

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

**BILL:** CS/SB 704

**INTRODUCER:** Community Affairs Committee and Senator Bennett

**SUBJECT:** Building Construction and Inspection

**DATE:** January 30, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Fav/CS</b>
2.	Howard	DeLoach	BGA	<b>Pre-meeting</b>
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill amends a number of provisions related to building construction and inspection in Florida. The bill:

- modifies how local government code enforcement boards serve notices on property owners;
- revises definitions, outlines permitting measures, establishes title transfer procedures and provides for the applicability of rules governing on-site sewage treatment and disposal systems;
- authorizes building code administrators or building officials to accept electronically transmitted construction plans and related documents for permit approval purposes;
- includes certain fire safety inspectors among those eligible to take the building code inspector or plans examiner certification exam and shortens the time length of a provisional certificate for newly employed or promoted inspectors or examiners;
- expands the meaning of ‘demolish’ as it is used to define licensed contractors;
- clarifies the remedial nature and retroactive application of contracts related to the sale of manufactured or factory-built buildings;
- increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;

- changes how certain Florida Building Code permit fee surcharges are allocated;
- exempts specified hunting structures from the Florida Building Code; and
- directs the Florida Building Commission to adopt a rule outlining an alternative method of screen enclosure design.

The bill substantially amends sections 162.12, 381.0065, 468.604, 468.609, 489.105, 489.127, 489.531, 553.721, and 553.73 of the Florida Statutes and creates an undesignated section of law.

## II. Present Situation:

### Local Government Code Enforcement Board Notices

#### *Code Enforcement Boards and Procedures*

Chapter 162, Part I of the Florida Statutes governs local government code enforcement boards. These county and municipality administrative boards are authorized to impose fines and other noncriminal penalties to enforce local government code and ordinance violations.<sup>1</sup>

The boards consist of five or seven members appointed by the local governing body.<sup>2</sup> An authorized agent or employee of the local government serves as a code inspector to assure code compliance and to initiate any enforcement proceedings.<sup>3</sup> If a violation of the codes is found, the code inspector notifies the violator and gives the person a reasonable time to correct the transgression. If the violation persists beyond the time specified for correction, a hearing is requested and scheduled, and the code enforcement board provides notice pursuant to s. 162.12, F.S.<sup>4</sup>

At the conclusion of a hearing, the enforcement board issues findings of fact and an order affording proper relief. The order may include a notice for compliance by a specified date and that a fine may be imposed.<sup>5</sup> Fines may not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation.<sup>6</sup>

#### *Code Enforcement Notices*

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. There are four options cited in s. 162.12(1), F.S., by which notices are provided, including by:

certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, *and* at any other address provided to the local government by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2. *and* by first class mail

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<sup>1</sup> See sections 162.02 and 162.03, F.S. An alternative enforcement system utilizing special magistrates is also an option.

<sup>2</sup> Section 162.05, F.S. If the local governing body has a population of less than 5,000 persons, the code enforcement board may consist of five or seven members. If the population is 5,000 or more persons, the board must be seven members.

<sup>3</sup> Section 162.04(2), F.S.

<sup>4</sup> See section 162.06, F.S.

<sup>5</sup> See section 162.07, F.S.

<sup>6</sup> See section 162.09, F.S.

directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing.<sup>7</sup>

The other options for serving notices in s. 162.12(1), F.S., are:

- hand delivery by the sheriff, code inspector, or other designated person;
- leaving at the violator's residence with any person residing there above the age of 15; or
- for commercial premises, leaving the notice with the manager or other person in charge.<sup>8</sup>

There is currently no specific guidance in s. 162.12(1), F.S., for serving notices on property owned by a corporation.

In addition to providing notice as set forth in subsection (1) of s. 162.12, F.S., subsection (2) provides optional noticing by publication or posting as follows:

- published once during each week for four consecutive weeks in a newspaper of general circulation in the county where the code enforcement board is located;
- posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which is at the property of the alleged violation and the other at the primary municipal or county government office.

Proof of posting is by affidavit of the person posting the notice. Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail.<sup>9</sup> Evidence that an attempt has been made to hand deliver or mail a notice together with proof of publication or posting satisfies the notice requirements regardless of whether or not the alleged violator actually received such notice.<sup>10</sup>

### **The Department of Health's Regulation of Septic Tanks**

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is administration of septic systems.<sup>11</sup>

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.<sup>12</sup>

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<sup>7</sup> Section 162.12(1)(a), F.S. *Italics* added.

