

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 526

SPONSOR: Committees on Judiciary and Regulated Industries and Senator Campbell

SUBJECT: Land Surveying and Mapping

DATE: February 19, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	Forgas	Johnson	JU	Favorable/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill substantially revises the regulatory provisions of ch. 472, F.S., governing the practice of land surveying and mapping, as follows:

- Provides additional exemptions from regulation;
- Provides additional definitions;
- Provides that the Board of Professional Surveyors and Mappers shall adopt rules relating to the use of professional titles by retired surveyors and mappers;
- Eliminates certain prerequisites for taking the licensure examination;
- Eliminates provisions relating to the approval of training provided by the United States Government;
- Modifies requirements for licensure by endorsement;
- Revises provisions authorizing surveyors and mappers to enter the land of third parties and providing liability standards for entry;
- Prohibits persons who are not registered to practice surveying and mapping from offering to practice surveying and mapping and from using related professional titles;
- Revises disciplinary grounds and eliminates the Board of Professional Surveyors and Mappers' authority to specify what acts constitute violations; and
- Eliminates the requirement that the Department of Business and Professional Regulation reissue the license of a disciplined surveyor and mapper upon board certification of the licensee's compliance with the terms and conditions of a final order.

This bill substantially amends the following sections of the Florida Statutes: 472.003, 472.005, 472.008 472.013, 472.015, 472.029, 472.031, and 472.033.

II. Present Situation:

1. Exemptions

Section 472.003, F.S., exempts specific individuals from regulation under ch. 472, F.S., including: (a) any surveyor and mapper employed by the United States Government when engaged in work solely for the United States Government; (b) a registered professional engineer who takes on contracts for surveying and mapping incidental to his or her practice of engineering and delegates the work to a registered professional surveyor and mapper; (c) licensed contractors and engineers performing construction layout from boundary, horizontal and vertical controls established by a registered professional surveyor and mapper; and (d) persons employed by county property appraisers, and persons employed by the Department of Revenue, to prepare maps for property appraisals.

2. Definitions

Section 472.005, F.S., sets forth several definitions applicable to ch. 472, F.S.

3. Rulemaking Authority

Section 472.008, F.S., authorizes the Board of Professional Surveyors and Mappers (board) to adopt rules to implement the provisions of ch. 472, F.S., conferring duties upon it.

4. Examination

Section 472.015(1), F.S., requires the board to certify any applicant who satisfies the requirements of s. 472.013, F.S. and passes the Florida licensing examination. Section 472.013(2), F.S., entitles an applicant to take the licensure exam if he or she is of good moral character and meets certain educational and work experience requirements. Prior to July 1, 1999, an applicant was entitled to take the examination if:

- (a) the applicant was a graduate of an approved course of study in surveying and mapping that included at least 32 semester hours in that area of study from a college or university recognized by the board, and the applicant had four or more years of experience as a subordinate to a professional surveyor and mapper;
- (b) the applicant was a graduate of a four-year course of study, other than surveying and mapping, at an accredited college or university that included at least 25 semester hours related to surveying and mapping or related fields, and the applicant had six or more years of experience as a subordinate to a professional surveyor and mapper;
- (c) the applicant successfully completed a 32-semester-hour course of study in surveying and mapping from an accredited college or university and had six or more years of experience as a subordinate to a professional surveyor and mapper;
- (d) the applicant successfully graduated high school and had eight or more years of experience as a subordinate to a professional surveyor and mapper; or
- (e) the applicant was enrolled on October 1, 1988, in a four-year course of study in surveying and mapping from a college or university recognized by the board, and prior to October 1, 1991, completed 32 semester hours of study in that area and had six or more years of experience as a subordinate to a professional surveyor and mapper.

Subsections (c) and (d) expired pursuant to their own terms on July 1, 1999 and were subsequently repealed during the 2000 Legislative Session. *See* ch. 2000-157, L.O.F. and ch. 2000-332, L.O.F.

Section 472.013(4), F.S., requires the board to adopt rules providing for review and approval of schools and colleges, including military schools and training and apprenticeship programs operated by the United States Government, and the course of study in surveying and mapping in such schools, colleges and programs.

5. Licensure by Endorsement

Section 472.015(3), F.S., requires the board to certify as qualified for licensure by endorsement an applicant who:

- (a) qualifies to take the examination as set forth in s. 472.013, F.S., passes a national, regional, state, or territorial license substantially equivalent to the Florida examination, and meets the experience requirements set forth in s. 472.013, F.S.; or
- (b) holds a valid license from another state if the criteria for issuance was substantially the same as the criteria required in Florida at the time of issuance.

