

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES

IN THE MATTER OF:

Phillip W. Green
(NAME OF PETITIONER)

Case No.: 142287

FILED
Department of Financial Services
Agency Clerk
Date: 9/27/13

IMPORTANT: BEFORE FILING, PLEASE READ STATUTE AND RULES
ATTACHED TO THIS DOCUMENT

Petitioner, Phillip W. Green, pursuant to Sections 120.565 and/or 633.001(6), Florida
(Name of Petitioner)

Statutes, Rule Chapter 28-105 and/or Rule 69A-60.007, Florida Administrative Code, hereby requests a declaratory statement from the Florida Department of Financial Services and as grounds therefore states the following: (IN ALL CASES, ATTACH ADDITIONAL PAGES IF NEEDED, USING THE CORRESPONDING NUMBER FOR EACH SECTION ADDRESSED).

1. Petitioner's Name and Address:^{1*}

Name

Phillip W. Green

Address

21500 Three Oaks Pkwy, Estero, FL 33928

Telephone Number

239-390-8000

Facsimile Number

239-390-8000

e-mail address (if any)

green@esterofire.org

2. Name and Address of Petitioner's Attorney or Qualified Representative, if any:

Name, (Attorney/Qualified Representative)

Address

Telephone Number

Facsimile Number

e-mail address (if any)

3. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on Which the Declaratory Statement is Sought (Please Include Specific Subsections, if any):

^{1*} **NOTICE:** if this request is made and this form is completed by an authority having jurisdiction for a county, municipality, or special firesafety district, and the request concerns an interpretation of the Florida Fire Prevention Code, the Petition must be signed by the senior administrative firesafety official of the authority having jurisdiction, such as the fire marshal or a similarly situated or designated person or a fire chief. Only the senior administrative firesafety official or a fire chief has standing to petition for a declaratory statement regarding the Florida Fire Prevention Code on behalf of an authority having jurisdiction.

4. Description of How the Statute(s), Agency Rule(s), Agency Order(s), and/or Code Section(s) May Substantially Affect the Petitioner in the Petitioner's Particular Set of Circumstances:

a. Facts: Estero Fire Rescue, an independent special taxing district is exploring the adoption of a requirement to install residential fire sprinklers in one and two family dwellings. Two water purveyors serve Estero Fire Rescue and statutory clarification is needed prior to completing the required economic benefit report

b. Arguments: 633.208 (8) States that a local jurisdiction or utility may not charge any additional fee above what is charged to a non fire sprinklered dwelling on the basis that a one or two family dwelling unit is protected by a fire sprinkler system.

5. Address of the Subject, Structure, or Proposed Structure, Affected by this Petition, if Applicable:

N/a

6. If this Petition Involves a Ruling of an Authority Having Jurisdiction, the Name, Address and Phone Number of the Authority Having Jurisdiction:

Phillip W. Green Fire Marshal
21500 Three Oaks Pkwy
Estero, Florida, 33928

7. Please Check the Box Indicating Whether You Filed an Appeal of a Ruling of the Authority Having Jurisdiction, if applicable:

PLEASE NOTE: Rule 69A-60.007(5), Florida Administrative Code, on the last page of this document, requires that a person having a dispute with a local fire official regarding the Florida Fire Prevention Code, must complete the local appeal process PRIOR to filing a petition for declaratory statement. Therefore, if your circumstances involve a dispute with a local fire official and you have not appealed the decision of the local fire official, this petition will be dismissed until the local appeal process has been completed and you have received an adverse ruling by the local appeals board, commission, or council.

Yes, Appeal Filed No, Appeal Not Filed Not Applicable

8. If an Appeal was Filed, Please State the Response or Outcome of the Appeals Board and Attach a Copy of All Official Orders or Notices:

9. Have You Filed or Do You Plan to File this or a Similar Question with any Other State or Local Agency?

Yes • No

10. If Yes, Please State the Name of Each State or Local Agency:

N/A

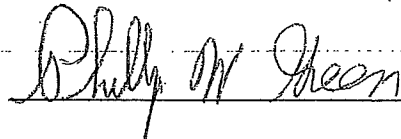
11. Are you involved in any litigation related to the question(s) presented in this case? Yes • No

12. If yes, please describe briefly

13. **QUESTION(S)** (Please be Specific):

Is it the intent of 633.208 (8) to prohibit a local jurisdiction or utility from requiring a standby water fee for a one or two family dwelling that is provided with residential fire sprinklers?

Respectfully submitted this 25 day of September, 2013.



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Petitioner (or Attorney or Qualified Representative for Petitioner)

Mail original to:

Agency Clerk
Division of Legal Services
Florida Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0390

Or file electronically at: Julie.Jones@myfloridacfo.com

(Send the preceding three page form only. You need not send the accompanying rules or statutes on the next page which are provided for your information and convenience.)

