

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 651 (CS/CS/SB 704)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Economic Affairs Committee; Business & Consumer Affairs Subcommittee; Davis; and others (Budget Subcommittee on General Government Appropriations; Community Affairs; Bennett)	114 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 704	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 651 passed the House on March 5, 2012, as CS/CS/SB 704. The bill includes all of CS/HB 387 and portions of CS/CS/HB 887, CS/CS/HB 897, and CS/CS/CS/HB 999.

The overall purpose for the Florida Building Code is to create a statewide set of uniform standards applicable to construction in Florida. The Florida Building Commission oversees the administration of the code. The licensure requirements for professions are set in statute and comprise what is known as the "practice act" for that profession which amounts to a different set of standards that apply to each profession. Construction contracting is regulated by the Construction Industry Licensing Board.

The bill:

- Changes the method that county and municipal code enforcement offices are required to use to serve notices on property owners.
- Authorizes local building code administrators, building officials, and fire code officials to accept electronic documents and allows licensees to electronically seal documents.
- Revises definitions, outlines permitting measures, establishes title transfer procedures, and provides for the applicability of rules governing on-site sewage treatment and disposal systems.
- Includes certain fire safety inspectors among those eligible to take the building code inspector or plans examiner certification examination and shortens the duration of a provisional certificate for newly employed or promoted inspectors or examiners.
- Specifies that the scope of work of a roofing contractor include "skylights and related work;" specifies that certain services relating to air-conditioning, mechanical, and plumbing contractors do not create a separate license category; and repeals the classification as a Division II contractor for a glass and glazing contractor.
- Provides retroactive application for "contracting" as applicable to the sale of manufactured or factory-built buildings that are completed on site.
- Provides expedited permit process for grants received from the U.S. Department of Energy's SunShot Initiative, Rooftop Solar Challenge program.
- Specifies criteria to be complied with in order to be exempt from the minimum requirements of the building code for buildings or structures that are used for hunting purposes.
- Requires the Commission to establish a workgroup on high wind impacts on screen enclosures.

The bill is not anticipated to have a significant fiscal impact on state funds. Cost savings may be realized from electronic transmissions of construction documents and efficiencies and improvements in the timelines associated with permit processing.

The bill was approved by the Governor on March 23, 2012, ch. 2012-13, Laws of Florida. Sections 1-10 and 12-19 of the bill are effective July 1, 2012. Sections 11 and 20 of the bill are effective upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0651z1.BCAS.DOCX

DATE: March 29, 2012

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Local government code enforcement notices**

##### Present situation

Currently, s. 162.12, F.S., outlines the notice requirements under the Local Government Code Enforcement Boards Act. This part specifies that “a charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances.” An alleged violator may be provided notice at the address listed in the tax collector’s office and at any other address provided to the local government by a property owner. Current law requires notice to be sent to both addresses.

The code enforcement board may also provide notice by publication or posting pursuant to the procedures in subsection (2) of s.162.12, F.S.

##### Effect of changes

The bill amends the notice requirements relating to a municipal or county code violation to allow notice to be sent to either the address listed in the tax collector’s office or to any other address provided by the property owner in writing to the local government for purposes of receiving notice. The bill also states that in instances where the property is owned by a business, notice may be provided by certified mail to the registered agent of the corporation. If the notice is not signed as being received within 30 days after the date of mailing, the bill states that the notice may be provided by posting under the procedures specified in s. 162.12, F.S.

The bill also requires local government enforcing agencies to identify specific plan or project features that do not comply with the applicable codes, chapters, and sections and provide this information to the permit applicant.

#### **Public disclosure**

##### Present situation

Currently s. 119.071(1), F.S. provides for general public record and public meeting exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN), are exempt from public records requirements.

##### Effect of changes

The bill requires that competitive solicitation bids offered on public construction projects relating to public facilities be unsealed at a public hearing, thus removing the current exemption from public disclosure. It requires that the name of the bidder and the amount of the bid be announced at the public hearing and made available upon request.

#### **Sewage treatment/disposal**

##### Present situation

The Department of Health (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>1</sup>

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.<sup>2</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 and approves courses for septic system contractors. The bureau manages a state-funded research program, prepares research grants, and reviews and approves products and septic system designs.<sup>3</sup>

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>4</sup> Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH.

### Effect of changes

The bill amends s. 381.0065, F.S., to add a definition for "bedroom" as a room that can be used for sleeping that, for site-built dwellings has a minimum of 70 square feet of conditioned space or for manufactured homes has a minimum of 50 square feet of floor space. 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 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. Transfer of the title is not encumbered 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 which contains the same number of bedrooms or fewer, provided that the square footage of the structure is less than or equal to 110 percent of the original square footage 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 also 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.

### **Electronic documents**

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<sup>1</sup> See s. 381.006, F.S.

<sup>2</sup> Florida Department of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited Jan. 13, 2012).