6. Entry Upon Third-Party Lands

Section 479.029, F.S., authorizes surveyors and mappers to enter upon the lands of others when necessary to make surveys or maps and authorizes them to bring their agents and employees as necessary to make surveys and maps. Such entry does not constitute trespass, nor are the entrants subject to arrest or civil action for such entry; however, the entrants may not destroy, injure, damage, or move anything upon the land without the owner's permission. If the surveyor destroys, injures, or damages *anything* on the owner's land without first securing permission from the owner, then the surveyor will be liable for damages consisting of the owner's deprivation of the convenience, comfort, and enjoyment of the subject parcel of land. *See, Ragland v. Clarson*, 259 So.2d 757 (Fla. 1st DCA 1972)[owner not entitled to recover for the replacement value of each destroyed plant, shrub, or tree; rather, owner entitled to recover for the deprivation of convenience, comfort, and enjoyment of the land.]

7. Prohibitions

Section 472.031(1), F.S., prohibits the practice of surveying and mapping and prohibits the use of the title "registered surveyor and mapper," unless such person is a registered surveyor and mapper pursuant to ss. 472.001-472.037, F.S. A person who violates s. 472.031, F.S., is guilty of a misdemeanor of the first degree. *See* s. 472.031(2), F.S.

8. Disciplinary Proceedings

Section 472.033(1), F.S., sets forth acts that constitute grounds for disciplinary action by the board, which include being found guilty, regardless of adjudication, of a crime directly related to the practice of surveying and mapping. Section 472.033(2), F.S., requires the board to specify by rule the acts or omissions that constitute violations under subsection (1). Section 472.033(4), F.S., requires the department to reissue the license of a disciplined surveyor and mapper upon certification by the board that he or she has complied with the terms and conditions set forth in the final order that imposed the disciplinary action.

III. Effect of Proposed Changes:

Section 1 creates subsection (5) of s. 472.003, F.S., to expand licensure exemptions to include employees of governmental units, employees of employee leasing companies, and employees of

surveyors and mappers, when those employees are subordinates of a licensed surveyor and mapper who is in responsible charge of the employee.

Section 2 creates subsections (9) through (13) of s. 472.005, F.S., to define the following terms: “employee,” “subordinate,” “monument,” “legal entity,” and “retired professional surveyor and mapper.”

- **Section 3** makes a technical change to subsection (1) of s. 472.008, F.S., and creates subsection (2) of s. 472.008, F.S., providing that the board shall adopt rules governing the use of professional titles by retired surveyors and mappers. The rules shall not require continuing education requirements in order for a retiree to use a professional title.

Section 4 deletes paragraph (c) of subsection (2) of s. 427.013, F.S. (formerly s. 472.013(2)(e), F.S.), to conform with the July 1, 1999, repeals discussed earlier. As such, the bill clarifies that the surveying and mapping licensure examination is limited to applicants who have graduated from a four-year college or university program. The bill also eliminates the provision in subsection (4) that requires the board to adopt rules that provide for review and approval of military schools and training and apprenticeship programs operated by the United States Government.

Section 5 amends paragraph (a) of subsection (3) of s. 472.015, F.S. The purpose of the amendment is to recognize those applicants who were licensed in other states prior to July 1, 1999, without having earned a college degree. The bill provides for licensure by endorsement if the applicant holds a valid license to practice surveying and mapping issued before July 1, 1999, and the applicant has passed a national, regional, state, or territorial licensure exam that is substantially equivalent to the Florida examination. The applicant must also have eight or more years of experience as a subordinate to a surveyor and mapper, six years of which indicates that the applicant was in responsible charge of the accuracy and correctness of the mapping and surveying performed. The bill also amends s. 472.015, F.S., to require that all applicants for endorsement pass an examination on Florida laws and rules prior to licensure.

Section 6 amends s. 479.029, F.S., to create new subsections (1) and (2). Subsection (1) sets forth general conditions applicable to surveyors and mappers entering the land of third parties. It expands the list of individuals who may enter the lands of third parties to include subordinates of surveyors and mappers and expands the purpose for entry to include locating and setting monuments. The bill alters the surveyor’s rights relating to the destruction, injury, or damage to things on the landowner’s property. The bill now provides that a surveyor cannot destroy, injure, damage, or move any *physical improvements* without the owner’s permission. The bill does not define the term “physical improvements.” As a point of reference, s. 212.06(14)(c), F.S., which is found in the chapter pertaining to the tax on sales, use, and other transactions, defines “[i]mprovements to real property” as including the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property (i.e. land.) Accordingly, surveyors will now have the apparent ability to remove, trim, destroy, and move trees, bushes, plants, flowers, and anything else on the owner’s land, other than *physical improvements*, without any resulting civil liability to the landowner.

