

1989

Session Law 89-137

Florida Senate & House of Representatives

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S 215 GENERAL BILL/CS/1ST ENG by Economic, Professional and Utility Regulation; Economic, Professional and Utility Regulation (Compare CS/H 988, H 1778)

Land Surveying/Revision: (SUNSET) expands rulemaking authority re fees; provides schedule of fees; deletes requirement that persons seeking to practice land surveying under corporation obtain approval from Prof. Reg. Dept.; creates committee to make recommendations with respect to specified aspects of provisions re certain exemptions from licensure as land surveyor; provides for review & repeal, etc. Amends/revives/readopts Ch. 472; repeals 472.003(3). Effective Date: 10/01/89 except as otherwise provided.

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02/08/89 SENATE Prefiled
02/17/89 SENATE Referred to Economic, Professional and Utility Regulation
04/04/89 SENATE Introduced, referred to Economic, Professional and Utility Regulation -SJ 25
04/14/89 SENATE Extension of time granted Committee Economic, Professional and Utility Regulation
04/28/89 SENATE On Committee agenda—Economic, Professional and Utility Regulation, 05/02/89, 2:00 pm, Room-1C-(309)—Temporarily postponed; Extension of time granted Committee Economic, Professional and Utility Regulation
05/12/89 SENATE Extension of time granted Committee Economic, Professional and Utility Regulation
05/16/89 SENATE On Committee agenda—Economic, Professional and Utility Regulation, 05/18/89, 2:15 pm, Room-1C-(309)
05/18/89 SENATE Comm. Report: CS by Economic, Professional and Utility Regulation, placed on Calendar -SJ 404
05/24/89 SENATE CS read first time -SJ 404
05/31/89 SENATE Placed on Special Order Calendar -SJ 618; CS passed as amended; YEAS 35 NAYS 0 -SJ 657
05/31/89 HOUSE In Messages
06/01/89 HOUSE Received, placed on Calendar; Taken up in lieu of HB 1778; Read second time; Read third time; CS passed; YEAS 109 NAYS 2 -HJ 1000
06/01/89 Ordered enrolled -SJ 691
06/12/89 Signed by Officers and presented to Governor
06/27/89 Approved by Governor; Chapter No. 89-137

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: _____

BILL NO. CS/SB 215

DATE: May 19, 1989

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Heffner <i>(initials)</i>	Krasovsky <i>(initials)</i>	1. EPUR _____	Fav/CS _____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:
Land Surveying

BILL NO. AND SPONSOR:
CS/SB 215 by
Senate Economic, Professional
& Utility Regulation Committee

I. SUMMARY:

A. Present Situation:

The Regulatory Sunset Act repeals chapter 472, Florida Statutes, relating to land surveying, on October 1, 1989, unless the Legislature revives and readopts it in the public interest. The chapter requires that a person be registered in order to provide land surveying services in Florida. The chapter also provides definitions, establishes the Board of Professional Land Surveyors, sets forth the board's duties and powers, establishes licensing requirements and provides disciplinary proceedings.

B. Effect of Proposed Changes:

The provisions of chapter 472, F.S., are revived and readopted with the following substantive changes:

-- Section 472.003, F.S., is amended to exempt certified or registered contractors, licensed pursuant to part I of chapter 489, F.S., and registered professional engineers, licensed pursuant to chapter 471, F.S., from the requirement that they be a licensed land surveyor in order to perform construction layout services.

-- Section 472.011, F.S., is amended to provide for a new fee schedule and to expand the rulemaking authority of the board regarding fees.

-- Section 472.021, F.S., is amended to delete the requirement that individuals obtain the Department of Professional Regulation's approval prior to filing articles of incorporation with the Department of State as a corporation or partnership offering land surveying services to the public. Due to the apparent unenforcability of this requirement, it is not being enforced; therefore, deletion of this requirement should not have any effect upon the public or government.

-- The board is authorized to assess each licensee an additional one-time fee of \$125 to recover the estimated \$300,000 deficit for the 1988-89 fiscal year incurred from defending a proposed board rule. In addition, a committee is created to make recommendations regarding chapters 471, 472, and 489, F.S., as they relate to the provision of construction layout services.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Presently, the chapter and board rules establish fees for application and examination, registration and renewal. If

chapter 472, F.S., is allowed to repeal on October 1, 1989, as provided by section 11.61, F.S., applicants and licensees would no longer be required to pay those fees. However, the committee substitute revives and readopts the chapter which will result in applicants and licensees continuing to pay the fees after October 1, 1989.

Granting the board the authority to assess each licensee an additional one-time fee of \$125 will enable the board to recover the \$300,000 deficit, and result in increased costs for registered land surveyors. These costs will likely be passed on to the public in the form of higher costs for land surveying services.