<sup>8</sup> See ss 162.12(b)-(d), F.S.

<sup>9</sup> Section 162.12(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> See s. 381.006, F.S.

<sup>12</sup> Section 381.0065(2)(j), F.S.

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.<sup>13</sup> The DOH's Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.<sup>14</sup>

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide five-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.<sup>15</sup> This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).<sup>16</sup> According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. The DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in Florida.<sup>17</sup> Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.<sup>18</sup> Therefore, Florida's pre-1983 septic systems and any

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<sup>13</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited Dec. 19, 2011).

<sup>14</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited Dec. 19, 2011).

<sup>15</sup> See ch. 2008-152, Laws of Fla.

<sup>16</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at <http://www.doh.state.fl.us/environment/ostds/pdfs/forms/MSIP.pdf> (last visited Dec. 19, 2011).

<sup>17</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited Dec. 22, 2011). See also Florida Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (last visited on Dec. 22, 2011).

<sup>18</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at <http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm> (last visited Jan. 3, 2012).

illegally repaired, modified or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.<sup>19</sup>

**Flow and Septic System Design Determinations**

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.<sup>20</sup> Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.<sup>21</sup>

Minimum required treatment capacities for septic systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined below.<sup>22</sup>

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area (ft <sup>2</sup> )	Minimum Required Treatment Capacity(gallons per day)
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

Minimum design flows for septic systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single- or multiple-family dwelling unit, the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.<sup>23</sup>

**Electronically Transmitted Construction Documents**

***Building Code Administrators and the Permitting Process***

The Legislature deems it necessary in the interest of public health and safety to regulate the practice of building code administration and inspection in this state.<sup>24</sup> “Building code administrators” or “building officials” are the local government employees charged with building construction regulation responsibilities. These responsibilities are linked to the permitting process and include plan review, enforcement, and the inspection of building construction,

<sup>19</sup> *Id.*

<sup>20</sup> Rule 64E-6.001, F.A.C.

<sup>21</sup> *Id.*

<sup>22</sup> Table adapted from Rule 64E-6.012, F.A.C.

<sup>23</sup> Rule 64E-6.008, F.A.C.

<sup>24</sup> Section 468.601, F.S.

remodeling, and demolition. Officials verify compliance with construction codes as required by state law or municipal or county ordinance relating to plumbing, mechanical, electrical, gas, fire prevention, energy, and accessibility.<sup>25</sup>

Section 468.604 (1), F.S., requires that construction plans be reviewed by a building code administrator or building official before the issuance of any building, system installation, or other construction permit. In addition, the administrator or official must also inspect each phase of construction where a building or other construction permit has been issued.<sup>26</sup>

To obtain a permit, the Florida Building Code provides that an applicant shall first file an application in writing on a form furnished by the appropriate building department for the intended purpose.<sup>27</sup> Permit application forms shall be in a format prescribed by a local administrative board, if applicable, and must comply with the requirements of s. 713.135(5) and (6), F.S.

Section 713.135(5), F.S., requires building permit applications to include the names and addresses of property owners and contractors and a description sufficient to identify the property. Section 713.135(6), F.S., delineates the format for building permit applications which include owner and contractor signatures as well as notarization.<sup>28</sup> The section also provides that an authority responsible for issuing building permits may accept a building permit application in an electronic format, as prescribed by the authority. Electronically submitted permits must contain an additional “owner’s electronic submission statement.”<sup>29</sup>

Construction documents outlining floor, site, and foundation plans, as well as other data, are submitted in one or more sets with each application for a permit. Electronic media versions of these documents are allowed to be submitted when approved by the building official.<sup>30</sup>

### ***Electronic Signatures***

The intent of the “Electronic Signature Act of 1996,” is to facilitate economic development and efficient delivery of government services through electronic messages.<sup>31</sup> The act also aims to foster the development of electronic commerce through the use of electronic signatures. Unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature.<sup>32</sup>

Part II, ch. 668, F.S., contains the “Uniform Electronic Transaction Act” which sets forth requirements for the validation and effect of electronic records and electronic signatures. It also

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<sup>25</sup> Section 468.603(1), F.S.