<sup>3</sup> Florida Department of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited Jan.13, 2012).

<sup>4</sup> Rule 64E-6.001, F.A.C.

## Present situation

Part I of ch. 668, F.S., cited as the “Electronic Signature Act of 1996,” provides guidelines for electronic signatures and gives the head of each agency the responsibility of adopting and implementing control processes and procedures for business transactions conducted through electronic commerce.

## Effect of changes

The bill amends ss. 468.604, F.S. and 633.0215, F.S., to express a statement of legislative findings to encourage municipal and county building code administrators, building officials, and fire officials to accept electronically submitted documents and allow electronic submission as an option upon approval by the local authority. The bill allows licensees (permitholders) to sign, date, and seal documents electronically if approved locally.

## **Construction certification**

### Present situation

A building code administrator supervises building code activities, including plans review, enforcement, and inspection. A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes.

Certification is defined to mean “the act of obtaining or holding a certificate of competency from the State Fire Marshal.” Contracting means “engaging in business as a contractor” and is divided into various classes of certification based on work requirements.

Subsection (4) of s. 468.609, F.S., provides no person may engage in the duties of a building code administrator, plans examiner, or inspector after October 1, 1993, unless the person possesses one of the following types of certificates issued by the board attesting to the person’s qualifications to hold such position: a standard certificate; a limited certificate which allows an individual to continue to work only in the position held on July 1, 1993; or a provisional certificate which allows an individual who does not comply with the statutory requirements for standard certification to work for “not less than 3 years nor more than 5 years” pending qualification and approval for a standard certificate.

Construction contracting essentially means building or altering a structure, for compensation. Several specific contracting activities are set forth in ch. 489, F.S., each with a license that may be obtained for that activity, such as for roofing, plumbing, etc. Currently, s. 489.103(7), F.S., provides for an exemption from licensure as a construction contractor for persons who comply with statutorily specified requirements and who are owners of residential property for their own occupancy or use of the owner and not offered for sale or lease. The exemption from licensure also applies to building or improving commercial buildings, at a cost not to exceed \$75,000, on the property for the occupancy or use of the owner and not offered for sale or lease. The statute specifies the contents of a disclosure statement which must be provided to the property owner by the local agency.

The U.S. Department of Energy SunShot Initiative “is a collaborative national initiative to make solar energy cost competitive with other forms of energy.”<sup>5</sup> Through the Rooftop Solar Challenge program, the DOE has awarded \$12m for 22 collaborative city, county, state and regional teams to streamline permitting and reduce regulation costs.<sup>6</sup>

## Effect of changes

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<sup>5</sup> <http://www1.eere.energy.gov/solar/sunshot/index.html>, last visited on 02/12.2012.

<sup>6</sup> Id.

The bill amends s. 489.103, F.S., to partially exempt property owners from the requirements to obtain a construction license for work on solar panels by the property owner when the local permitting agency is receiving and distributing grant funding under the U.S. Department of Energy's SunShot Initiative, Rooftop Solar Challenge program.

The property owner supervising the solar panel construction is specifically required by the bill to contract with a licensed electrical contractor to perform electrical wiring related to the solar panel system. The bill further specifies that the local permitting agency must include a disclosure statement within the local permit to indicate the limitations of the partial exemption from licensure and the requirement for licensure for electrical work.

The bill further amends s. 489.103, F.S., to address the property owner requirement to satisfy applicable local permitting agency requirements in order to be approved for the owner licensure exemption under the U.S. Department of Energy's SunShot Initiative, Rooftop Solar Challenge program. The bill allows the local permitting agency to waive the signature or personal appearance requirement for issuance of a permit if a construction permit application is submitted electronically.

The bill specifies that a permitting authority that accepts a building permit application and disclosure statement in an electronic format is not liable in any civil action for inaccurate information submitted by the owner who is using the authority's electronic confirmation system.

### Present situation

Contractors are regulated by the Construction Industry Licensing Board (CILB) within the DBPR. Construction contractors are subdivided into Division 1 contractors, consisting of general, building and residential contractors, and Division 2 contractors, consisting of sheet metal, roofing, air-conditioning, mechanical, pool and spa, swimming pool, underground utility and excavation, solar, pollutant storage systems, and specialty contractors. Section 489.105, F.S., defines professions related to construction.

The licensure requirements for professions are set in statute. The licensure requirements, such as discipline, continuing education, and license renewal procedures, among others, comprise what is known as the "practice act" for that profession. Each practice act amounts to a different set of standards that apply to each profession, either for initial licensure or as a practitioner. For instance, some professions' practice acts require an academic degree for licensure, while others allow a variety of paths, including allowing qualification through experience, internship training, or other specific training.

The Manufactured Building Act of 1979, s. 553.35, F.S., requires minimum construction standards for the "manufacture, design, construction, erection, alteration, modification, repair and demolition of manufactured buildings" to be adopted into the Florida Building Code.

