ s. 565.02(2)(a), F.S.

¹⁰ s. 565.02(2)(a), F.S. The phrase "for consumption upon any dining, club, parlor, buffet, or observation car of a passenger train" appears to limit the ability of the train operator from allowing passengers to purchase a bottle of liquor and leave the train with it.

¹¹ s. 565.02(3)(b), F.S.

¹² Dan Rorabaugh, *Brightline announces launch date for service between West Palm Beach, Fort Lauderdale*, TCPALM (Dec. 28, 2017), <https://www.tcpalm.com/story/news/local/shaping-our-future/all-aboard-florida/2017/12/28/brightline-announces-launch-date-service-between-west-palm-beach-fort-lauderdale/989273001/>.

¹³ See All Aboard Florida at: <http://www.allaboardflorida.com/> (Last visited January 16, 2018).

B. SECTION DIRECTORY:

Section 1 Amends s. 565.02, F.S., exempting operators of railroads or sleeping cars from certain liquor bottle size restrictions.

Section 2 Provides an effective date.

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:

The bill will allow operators of railroads or sleeping cars to buy and sell beyond the current bottle size limitation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, the bill provides, "Except for alcoholic beverages sold within the licensed premises of a railroad transit station, or sold within the licensed premises of an operator, it is unlawful for such

licensees to purchase or sell any liquor on a passenger train except in miniature bottles of not more than 2 ounces.

It is unclear what "premises" of an operator the exemption applies to. It is also unclear whether the exception is intended to allow an operator to sell anywhere or only on "any dining, club, parlor, buffet, or observation car of a passenger train." Further, it is unclear where the restriction to selling "miniature bottles of not more than 2 ounces" still applies. It appears that this limitation may no longer apply.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to alcoholic beverages; amending s.
 3 565.02, F.S.; exempting operators of railroads or
 4 sleeping cars from certain liquor bottle size
 5 restrictions; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (a) of subsection (2) of section
 10 565.02, Florida Statutes, is amended to read:

11 565.02 License fees; vendors; clubs; caterers; and
 12 others.—

13 (2) An operator of railroads or sleeping cars, or a vendor
 14 in a railroad transit station, in this state may obtain a
 15 license to keep for sale and to sell the beverages mentioned in
 16 the Beverage Law upon the payment of an annual license tax of
 17 \$2,500 to the division. A municipality or county may not require
 18 an additional license or levy a tax for the privilege of selling
 19 such beverages.

20 (a) Operators of railroads or sleeping cars in this state
 21 are authorized to keep for sale and to sell all beverages
 22 mentioned in the Beverage Law for consumption upon any dining,
 23 club, parlor, buffet, or observation car of a passenger train in
 24 which certified copies of the licenses issued to the operators
 25 are posted. Certified copies of such licenses shall be issued by

26 | the division upon the payment of a \$10 fee. A license for the
27 | sale of alcoholic beverages on a passenger train shall be good
28 | throughout the state. Except for alcoholic beverages sold within
29 | the licensed premises of a railroad transit station, or sold
30 | within the licensed premises of an operator, it is unlawful for
31 | such licensees to purchase or sell any liquor on a passenger
32 | train except in miniature bottles of not more than 2 ounces.

33 | Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1447 City of Orlando, Orange County

SPONSOR(S): Miller

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Renner	Miller
2) Careers & Competition Subcommittee		Brackett <i>OB</i>	Anstead <i>Le</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

Florida's Beverage Law places a limit on the number of "quota licenses" that the Department of Business and Professional Regulation (DBPR) may issue per county. A quota license allows a business to serve any alcoholic beverage regardless of alcoholic content, including liquor, for both on and off premises consumption. DBPR is not limited by the Beverage Law on the number of licenses it may issue for businesses who wish to serve only malt beverages and wine.

In excess of the quota limitation, DBPR is authorized to issue an SRX license, which allows a restaurant to sell any alcoholic beverage, including liquor, under certain circumstances. Under general law, a restaurant may be issued an SRX license if it has at least 2,500 square feet of service area, is equipped to serve meals to 150 customers simultaneously, and derives at least 51 percent of its gross revenue from the sale of food and non-alcoholic beverages.

The bill would create an exception to general law by requiring DBPR to issue an SRX license to a bona fide restaurant in the "Downtown Restaurant Area" of the City of Orlando that is licensed by DBPR and meets the following requirements: occupies at least 1,800 square feet of contiguous space, is equipped to serve meals to at least 80 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter.