<sup>26</sup> Section 468.604(1), F.S.

<sup>27</sup> Section 105.3, Chap. 1, 2007 Florida Building Code: Building (including 2009 Supplement).

<sup>28</sup> Section 117.021(1), F.S., provides that “any document requiring notarization may be notarized electronically.”

<sup>29</sup> Section 713.135(6)b, F.S.

<sup>30</sup> Sections 106.1.1 and 106.3.5, Chap. 1, 2007 Florida Building Code: Building (including 2009 Supplement).

<sup>31</sup> See s. 668.002, F.S.

<sup>32</sup> Section 668.004, F.S.

provides for agreement variation in order to facilitate, but not require, the use of electronic means in conducting transactions.<sup>33</sup>

### ***Statutorily Authorized Electronic Submission of Documents and Seals***

Certain professions regulated by the state have statutory authority to electronically submit documents and to utilize electronic seals. These include:

- architects,<sup>34</sup>
- engineers,<sup>35</sup>
- interior designers,<sup>36</sup>
- landscape architects,<sup>37</sup> and
- land surveyors and mappers.<sup>38</sup>

In addition, in 2009, the Legislature required each clerk of court to implement an electronic filing process in an effort to reduce judicial costs, increase timeliness in the processing of cases, and improve judicial case management.<sup>39</sup>

### **Certification Standards for Building Code Administration Personnel**

A person 18 years of age and of good moral character may meet one of five eligibility requirements to take the building code inspector or plans examiner certification exam.<sup>40</sup> The eligibility requirement in s. 468.609(2)(c)(4), F.S., is to hold a standard certificate from the Florida Building Code Administrators and Inspectors Board (board) and complete an inspector or examiner training program.

Section 468.609(7)(a), F.S., allows the board to issue provisional building code inspector or plans examiner certificates to newly employed or promoted inspectors or examiners. These provisional certificates are valid for not less than three years nor more than five years.

### **Construction Contracting and Licensure to Demolish**

The legislature deems it necessary in the interest of public health, safety and welfare to regulate the construction industry.<sup>41</sup> Chapter 489, part I of the Florida Statutes governs construction contracting in the state and establishes the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) to carry out chapter provisions.<sup>42</sup>

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<sup>33</sup> See Comm. on Commerce and Economic Opportunities, The Florida Senate, *CS/CS/SB 1334 Electronic Commerce*, Florida Senate 2000 Session Summary, available at <http://archive.flsenate.gov/publications/2000/senate/reports/summaries/pdf/Comm.pdf>.

<sup>34</sup> Section 481.221(2), F.S.

<sup>35</sup> Section 471.025(1), F.S.

<sup>36</sup> Section 481.221(3), F.S.

<sup>37</sup> Section 481.321(1), F.S.

<sup>38</sup> Section 472.025(1), F.S.

<sup>39</sup> Section 28.22205, F.S.

<sup>40</sup> See s. 468.609, F.S.

<sup>41</sup> Section 489.101, F.S.

<sup>42</sup> Section 489.107(1), F.S.

The CILB meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings relating to licensure and discipline. The board engages in rulemaking to implement the provisions set forth in statutes and conducts other general business, as necessary.<sup>43</sup>

Section 489.105(3), F.S., defines “contractor” as

a person, who for compensation undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, *demolish*, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others . . . .<sup>44</sup>

Of the defined contractor activities, demolish is the sole act that receives additional clarification in the statute.

For the purposes of regulation under this part, “demolish” applies only to demolition of steel tanks over 50 feet in height; towers over 50 feet in height; other structures over 50 feet in height, other than buildings or residences over three stories tall; and buildings or residences over three stories tall.<sup>45</sup>

Given the above qualifying language, demolition of buildings or residences that are *three stories in height or less* as well as steel tanks, towers and other structures *50 feet in height or less* do not require licensure pursuant to Chapter 489, Florida Statutes.<sup>46</sup> According to the DBPR, the number of unlicensed persons currently demolishing residences and buildings three stories or less or tanks and towers 50 feet or less is unknown.<sup>47</sup>

### **Construction Contracting**

Contracting is defined in the context of the regulation of construction contracting under ch. 489, F.S. Section 489.105(6) defines “contracting” with the following exemption:

. . . the term “contracting” shall not extend to an individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, or to the individual or business entity that offers to sell or sells manufactured or factory-built buildings that will be completed on site on property on which either party to a contract has any legal or equitable interest, if the services of a qualified contractor certified or registered pursuant to the requirements of this chapter have been or will be retained for the purpose of constructing or completing such residences.