B. Government:

The cost of administering the chapter in fiscal year 1987-88 was \$246,734. The costs are recovered through fees paid by applicants and licensees which are deposited in the DPR Trust Fund. During fiscal year 1987-88 the board collected annualized revenues estimated at \$271,494. If the act is repealed, these costs would no longer be incurred by state government after October 1, 1989. The committee substitute reenacts chapter 472, F.S., and would cause these state costs to continue after October 1, 1989.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STORAGE NAME: h1778-f.rr
DATE: June 28, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 1778 (similar provisions passed as CS/SB 215)

RELATING TO: Land Surveying

SPONSOR(S): Committee on Regulatory Reform and Representative Morse

EFFECTIVE DATE: October 1, 1989

COMPANION BILL(S): CS/SB 215

OTHER COMMITTEES OF REFERENCE: (1) Finance and Taxation
(2) Appropriations

I. SUMMARY:

HB 1778 would revise and reenact chapter 472, Florida Statutes, regulating the practice of land surveying. Future Sunset review and repeal would be scheduled on October 1, 1999.

A. PRESENT SITUATION:

Chapter 472, Florida Statutes, is scheduled for Sunset repeal on October 1, 1989, and has been reviewed pursuant to section 11.61, Florida Statutes. The chapter regulates the practice of land surveying. It is administered by a seven member Board of Professional Land Surveyors within the Department of Professional Regulation. The chapter requires that individuals, corporations, and partnerships be licensed by the department before practicing land surveying or using titles indicating that they are registered land surveyors. Two exemptions from the licensure requirements are provided. The statute establishes criminal penalties for certain prohibited acts. It is a first degree misdemeanor to practice land surveying or use titles implying that an individual is a land surveyor without holding a valid license in this state.

The board is given general rulemaking authority and specific authority to establish methods by which licensees can demonstrate financial responsibility; to establish fees for licensure; to provide for the review and approval of schools or colleges and course-work; to establish criteria for the approval of continuing education course-work; to prescribe a form of seal to be used by licensees; to adopt minimum technical standards for land surveying; to specify what acts or omissions constitute grounds for discipline; and to impose certain disciplinary actions.

To be licensed, applicants must demonstrate good moral character, meet minimum requirements of education and experience, and

demonstrate through satisfactory performance on written examination that they are knowledgeable and competent to practice land surveying. Licensees must complete continuing education as a condition of biennial license renewal. All licensees must demonstrate that they or their employer have the financial responsibility to pay claims and costs related to their practice of land surveying.

Corporations and partnerships may obtain a certificate of authorization to practice land surveying or to offer land surveying services through registered land surveyors if one or more of the principal officers or partners and all personnel who act as land surveyors in behalf of the business are registered land surveyors. Corporations seeking certification must obtain approval from the department before filing or amending their articles of incorporation. Corporations and partnerships are subject to the same disciplinary actions as registered land surveyors.

Applicants may be licensed by endorsement if they meet Florida's education and experience requirements and have passed a substantially equivalent examination, or if they hold a license in another state issued under substantially identical criteria as existed in Florida at the time of original licensure. Land surveyors who are registered in another state and out-of-state firms may obtain temporary certification for limited practice in this state provided that the other state similarly permits temporary practice by Florida registrants.

B. EFFECT OF PROPOSED CHANGES:

The bill would revise and reenact chapter 472, Florida Statutes, to continue regulation of the practice of land surveying.

The bill would modify section 472.005(4)(b), Florida Statutes, which defines activities which are included in the practice of land surveying. As amended, the layout of controls for proposed improvements and the determination of horizontal and vertical controls for grades and elevations of roads and land in connection with subdivisions or divisions of land would be considered to be land surveying practices. The current definition does not specify that land surveying practice is limited to establishing controls for these activities, but rather includes the layout of proposed improvements and the determination of grades and elevations for roads and lands in connection with the subdivision or division of land.

The bill would revise section 472.011, Florida Statutes, to include all provisions related to licensure fees and provide a schedule of fee caps. The bill would make the application fee non-refundable to cover processing costs. It would raise the statutory caps for the following fees: biennial renewal, from

4.5

\$150 to \$500; licensure by endorsement, from \$100 to \$200; license reactivation, from \$50 to \$150; and temporary certification for individuals from \$25 to \$100 and for firms from \$50 to \$200. These fees are currently set at the statutory caps. As of June 30, 1988, the board was operating at a \$5,914 deficit and projects a deficit of \$242,778 for FY 89-90. These changes would allow the board to raise fees as necessary to off-set this and any future deficit.

The bill would amend section 472.021, Florida Statutes, by deleting the requirement that corporations receive prior approval from the Department of Professional Regulation before filing or amending their articles of incorporation. It would also delete provisions related to the liability of corporations, partnerships, and shareholders who are licensees.

Each registrant and each certified corporation and partnership would be required to display its certificate of registration or certificate of authorization number in certain advertising media.