The bill provides that failure of a licensee who is issued an SRX license to meet the 51 percentage of food and nonalcoholic beverage gross revenue during the covered operating period will result in the revocation of the license or denial of the pending application for a permanent license of a licensee operating with a temporary license. A licensee whose license is revoked, or an applicant whose pending application for a permanent license is denied, or any person required to qualify on the SRX license application, is ineligible to have any interest in a subsequent license application for a period of 120 days after the date of the final denial or revocation.

According to the Economic Impact Statement, the bill is revenue positive due to the increase in sales tax revenue and licensing revenue.

The bill takes effect upon becoming law.

Pursuant to House Rules 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Alcoholic Beverage Licensing

The Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

Under the Beverage Law, DBPR is not limited on the number of licenses it issues to businesses who wish to sell malt beverages or wine; however s. 561.20, F.S., limits the number of licenses that may be issued under s. 565.02(1)(a)-(f), F.S., to one license per 7,500 residents per county with a minimum of three (3) licenses per county that has approved the sale of intoxicating liquors.¹ This license, often referred to as a "quota license," allows a business to sell any alcoholic beverage regardless of alcoholic content, including liquor or distilled spirits.²

There are several exceptions to the quota license limitation. Businesses that meet the requirements set out in one of the exceptions pursuant to s. 561.20(2), F.S., may be issued a special license by DBPR that allows the business to serve any alcoholic beverages regardless of alcoholic content.

One such license is the Special Restaurant Beverage (SRX) license, which may be issued to a "restaurant having 2,500 square feet of service area and equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages so long as any alcoholic beverages sold under such license is for on premises consumption only."³ Some older restaurants may qualify at a lower total gross revenue threshold.⁴ A restaurant must offer full course meal service at any time alcoholic beverages are being served to qualify for a license.⁵ A full course meal must contain a salad or vegetable, entrée, beverage, and bread.⁶

Effect of the Bill

The bill would create an exception to s. 561.20(1), F.S., by requiring DBPR to issue an SRX license to a bona fide restaurant in the "Downtown Restaurant Area" of the City of Orlando that is licensed by DBPR and occupies at least 1,800 square feet of contiguous space, is equipped to serve meals to at least 80 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter. The bill includes a complete legal description of the area in which the exemption will apply.

¹ s. 561.20(1), F.S.

² s. 565.02, F.S.

³ s. 561.20(2)(a)4., F.S. Current law requires the gross food and beverage revenue to be based on the first 60-day operating period and each 12-month operating period thereafter.

⁴ Rule 61A-3.0141, F.A.C. This provision applies to all licenses issued after April 18, 1972. For licenses issued between September 1, 1969 and April 18, 1972, at least 30 percent of the restaurant's total gross revenue must be derived from the sale of food and non-alcoholic beverages; for licenses issued prior to September 1, 1969, there is no minimum gross revenue threshold, but the restaurant must be "bona fide" and meet the other requirements of the rule.

⁵ *Id.*

⁶ *Id.*

The bill provides that failure of a licensee who is issued an SRX license to meet the 51 percentage of food and nonalcoholic beverage gross revenue during the covered operating period will result in the revocation of the license or denial of the pending application for a permanent license of a licensee operating with a temporary license. A licensee whose license is revoked, or an applicant whose pending application for a permanent license is denied, or any person required to qualify on the SRX license application, is ineligible to have any interest in a subsequent license application for a period of 120 days after the date of the final denial or revocation.

B. SECTION DIRECTORY:

- Section 1 Creates the "Downtown Restaurant Area" in the City of Orlando.
- Section 2 Creates an exception to general law, providing space, seating and minimum gross revenues requirements for special alcoholic beverage licenses for restaurants in the Downtown Restaurant Area.
- Section 3 Provides that the bill takes effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 25, 2017

WHERE? *Orlando Sentinel*, a daily newspaper published in Orange County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pursuant to House Rules 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
An act relating to the City of Orlando, Orange County;
providing an exception to general law; providing
space, seating, and minimum gross revenues
requirements for special alcoholic beverage licenses
for restaurants in a described area; providing an
effective date.