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<sup>43</sup> Florida Department of Business and Professional Regulation, *Construction Industry Licensing Board*, <http://www.myfloridalicense.com/dbpr/pro/cilb/> (last visited Dec. 14, 2011).

<sup>44</sup> *Italics added.*

<sup>45</sup> Section 489.105(3), F.S.

<sup>46</sup> See Florida Department of Business and Professional Regulation, *Senate Bill 704 Analysis* (Nov. 2, 2011) (on file with the Senate Committee on Community Affairs).

<sup>47</sup> *Id.*



## **Penalties for Unlicensed Contracting**

Prohibitions and penalties for construction contracting and electrical and alarm system contracting are found in Part I, ch. 489, F.S., and Part II, ch. 489, F.S., respectively. The local governing body of a county or municipality is authorized to enforce codes and ordinances against unlicensed contractors. The local governing board may enact an ordinance establishing procedures for implementing codes, including a schedule of penalties to be assessed by the code enforcement officer.<sup>48</sup> The maximum civil penalty which may be levied shall not exceed \$500.<sup>49</sup>

## **Florida Building Code Permit Fee Surcharge**

### ***Florida Building Code and Building Commission***

In 2000, the Florida Legislature enacted ch 2000-141, Laws of Florida, to provide for the adoption of the Florida Building Code (Code), a unified building code for the state. The Code consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair or demolition of public and private buildings or structures.<sup>50</sup> It is adopted and maintained by the Florida Building Commission (Commission) which is located within the DBPR. The Code is enforced by authorized state and local government enforcement agencies.<sup>51</sup> The Commission, by rule adopted pursuant to ss. 120.536(1) and 120.54, F.S., updates the Code every three years.<sup>52</sup>

### ***Building Code Permit Fee Surcharges***

The governing bodies of local governments may provide a schedule of fees to administer their responsibilities enforcing the Code.<sup>53</sup> In order for the DBPR to administer and carry out the purposes of the Code and related activities, a surcharge is assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Code.<sup>54</sup> The minimum amount collected on any permit issued is \$2. Surcharge funds are electronically remitted to the DBPR on a quarterly calendar basis.

The unit of government collecting and remitting these funds retains 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to DBPR are deposited in the Professional Regulation Trust Fund.<sup>55</sup> Funds collected from surcharges are used exclusively for the duties of the Florida Building

<sup>48</sup> See s. 489.127(5)(c) and s. 489.531(4)(c), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> Section 553.72(1), F.S.

<sup>51</sup> Section 553.72(3), F.S. The Commission is composed of 25 members appointed by the Governor subject to confirmation by the Senate.

<sup>52</sup> Section 553.73(7)(a), F.S.

<sup>53</sup> See s. 553.80, F.S.

<sup>54</sup> See s. 553.721, F.S., for this and the remaining information provided in this subsection of the analysis. A similar 1.5% surcharge of permit fees is assessed pursuant to s. 468.631, F.S., to fund the Florida Homeowners' Construction Recovery Fund established by s. 489.140, F.S., and to fund the functions of the Building Code Administrators and Inspectors Board.

<sup>55</sup> Pursuant to s. 215.37, F.S., the Professional Regulation Trust Fund consists of fees, licenses, and other charges assessed to practitioners of professions, as defined in ch. 455, F.S. by the DBPR. Separate accounts are maintained for each profession.

Commission and the DBPR. Funds used by the DBPR as well as funds to be transferred to the Department of Health are prescribed in the annual General Appropriations Act.

***Building Code Compliance and Mitigation Program***

Created by Chapter 98-287, s. 52, Laws of Fla. as the Building Code Training Program, s. 553.841, F.S., governs what is now known as the Florida Building Code Compliance and Mitigation Program (Program). Administered by the DBPR, the Program develops, coordinates, and maintains education and outreach to persons required to comply with the Florida Building Code including methods for mitigation of hurricane and storm-related damage. All services and materials of the Program are provided by a private, nonprofit corporation under contract with the DBPR.<sup>56</sup> Program funding is provided by the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board pursuant to ss. 489.109(3) and 489.509(3), F.S.<sup>57</sup>

**Florida Building Code Amendments and Exemptions**

Section 553.72(1), F.S., provides that the Florida Building Code (Code) is to be “applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.” Among the purposes of the Code is the intent to “establish minimum standards primarily for public health and lifesafety, and, secondarily, for protection of property as appropriate.”