The bill would create a committee composed of persons designated by the Boards of Professional Land Surveyors and Professional Engineers, and the Construction Industry Licensing Board. Each board would designate three members of the committee. The committee would designate an additional member to represent contractors who are exempt from licensure pursuant to section 489.103(1), Florida Statutes. The committee would be charged with considering the statutorily defined practice of land surveying as it relates to the layout of controls for proposed improvements and for grading and elevations of roads, and for construction stakeout performed within controls established by professional land surveyors. The committee would be required to submit recommendations regarding that issue no later than March 1, 1990. Recommendations would be to the Legislature and the Secretary of the Department of Professional Regulation. The committee would cease to exist on June 1, 1990.

The bill would also delete obsolete language and make a number of technical changes.

C. SECTION-BY-SECTION ANALYSIS:

Sections 1 & 2. Correct cross-references.

Section 3. Adds definitions for "certificate of authorization" and "certificate of registration" to section 472.005, Florida Statutes, to comport with the usage of those terms throughout the chapter. Modifies certain provisions included in the definition of "land surveying." Corrects cross-references.

Section 4. Deletes obsolete provisions related to the initial appointment of the board and preserves the statutory requirement

for 4 year terms of office.

Section 5. Revises section 472.011, Florida Statutes, to include all fee language; to provide for a non-refundable application fee; and to increases fee caps for certain fees.

Section 6. Corrects a cross-reference.

Section 7. Makes a technical change.

Section 8. Revises section 472.019, Florida Statutes, to contain all provisions related to inactive licenses and the reactivation of such licenses.

Section 9. Deletes the requirement for prior approval of articles of incorporation as a prerequisite for certification of land surveying firms. Deletes provisions related to the liability of corporations, stockholders, and partnerships. Corrects cross-references.

Section 10. Makes technical changes to conform with revised fee provisions.

Section 11. Requires all licensees to publish their certificate of registration or certificate of authorization numbers in certain advertising media.

Section 12. Corrects a cross-reference.

Section 13. Corrects a statutory reference regarding first degree misdemeanor penalties for prohibited acts by deleting a reference to section 775.084, Florida Statutes. That section is no longer applicable to first degree misdemeanor convictions.

Section 14. Revises grounds for disciplining land surveyors and firms by limiting certain circumstances in which disciplinary action may be taken. The bill specifies the effect of a plea of nolo contendere to conform to case law regarding such pleas and makes technical changes.

Section 15. Corrects a cross-reference.

Section 16. Makes technical changes to correct a cross-reference and clarify local effects of chapter.

Section 17. Repeals section 472.039, Florida Statutes, to delete obsolete language.

Section 18. Creates a committee to study and make recommendations about certain aspects of the practice of land surveying and construction stakeout performed within controls established by professional land surveyors. Makes the section

effective upon becoming a law.

Section 19 & 20. Saves chapter 472, Florida Statutes, from Sunset repeal and schedules future review and repeal, pursuant to section 11.61, Florida Statutes, on October 1, 1999.

Section 21. Provides an effective date of October 1, 1989, except as otherwise provided. (See section 18.)

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill would continue licensure costs associated with the regulation of land surveyors and would allow the board to raise licensure fees within specified caps. The board is currently operating at a deficit, therefore, fees increases

are anticipated. An increase in fees would directly affect the costs incurred by licensees.

All licensees may incur limited additional costs in complying with the requirement that licensees publish their certificate numbers in certain advertising media.

It is generally assumed that licensure costs are passed on to the consumer in fees for professional services. The economic impact of these costs is believed to be minimal.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

Revenues from licensure fees and administrative fines assessed pursuant to chapter 472, Florida Statutes, are deposited in the Professional Regulation Trust Fund. The regulatory structure imposed by the chapter is intended to be self-sustaining.

As of June 30, 1988, the Board of Professional Land Surveyors was operating at a \$5,914 deficit. A deficit of \$242,778 has been projected for FY 89-90. This deficit is primarily a result of legal costs associated with an administrative hearing concerning the board's proposed rules on ordinary high water line surveys. As of March 29, 1989, the board's legal costs for private counsel and expert witnesses for the hearing totaled approximately \$276,000.

This bill would allow the Board of Professional Land Surveyors to increase licensure fees within fee caps set by the bill. The Department of Professional Regulation has estimated revenues (with projected fee increases) and expenditures as follows:

	<u>FY 89-90</u>	<u>FY 90-91*</u>
Revenues:	\$144,415	\$707,285
Expenditures:	<u>281,585</u>	<u>327,629</u>
	<\$221,238>	\$158,418

*The next biennial renewal cycle occurs in 1991.