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

Section 1. There is created a special zone in the City of
Orlando to be known as the "Downtown Restaurant Area," more
particularly described as follows:

A PORTION OF LAND LYING IN SECTIONS 23, 24, 25, 26, 35
AND 36, TOWNSHIP 22 SOUTH, RANGE 29 EAST, IN THE CITY
OF ORLANDO AND ORANGE COUNTY, FLORIDA; SAID PORTION OF
LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE CENTERLINE OF W GORE
STREET AND THE CENTERLINE OF S WESTMORELAND DRIVE,
THENCE RUN NORTHERLY ALONG THE CENTERLINE OF SAID S
WESTMORELAND DRIVE AND THE WEST LINE OF SAID SECTIONS
35 AND 26 TO THE INTERSECTION OF THE CENTERLINE OF N
WESTMORELAND DRIVE AND THE CENTERLINE OF W COLONIAL

26 DRIVE; THENCE DEPARTING THE SAID CENTERLINE OF N
 27 WESTMORELAND DRIVE, RUN EASTERLY ALONG THE CENTERLINE
 28 OF W COLONIAL DRIVE AND THE NORTH LINE OF AFORESAID
 29 SECTION 26 TO THE INTERSECTION OF THE CENTERLINE OF
 30 INTERSTATE 4, STATE ROAD 400; THENCE DEPARTING THE
 31 SAID CENTERLINE OF W COLONIAL DRIVE, RUN NORTHERLY
 32 ALONG THE CENTERLINE OF SAID STATE ROAD 400 TO THE
 33 INTERSECTION WITH THE NORTH LINE OF THE SOUTHEAST
 34 QUARTER OF SAID SECTION 23; THENCE DEPARTING THE
 35 CENTERLINE OF SAID STATE ROAD 400, RUN EASTERLY ALONG
 36 SAID NORTH LINE TO THE EAST LINE OF SAID SECTION 23;
 37 THENCE DEPARTING THE NORTH LINE OF THE SAID SOUTHEAST
 38 QUARTER OF SECTION 23 RUN SOUTHERLY ALONG SAID EAST
 39 LINE OF SECTION 23 TO THE INTERSECTION OF THE
 40 CENTERLINE OF S IVANHOE BOULEVARD; THENCE DEPARTING
 41 THE SAID EAST LINE OF SECTION 23 RUN EASTERLY ALONG
 42 THE CENTERLINE OF SAID S IVANHOE BOULEVARD TO THE
 43 INTERSECTION OF THE CENTERLINE OF N ORANGE AVENUE;
 44 THENCE DEPARTING THE CENTERLINE OF SAID S IVANHOE
 45 BOULEVARD RUN EASTERLY ALONG THE CENTERLINE OF N
 46 ORANGE AVENUE TO THE INTERSECTION OF THE CENTERLINE OF
 47 HIGHLAND AVENUE; THENCE DEPARTING THE SAID CENTERLINE
 48 OF N ORANGE AVENUE RUN SOUTHERLY ALONG THE CENTERLINE
 49 OF HIGHLAND AVENUE TO THE INTERSECTION OF THE
 50 CENTERLINE OF E COLONIAL DRIVE AND THE NORTH LINE OF

51 SECTION 25; THENCE DEPARTING THE SAID CENTERLINE OF
 52 HIGHLAND AVENUE RUN EASTERLY ALONG THE CENTERLINE OF
 53 SAID E COLONIAL DRIVE AND THE NORTH LINE OF SAID
 54 SECTION 25 TO THE NORTHEAST CORNER OF SECTION 25,
 55 TOWNSHIP 22 SOUTH, RANGE 29 EAST, ALSO BEING THE
 56 INTERSECTION OF THE CENTERLINE OF N FERN CREEK AVENUE;
 57 THENCE DEPARTING THE CENTERLINE OF E COLONIAL AND THE
 58 NORTH LINE OF SAID SECTION 25 RUN SOUTHERLY ALONG THE
 59 CENTERLINE OF SAID N FERN CREEK AVENUE AND THE EAST
 60 LINE OF SECTION 25 TO THE INTERSECTION OF THE
 61 CENTERLINE OF E CENTRAL BOULEVARD; THENCE DEPARTING
 62 THE CENTERLINE OF SAID N FERN CREEK AND SAID EAST LINE
 63 OF SECTION 25, RUN WESTERLY ALONG THE CENTERLINE OF
 64 SAID E CENTRAL BOULEVARD TO THE INTERSECTION OF THE
 65 CENTERLINE OF S LAWSONA BOULEVARD; THENCE DEPARTING
 66 THE CENTERLINE OF SAID E CENTRAL BOULEVARD RUN
 67 SOUTHERLY ALONG THE CENTERLINE OF SAID S LAWSONA
 68 BOULEVARD TO THE INTERSECTION OF THE CENTERLINE OF E
 69 SOUTH STREET, ALSO BEING THE SOUTH LINE OF AFORESAID
 70 SECTION 25; THENCE DEPARTING THE CENTERLINE OF SAID S
 71 LAWSONA BOULEVARD RUN WESTERLY ALONG THE CENTERLINE OF
 72 SAID E SOUTH STREET AND THE SOUTH LINE OF SECTION 25
 73 TO THE INTERSECTION OF THE CENTERLINE OF S MILLS
 74 AVENUE; THENCE DEPARTING THE CENTERLINE OF SAID E
 75 SOUTH STREET AND THE SAID SOUTH LINE OF SECTION 25,