While the Code is uniform in nature, s. 553.72(3)(d), F.S., states that the Florida Building Commission shall incorporate within sections of the Code provisions which address regional and local concerns and variations. In addition, local governments may adopt amendments to the technical provisions of the Florida Building Code which apply solely within the jurisdiction of such government and which provide for more stringent requirements than those specified in the Florida Building Code.<sup>58</sup>

***Permissive Exemptions for Single-Family Residences***

Local governments and Code enforcement districts may adopt rules granting Code exemptions to owners of single-family residences.<sup>59</sup> These exemptions relate to:

- additions or repairs performed by the property owner which do not exceed 1,000 square feet or the square footage of the primary structure, whichever is less;
- additions or repairs by a non-owner within a specific cost limitation set by rule, provided the total cost does not exceed \$5,000 within any 12-month period;
- building and inspections fees.<sup>60</sup>

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<sup>56</sup> According to the DBPR, Building a Safer Florida, Inc., is the nonprofit corporation currently providing services and materials for the Program. Their website is available at <http://buildingasaferflorida.com/index.cfm?key=1>.

<sup>57</sup> Section 553.841(5), F.S. According to the DBPR *Senate Bill 704 Analysis*, the Program has historically received funds from the Florida Building Commission appropriation or one-time appropriations from the Residential Construction Mitigation Program.

<sup>58</sup> Section 553.73(4)(a).

<sup>59</sup> Section 553.80(3)(b)1., F.S.

<sup>60</sup> Section 553.80(3)(b)1.a.-c., F.S.

***Outright Exemptions for Buildings, Structures, and Facilities***

The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:<sup>61</sup>

- Buildings and structures specifically regulated and preempted by the Federal Government.
- Railroads and ancillary facilities associated with the railroad.
- Nonresidential farm buildings on farms.
- Temporary buildings or sheds used exclusively for construction purposes.
- Mobile or modular structures used as temporary offices.<sup>62</sup>
- Structures or facilities of electric utilities which are directly involved in the generation, transmission, or distribution of electricity.
- Temporary sets, assemblies, or structures used in motion picture or television production.
- Storage sheds that are not designed for human habitation.<sup>63</sup>
- Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida.<sup>64</sup>
- Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site.<sup>65</sup>

The Florida Building Commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law.<sup>66</sup>

***Thermal Efficiency Standards for certain Hunting and Recreational Buildings***

Section 553.901, F.S., requires the DBPR to prepare a thermal efficiency code which provides a statewide uniform standard for energy efficiency in the thermal design and operation of all buildings consistent with energy conservation goals. Buildings exempted from thermal efficiency provisions include those with a minimal peak rate of energy usage, those neither heated nor cooled by a mechanical system, buildings where federal standards preempt state codes, and certain historical buildings.<sup>67</sup> The thermal efficiency standards for new residential buildings outlined in s. 553.905, F.S., do not apply to a building of less than 1,000 square feet which is not primarily used as a principal residence and which is constructed and owned by a natural person for hunting or similar recreational purposes.<sup>68</sup>

<sup>61</sup> See s. 553.73(10)(a)-(j), F.S.

<sup>62</sup> Provisions relating to accessibility by persons with disabilities apply to such structures.

<sup>63</sup> Sheds of 720 square feet or less are not required to comply with wind-borne-debris-impact standards. Sheds 400 square feet or less are not subject to door height and width requirements.

<sup>64</sup> “Chickee” means an open-sided wooden hut that has a thatched roof made of traditional materials that does not incorporate any electrical, plumbing, or other non-wood features.

<sup>65</sup> These mausoleums have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.

<sup>66</sup> Section 553.72(10)(j), F.S.

<sup>67</sup> See s. 553.902, F.S.

<sup>68</sup> These standards relate to heating, ventilating, and air conditioning as well as insulation. Persons may not construct more than one exempt hunting or recreational building in any 12-month period.