Please note that the use of this form containing the information in it is neither solicited nor required; however, if used and filled out completely, it complies in all respects with the requirements of the law and all rules pertaining to declaratory statements, and will assist the division in expediting the proceeding.

Declaratory Statements: FLORIDA STATUTES

120.565 Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set or circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or any the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

^{2*} Please see footnote 1 relating to the authorized signature for an authority having jurisdiction.

FILED

DEC 13 2013

Docketed by



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

In The Matter Of:

Phillip W. Green, Fire Marshal
Estero Fire Rescue

Case No.: 142287-13-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (Petition) by Phillip W. Green, Fire Marshal, Estero Fire Rescue, (Petitioner), received by the Department of Financial Services (Department), Division of Legal Services, on September 27, 2013. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter of the Petition.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being answered as purely hypothetical.

3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. A Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.104(6), Florida Statutes, Chapter 28-105, Florida Administrative Code, and/or Rule 69A-60.007, Florida Administrative Code.

5. The Petition states that Estero Fire Rescue, an independent special taxing district, is exploring the adoption of a requirement that residential fire sprinklers be installed in one- and two-family dwellings.

6. The subject of the Petition is whether the intent of Section 633.208(8), Florida Statutes, is to prohibit a local jurisdiction or utility from requiring a standby water fee for a one- or two-family dwelling that is provided with residential fire sprinklers.

7. Receipt of the Petition herein was published in Volume 39, Number 207 of the Florida Administrative Register, on October 23, 2013.

QUESTION PRESENTED

8. Is it the intent of Section 633.208(8), Florida Statutes, to prohibit a local jurisdiction or utility from requiring a standby water fee for a one- and two-family dwelling that is provided with residential fire sprinklers?

DISCUSSION

9. The Department has authority pursuant to Sections 120.565 and 633.104(6), Florida Statutes, and Chapter 28-105, Florida Administrative Code, to

issue Declaratory Statements when requested in writing by a substantially affected person or an Authority Having Jurisdiction regarding the Department's opinion as to the applicability of a statutory provision over which the agency has authority to the Petitioner's particular set of circumstances.

10. Section 633.208, Florida Statutes, is entitled "Minimum firesafety standards." It generally requires that the Florida Fire Prevention Code, adopted by the State Fire Marshal, shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities. This section requires each municipality, county, and special district with firesafety responsibilities to enforce the Florida Fire Prevention Code as the minimum firesafety code. In addition, it provides that a municipality, county, and special district may adopt more stringent firesafety standards, subject to the requirements of this section.

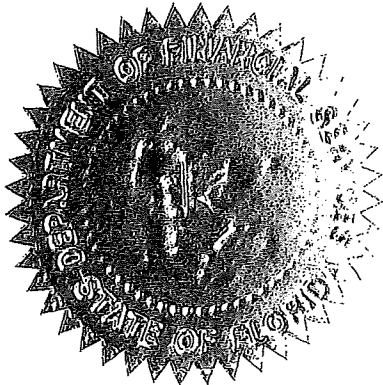
11. Subsection (8) of Section 633.208, Florida Statutes, provides that the provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to newly constructed one-family and two-family dwellings. However, local governments may adopt fire sprinkler requirements for one- and two-family dwellings under this subsection. This section also contains various other provisions related to the implementation of a fire sprinkler requirement on one- or two-family dwellings by any local government.

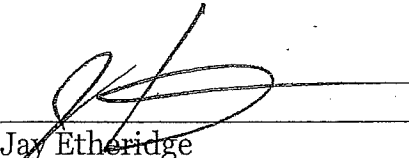
12. Subsection (8) of Section 633.208, Florida Statutes, specifically states: "[i]n addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system."

CONCLUSION

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that the Petitioner is a substantially affected person and is entitled to the issuance of this Declaratory Statement. The Department finds that Section 633.208(8), Florida Statutes, prohibits a local jurisdiction or utility from charging a standby water fee for one- and two-family dwellings that are equipped with residential fire sprinklers that is not charged to non-fire sprinklered one- and two-family dwellings.

DONE and ORDERED this 12 day of December, 2013.




Jay Etheridge
Deputy Chief Financial Officer
Department of Financial Services

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, Agency Clerk, Division of Legal Services, 612 Larson Building, Tallahassee, Florida 32399-0333, and a copy of the same with the appropriate district court of appeal within 30 days of rendition of this Declaratory Statement.

Copies furnished to:

Phillip W. Green, Fire Marshal
Esterro Fire Rescue
21500 Three Oaks Pkwy
Esterro, FL 33928

R. Terry Butler, Esq.
Assistant General Counsel
Department of Financial Services
Room 612A, Larson Building
Tallahassee, FL 32399-0333