76 RUN SOUTHERLY ALONG THE CENTERLINE OF SAID S MILLS
 77 AVENUE TO THE INTERSECTION OF THE CENTERLINE OF E GORE
 78 STREET; THENCE DEPARTING THE CENTERLINE OF SAID S
 79 MILLS AVENUE RUN WESTERLY ALONG THE CENTERLINE OF SAID
 80 E GORE STREET TO THE INTERSECTION OF THE CENTERLINE OF
 81 LAKE DAVIS DRIVE; THENCE DEPARTING THE CENTERLINE OF
 82 SAID E GORE STREET RUN NORTHERLY AND WESTERLY ALONG
 83 SAID LAKE DAVIS DRIVE TO THE INTERSECTION OF THE
 84 CENTERLINE OF WOODLAWN BOULEVARD; THENCE DEPARTING THE
 85 CENTERLINE OF SAID LAKE DAVIS DRIVE RUN WESTERLY ALONG
 86 THE CENTERLINE OF SAID WOODLAWN BOULEVARD TO THE
 87 INTERSECTION OF THE CENTERLINE OF S SUMMERLIN AVENUE;
 88 THENCE DEPARTING THE CENTERLINE OF SAID WOODLAWN
 89 BOULEVARD, RUN SOUTHERLY ALONG THE CENTERLINE OF SAID
 90 S SUMMERLIN AVENUE TO THE INTERSECTION OF THE
 91 CENTERLINE OF CHEROKEE DRIVE; THENCE DEPARTING THE
 92 CENTERLINE OF SAID S SUMMERLIN AVENUE RUN WESTERLY
 93 ALONG THE CENTERLINE OF SAID CHEROKEE DRIVE TO THE
 94 INTERSECTION OF THE CENTERLINE OF DELANEY AVENUE;
 95 THENCE DEPARTING THE CENTERLINE OF SAID CHEROKEE DRIVE
 96 RUN SOUTHERLY ALONG THE CENTERLINE OF SAID DELANEY
 97 AVENUE TO THE INTERSECTION OF E GORE STREET; THENCE
 98 DEPARTING THE CENTERLINE OF SAID DELANEY AVENUE RUN
 99 WESTERLY ALONG THE CENTERLINE OF E AND W GORE STREET

100 TO THE INTERSECTION OF N WESTMORELAND DRIVE AND THE
101 POINT OF BEGINNING.

102
103 Section 2. Notwithstanding s. 561.20(1), Florida Statutes,
104 the Division of Alcoholic Beverages and Tobacco of the
105 Department of Business and Professional Regulation shall issue a
106 special alcoholic beverage license to a bona fide restaurant in
107 the Downtown Restaurant Area described in section 1 that is
108 licensed by the division, occupies at least 1,800 square feet of
109 contiguous space, is equipped to serve meals to at least 80
110 persons at one time, and derives at least 51 percent of its
111 gross food and beverage revenue from the sale of food and
112 nonalcoholic beverages during the first 60-day operating period
113 and each 12-month operating period thereafter. Failure of any
114 licensee issued a special license to meet the required
115 percentage of food and nonalcoholic beverage gross revenue
116 during the covered operating period shall result in the
117 revocation of the license or denial of the pending application
118 for a permanent license of a licensee operating with a temporary
119 license. A licensee whose license is revoked, or an applicant
120 whose pending application for a permanent license is denied, or
121 any person required to qualify on the special alcoholic beverage
122 license application, is ineligible to have any interest in a
123 subsequent license application for such license for a period of
124 120 days after the date of the final denial or revocation.

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2018

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