## Federal Emergency Management Agency Flood Insurance Rate Maps

The Flood Insurance and Mitigation Administration (FIMA), a component of the Federal Emergency Management Agency (FEMA), manages the National Flood Insurance Program (NFIP). Nearly 20,000 communities across the United States and its territories participate in the NFIP by adopting and enforcing floodplain management ordinances to reduce future flood damage. In exchange, the NFIP makes federally backed flood insurance available to homeowners, renters, and business owners in these communities. Community participation in the NFIP is voluntary.<sup>69</sup>

In addition to providing flood insurance and reducing flood damages through floodplain management regulations, the NFIP identifies and maps the Nation's floodplains. The official map of a community on which FEMA has delineated special hazard areas and the risk premium zones applicable to a community is known as a Flood Insurance Rate Map (FIRM).<sup>70</sup> Special flood hazard areas are defined as areas that will be inundated by a flood event having a one-percent chance of being equaled or exceeded in any given year. The one-percent annual chance flood is also referred to as the base flood or 100-year flood.<sup>71</sup>

## Screen Enclosures

A screen enclosure is defined in the Florida Building Code as:

a building or part thereof, in whole or in part self-supporting, and having walls of insect screening with or without removable vinyl or acrylic wind break panels and a roof of insect screening, plastic, aluminum or similar lightweight material.<sup>72</sup>

Removable vinyl and acrylic panels shall be identified as removable by a decal. The identification decal shall essentially state "Removable panel SHALL be removed when wind speeds exceed 75 mph (34 m/s)." Decals shall be placed such that the decal is visible when the panel is installed.<sup>73</sup>

## III. Effect of Proposed Changes:

**Section 1** amends s. 162.12, F.S., to modify how local government code enforcement boards serve notices to alleged violators of local codes and ordinances. The bill allows for mail notices to be sent by certified mail *either* to an address listed in the tax collector's office *or* to any other address provided by the property owner. Currently, if mailing notices, local governments are required to send to the tax collector address *and* any other addresses.

<sup>69</sup> Federal Emergency Management Agency, United States Department of Homeland Security, *National Flood Insurance Program*, <http://www.fema.gov/about/programs/nfip/index.shtm> (last visited Dec. 14, 2011).

<sup>70</sup> FEMA provides map servicing information at <https://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1>.

<sup>71</sup> Federal Emergency Management Agency, United States Department of Homeland Security, *Flood Zones*, [http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/flood\\_zones.shtm](http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/flood_zones.shtm) (last visited Dec. 14, 2011).

<sup>72</sup> Section 202, 2007 Florida Building Code: Building (First Printing), Includes 2009 Supplement.

<sup>73</sup> Section 2002.3.3, 2007 Florida Building Code: Building (First Printing), Includes 2009 Supplement.

In addition, this section of the bill establishes a corporation's registered agent as the recipient of certified mail notices for property owned by a corporation.

The bill also amends s. 162.12, F.S., to permit local government code enforcement boards to proceed with service by publication or posting pursuant to s. 162.12(2)(b), F.S., if a notice sent by certified mail is not signed as received within 30 days of mailing. Enforcement boards would no longer be required to wait until the return receipt is returned as undeliverable or refused by the United States Postal Service.

Finally, the bill eliminates a requirement to provide notices by first class mail when exercising the publishing or posting options and removes a return receipt requested provision of notices sent via certified mail.

**Section 2** amends definitions as used in ss. 381.0065-381.0067, F.S., related to onsite sewage and treatment disposal systems. The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property. A title is not encumbered when transferred by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired.

The bill specifies a septic system serving a foreclosed property is not considered abandoned. It also specifies a septic system is not considered "abandoned" if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- reconnection of the septic system is to the same type of structure that existed prior to the disaster;
- has the same number of bedrooms or less than the structure that existed prior to the disaster;
- is within 110 percent of the size of the structure that existed prior to the disaster;
- the septic system is not a sanitary nuisance; and
- the septic system has not been altered without prior authorization.

The bill provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system if fundamental site conditions have not changed between the time of construction approval and final approval.

The bill provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

**Section 3** creates subsection (4) of s. 468.604, F.S., specifying that should a building code administrator or building official provide for electronic filing, then construction plans, drawings, specifications, reports, final documents, or documents prepared or issued by a licensee may be dated and electronically signed and sealed by the licensee in accordance with ss. 668.001-668.006 and transmitted electronically to the building code administrator or building official for approval.