Subsection (2) sets forth conditions applicable to surveyors and mappers who enter agricultural land. Agricultural land is defined by reference to s. 193.461, F.S. When entering agricultural land a surveyor and mapper must do so in compliance with all federal, state, and local laws, rules, and regulations pertaining to premises security, agricultural protections, and other health and safety requirements in place on such land. The bill does not specify the regulations with which the surveyor must comply.

Subsection (2) also provides that a landowner is not liable to any third party for civil or criminal acts or damages that result from the negligence or intentional conduct of a surveyor and mapper while such person is on agricultural land.

Additionally, for agricultural parcels greater than 160 acres, surveyors and mappers will be classified as undiscovered trespassers unless they provide the landowner with written notice of their intent to enter the land at least 3 business days prior to entry.

This provision of the bill changes the status of certain surveyors as far as premises liability circumstances are concerned. Currently, all surveyors arguably possess the status of an “uninvited licensee” when they enter the owner’s land pursuant to the authority of s. 472.029, F.S. Under current premises liability law, the landowner owes a duty to the surveyor of refraining from wanton negligence or willful misconduct, as well as warning the surveyor of hidden dangers which are unknown to the surveyor but are known to the landowner. *See, Zipkin v. Rubin Construction Co.*, 418 So.2d 1040, 1044 (Fla. 4th DCA 1982). The bill changes the status of the surveyor when the surveyor enters agricultural parcels of land larger than 160 acres. Unless the surveyor provides the owner with written notice of the surveyor’s intent to enter the land at least 3 business days prior thereto, the surveyor will not occupy the status of uninvited licensee but will be classified as an undiscovered trespasser. The term “undiscovered trespasser” is defined in s. 768.075(3)(a)(3), F.S. which pertains to immunity from liability for injury to trespassers on real property, as a person who enters property without an express or implied invitation, and whose actual physical presence was not detected by the owner within 24 hours preceding the accident. Section 768.075(3)(b), F.S., provides that the landowner’s duty to undiscovered trespassers is to refrain from intentional misconduct. Accordingly, those surveyors who enter agricultural parcels greater than 160 acres in area, without providing the required written notice, will most likely occupy the status of an undiscovered trespasser as set forth in s. 768.075, F.S.

Section 7 amends subsection (1) of s. 472.031, F.S., to prohibit persons who are not registered to practice surveying and mapping from offering to practice such profession and prohibits them from using the title “registered surveyor and mapper,” or certain related titles and combinations thereof. This section also makes a technical change to subsection (2) of s. 472.031, F.S.

Section 8 amends subsection (1) of s. 472.033, F.S., to include within those acts that constitute grounds for discipline by the board, a plea of nolo contendere to a crime related to surveying and mapping, regardless of adjudication. The bill also deletes subsection (2) to eliminate the board’s authority to specify by rule acts or omissions that constitute a violation of subsection (1).

Section 9 provides that the bill takes effect on July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's provisions in s. 472.029, F.S., pertaining to the surveyor's authority to destroy non-physical improvements without the owner's permission, will adversely affect those landowner's rights to recover damages for such actions. Currently, landowners can recover monetary damages for the loss of enjoyment of the trees, shrubs, plants, flowers, gardens, etc., that are damaged or destroyed by the surveyor without the owner's permission. The bill now gives surveyors the authority to do anything to these non-physical improvements without first obtaining the owner's permission, thereby eliminating the owner's right to recover damages for such actions.

Additionally, the bill's provisions in s. 472.029, F.S., will now require surveyors who enter land pursuant to this section to do so "...in compliance with all federal, state, and local regulations pertaining to premises security, agricultural protections, and other health and safety requirements." Arguably, this will place a burden on surveyors to determine whether any such regulations apply before entering any parcel of land. A surveyor who fails to comply with any applicable regulation will presumably be subject to arrest as a trespasser and be held liable for any resulting damages in a civil action.

Finally, the bill's provisions in s. 472.029, F.S., pertaining to a landowner's duty of care to a surveyor who seeks to enter agricultural property greater than 160 acres, will now place the burden of providing written notice of an intent to enter such property on a surveyor in order to be considered a licensee on such property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