III. LONG RANGE CONSEQUENCES:

A significant potential for public harm exists from the incompetent practice of land surveying. This bill would protect the public by reenacting chapter 472, Florida Statutes. The bill would eliminate aspects of the regulation that are not tied to specific public protection. This is consistent with the policies of State Comprehensive Plan goal 21.

IV. COMMENTS:

This bill is consistent with the 1989-90 Legislative Issues Conference Policy Statement on Governmental Efficiency and Effectiveness. The bill is a result of a systematic review and evaluation of the regulation imposed and administrative structure created by chapter 472, Florida Statutes. The review was conducted according to criteria established by the Regulatory Sunset Act, section 11.61, Florida Statutes. The bill reflects the findings and recommendations resulting from that review.

Eliminating the certification prerequisite which requires corporations to obtain prior approval from the department before filing their articles of incorporation should not lessen the public protection aspects of the chapter. Firms which incorporate under the provisions of chapter 607, Florida Statutes, are required only to state the general purpose for incorporating and not the specific nature of their business.

Section 472.021(3), Florida Statutes, provides that stockholders who are registered land surveyors are jointly and severally liable for negligence, misconduct or wrongful acts committed by the corporation's agents, employees, officers, or partners. This provision is inconsistent with the shareholder liability established by chapters 607 and 621, Florida Statutes. The bill would delete this provision in light of chapters 607, 620, and 621, Florida Statutes, which govern the extent of liability of partnerships and corporations and their shareholders.

Requiring licensees to publish their certificate number in certain advertising media should facilitate consumers' ability to identify registrants and should assist the department in identifying unlicensed activity.

Representatives of the construction industry and of contractors who build roads have raised concerns that the Board of Professional Land Surveyors minimum technical standards for construction layout surveys precludes them from staking out proposed improvements for construction within controls established by professional land surveyors.

The bill would modify the definition of land surveying to specify the scope of land surveying practice in regard to establishing controls

for proposed improvements and for the grades and elevations of roads. It would also create a special committee to study and make recommendations about whether additional modifications are necessary to address this issue.

The assistant attorney general who serves as legal counsel for the Board of Professional Land Surveyors raised several concerns about the proposed change in the definition of land surveying and about the focus of the proposed special committee. It was pointed out that while professional land surveyors must comply with minimum technical standards when performing as-built, construction layout, control, and right-of-way surveys and are subject to disciplinary action for failure to meet those standards, no such requirements exist for contractors licensed under chapter 489. It was also noted that the definition proposed by the bill could be interpreted as limiting land surveyors to the establishment of controls for proposed improvements and for the grades and elevations of roads. Such an interpretation could preclude land surveyors from performing services which they have traditionally performed in connection with improvements and road building. It was suggested that if the intent is to enable licensed contractors to perform construction staking, that it might be preferable to add such a provision to chapter 489, Florida Statutes, rather than limit the practice of land surveying. In light of these concerns, it was suggested that the current statutory definition of land surveying be retained. It was also recommended that the proposed special committee be directed to examine not only that definition, but also the provisions of chapters 471, 472, and 489, Florida Statutes, to ensure that provisions concerning proposed improvements and roads are consistent among the practice acts.

A deficit of \$242,778 was projected for the Board of Professional Land Surveyors for FY 89-90. The deficit is primarily a result of legal costs associated with an administrative hearing concerning the board's proposed rules on ordinary high water line surveys. In its 1989 Regular Session, the Legislature appropriated \$300,000 from the General Revenue Fund to the Department of Professional Regulation for the reimbursement of legal fees. (See line 1661B of the 1989 Appropriations Act.)

V. FINAL ACTION:

HB 1778 died on the calendar. Provisions similar to sections 5, 9, and 18-21 of HB 1778 were passed by the Legislature as CS/SB 215. CS/SB 215 was approved by the Governor on June 27, 1989, chapter 89-137, Laws of Florida. (Also see line 1661B of the 1989 General Appropriations Act and the comments section of this analysis regarding funds appropriated to the Department of Professional Regulation for reimbursement of legal fees.)

It is noted that an apparent cross-reference error exists in the effective date section of CS/SB 215. Originally, section 5 of the CS/SB 215 was to become effective upon becoming a law. That section

created a special committee to study and make recommendations to the Legislature about certain aspects of construction stakeout performed by engineers, contractors, and road contractors within controls established by professional land surveyors. The committee's report is due January 1, 1990. CS/SB 215 was amended on the floor of the Senate on May 31, 1989, deleting section 4 of the bill (a one-time fee assessment authorization) and renumbering subsequent sections. However, the effective date section of the bill (which made section 5 effective upon becoming law) was not amended to reflect the renumbering of section 5 as section 4. This apparent oversight resulted in section 5 (which saves chapter 472, Florida Statutes, from Sunset repeal) rather than section 4 (which creates the special committee) being made effective upon becoming law.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Sheila A. Hill

Staff Director:



Patrick L. "Booter" Imhof

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

SH/cm