**Section 4** amends s. 468.609(2)(c) and 468.609(7)(a), F.S., on certification of building code administration and inspection personnel. The bill adds provisions for existing fire safety inspectors among the eligibility requirements persons can meet to take the building code inspector or plans examiner certification exam. Currently, the requirement in s. 468.609(2)(c)(4), F.S., is to hold a standard certificate from the Florida Building Code Administrators and Inspectors Board and complete an inspector or examiner training program. The bill would allow a standard certificate *or* a fire safety inspector license issued pursuant to chapter 633 and two years of verifiable experience in inspection or plan review along with the training program.

The bill also shortens the time length of a building code inspector or plans examiner provisional certificate issued to newly employed or promoted inspectors or examiners to one year. Provisional licenses may be renewed by the Florida Building Code Administrators and Inspectors Board for just cause though for not more than three years.

**Section 5** amends s. 489.105, F.S., to expand the definition of “contractor” to include those persons or businesses that contract to demolish any residence or building. Currently, contractor licensure to demolish buildings and residences only applies when these particular structures are over three stories tall.

**Section 6** creates an undesignated section of law to delineate that the amendments to s. 489.105(6), F.S., as enacted by s. 30 of chapter 2008-240, Laws of Florida, were intended to protect the sanctity of contracts for the sale of manufactured or factory-built buildings that will be completed on site and to ensure that those contracts are legal and enforceable contracts under state law. The bill further provides that the amendments were intended to be remedial in nature, clarify existing law, and apply retroactively to any contract for the sale of manufactured or factory-built buildings that will be completed on site and otherwise comply with state law.

**Section 7** amends prohibitions and penalties in Part I of Chapter 489, F.S., on construction contracting. The maximum civil penalty a local governing body may levy against an unlicensed contractor in s. 489.127(5)(c), F.S., rises from the \$500 to \$2,000.

**Section 8** amends prohibitions and penalties in Part II of Chapter 489, F.S., on electrical and alarm systems contracting. The maximum civil penalty a local governing body may levy against an unlicensed contractor in s. 489.531(4)(c), F.S., rises from the \$500 to \$2,000.

**Section 9** amends s. 553.721, F.S., to change how certain building code permit fee surcharges are allocated. Currently, funds collected from these surcharges are used exclusively for the duties of the Florida Building Commission and the Department of Business and Professional Regulation which includes the Florida Building Code Compliance and Mitigation Program. This section of the bill amends this to specifically earmark \$925,000 annually for the Florida Building Code Compliance and Mitigation Program.

**Section 10** amends s. 553.73, F.S., to exempt specified hunting structures from the Florida Building Code. Buildings or structures less than 1,000 square feet, constructed and owned by a natural person for hunting, and repaired or constructed to the same dimension and condition as existed on January 1, 2011, are eligible for the exemption if:

- the buildings or structures are not rented or leased or used as principal residences;
- they are not located within the 100-year floodplain; and
- they are not connected to an off-site electric power or water supply.

The bill also creates subsection (18) of s. 553.73, F.S., instructing the Florida Building Commission to adopt by rule an alternative screen enclosure design that requires the removal of a section of the screen to accommodate wind resistance and keep the screen enclosure intact. The rules must require the contractor to notify the homeowner and local building department on panel removal procedures when wind speeds are expected to exceed 75 miles per hour. In addition, the contractor will provide a replacement screen at the initial point of sale to repair the screen enclosure for designs that require cutting. The Florida Building Commission shall adopt the method before October 1, 2012, and incorporate the requirements into the next version of the Florida Building Code.

**Section 11** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 6 of the bill may raise an impairment of contract constitutional issue. Both the Federal and Florida State Constitutions contain limitations on the State's right to alter or impair existing contracts.<sup>74</sup> Article I, Section 10 of the State Constitution and the

<sup>74</sup> See U.S. Const., Art. I, Sec. 10, clause 1; Fla. Const., Art. I, Sec. 10.

Contract Clause of the United States Constitution prohibit laws impairing contractual obligations. Retrospective operation is not favored by courts, and a law is not construed as retroactive unless the act clearly, by express language or necessary implication, indicates that the Legislature intended a retroactive application.<sup>75</sup> These provisions allow courts to strike laws which retroactively burden or alter contractual obligations.<sup>76</sup>

The framework courts use to determine whether a law has impaired a contract is similar to a rational basis review. The United States Supreme Court set forth a three part test for whether a law violates a private contract under the Contract Clause in *Energy Reserves Group v. Kansas Power & Light*.<sup>77</sup> First, the state regulation must substantially impair a contractual relationship. If it doesn't substantially impair a contractual obligation then the inquiry ends, as the Contract Clause applies only to laws which *substantially* impair contract rights. Second, the State "must have a significant and legitimate purpose behind the regulation, such as the remedying of a broad and general social or economic problem."<sup>78</sup> Third, the law must be reasonable and appropriate for its intended purpose.

Florida's Contract Clause interpretations have generally mirrored the United States Supreme Court's interpretation of the Contract Clause of the Constitution of the United States.<sup>79</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

Persons or businesses engaged in various phases of building construction, repair, remodeling or demolition may experience cost savings as a result of efficiencies accruing from electronic filing. Costs associated with the production and delivery of hard copy documents could be reduced.

Unlicensed persons currently demolishing residences and buildings three stories or less in height will be required to obtain a contractor license from the DBPR.

Unlicensed contractors will be subject to higher civil penalties.

<sup>75</sup> See *Heberle v. P.R.O. Liquidating Co.*, 186 So. 2d 280, 282 (1st DCA 1966) ("A strict rule of statutory construction indulged in by the courts is the presumption that the legislature, in the absence of a positive expression, intended statutes or amendments enacted by it to operate prospectively only, not retroactively.").

<sup>76</sup> See *In re Advisory Opinion to the Governor*, 509 So. 2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities District v. Volusia County*, 372 So. 2d 419 (Fla. 1979).

<sup>77</sup> 459 U.S. 400 (1983).

<sup>78</sup> *Id.* at 411-13.

<sup>79</sup> See generally *Pomponio v. Cladridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1980); *Brevard County v. Florida Power and Light*, 693 So. 2d 77 (Fla. 5th DCA 1997).



Specified buildings designed for hunting purposes will be exempt from the Florida Building Code. Persons who own these buildings will encounter fewer building code regulation fees and requirements.

**C. Government Sector Impact:**

Local government code enforcement boards may realize postage cost savings as a result of the optional noticing provisions.

Local authorities that provide for and accept electronic transmissions of various construction documents may realize procedural and document storage efficiencies and improve the timeliness of permit processing. The bill does not require electronic filing; therefore, any expenditures to facilitate this option would be discretionary.

There may be an increase in the number of contractor licenses issued due to the new requirement for persons demolishing residences or buildings. According to the DBPR, the number of unlicensed persons currently demolishing residences and buildings three stories or less is unknown.<sup>80</sup> It is unknown how many of these unlicensed persons will qualify for licensure as a contractor; therefore, the amount of revenue resulting from the potential increase in the number of licenses is indeterminate. The costs of issuing the potential licenses can be managed within current Departmental resources.

Local governing bodies may issue higher civil penalties against unlicensed contractors.

The Florida Building Code Compliance and Mitigation Program will have a set funding amount of \$925,000 annually.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to the DBPR, section 5 of the bill indicates that certain buildings used for hunting will not be required to meet minimum construction standards necessary to ensure such structures are structurally stable with adequate means of egress, light and ventilation providing a minimum acceptable level of protection to life and property from fire.<sup>81</sup> However, the DBPR states that this impact will be minimal due to the occasional use of such facilities and the specific safeguards outlined in the bill.<sup>82</sup>

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<sup>80</sup> Florida Department of Business and Professional Regulation, *Senate Bill 704 Analysis* (Nov. 2, 2011) (on file with the Senate Committee on Community Affairs).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on January 12, 2012:**

Revises definitions, outlines permitting procedures, establishes title transfer procedures and provides for the applicability of rules governing on-site sewage treatment and disposal systems.

- Adds provisions for existing fire safety inspectors to take the building code inspector or plans examiner certification exam and shortens the time length of certain provisional certificates for inspectors and examiners.
- Clarifies the remedial nature and retroactive application of contracts related to the sale of manufactured or factory-built buildings.
- Increases the maximum civil penalty a local governing body may levy against an unlicensed contractor.
- Directs the Florida Building Commission to adopt a rule outlining an alternative method of screen enclosure design.
- Makes other technical and clarifying changes.

- B. **Amendments:**

None.