Section 489.105, F.S., provides that individuals who sell manufactured and factory-built buildings can legally enter into contracts for sales of these structures.

Section 489.113, F.S., specifies, in part, that "no person who is not certified or registered shall engage in the business of contracting in this state. However, for purposes of complying with the provisions of this chapter, a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered."

### Effect of changes

The bill amends s. 489.105, F.S., to expand the definition of "contractor" to include those persons or businesses that contract to demolish a residence or building. Currently, contractor licensure to demolish buildings and residences only applies when these particular structures are over three stories in height.

The bill specifies that the scope of work of a roofing contractor includes “skylights and related work.”

The bill specifies that a Class A air-conditioning contractor, Class B air-conditioning contractor, and Mechanical contractor may also “test and evaluate” central air-conditioning, refrigeration, heating, and ventilating systems, and that a mandatory licensing requirement is not created for the performance of these specific services.

The bill specifies that a plumbing contractor may also “perform drain cleaning and clearing and install or repair rainwater catchment systems” and a mandatory licensing requirement is not created for the performance of these specific services.

The bill repeals the classification as a Division II contractor for a glass and glazing contractor.

The bill delineates that the amendments to s. 489.105(6), F.S., as enacted by s. 30 of ch. 2008-240, L.O.F., 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.

The bill amends s. 489.113, F.S., to specify that “a person must be certified or registered in order to engage in the business of contracting in this state. However, for purposes of complying with the provisions of this chapter, a subcontractor who is not certified or registered may perform construction work under the supervision of a person who is certified or registered, provided that the work is within the scope of the supervising contractor’s license, the supervising contractor is responsible for the work, and the subcontractor being supervised is not engaged in construction work that would require a license as a contractor.” This section clarifies the responsibilities of certified contractors and registered contractors, specifically clarifying that contractors can perform and supervise all work which falls within the scope of their license, whether that work is performed by a subcontractor or a business entity hired by and supervised by the licensed contractor.

## **Landscape plans**

### Present situation

Landscape architecture means the planning and designing of land areas for such projects as parks and other recreational facilities, airports, highways, hospitals, schools, land subdivisions, commercial, industrial, and residential sites.<sup>7</sup>

Currently, s. 481.329, F.S., specifies that a person engaging in the practice of landscape design may submit plans to government agencies for approval. Section 481.329(5), F.S., provides that nothing in part II of ch. 481, F.S., which provides for the regulation of the practice of landscape architecture, prohibits a person engaging in the practice of landscape design from submitting plans to government agencies for approval.

### Effect of changes

The bill rephrases the authority to submit landscape design plans to local government agencies and specifies that planting plans including, but not limited to, planting plans independent of or a component of construction documents, may be submitted to local government agencies for approval.

## **Building Code Compliance and Mitigation Program/ Enforcement Surcharge**

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<sup>7</sup> s. 481.303(6), F.S.

## Present situation

Currently, s. 553.841, F.S., states, in part: “the Legislature finds that knowledge and understanding by persons licensed in the design and construction industries of the importance and need for complying with the Florida Building Code is vital to the public health, safety, and welfare of this state, especially for mitigating damage caused by hurricanes to residents and visitors to the state.”

This section further states: “The (DBPR) shall administer a program, designated as the Florida Building Code Compliance and Mitigation Program (Program), to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code and ensure consistent education, training, and communication of the code’s requirements, including, but not limited to, methods for mitigation of storm-related damage.”

In order for the DBPR to administer and fund the programs necessary to carry out the purposes of the building code and related activities, s. 553.721, F.S., authorizes the collection of a surcharge assessed at the rate of 1.5 percent of the construction permit fees imposed by local governments and associated with enforcement of the building code.

The unit of government responsible for collecting permit fees also collects the surcharge and electronically remits the funds collected to the DBPR on a quarterly basis. The local agency remitting the surcharge is authorized to retain 10 percent of the revenues to fund the participation of local building departments in the building code adoption processes and to provide education related to enforcement of the building code.

The surcharge funds remitted to the DBPR are deposited in the Professional Regulation Trust Fund. These funds are statutorily required to be used exclusively for the duties of the Commission and the DBPR to achieve the goals specified for the implementation of the building code. The program has historically received funds from the Commission by appropriation. The funds are used primarily to provide training and outreach relating to the building code.

## Effect of changes

The bill amends s. 553.721, F.S., to provide for revenue sharing of funds collected from the building permit surcharge between the Commission and the program. The bill specifies that the program’s funding shall be \$925,000 annually beginning in fiscal year 2013-2014.

## **Building Code Exemption**

### Present situation

Currently s. 553.73(2), F.S., specifies, in part, the building code shall contain provisions or requirements for public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems.

This section also statutorily specifies exemptions from the requirements of the code, such as, buildings and structures specifically regulated and preempted by the federal government, nonresidential farm buildings, certain temporary buildings or sheds that are not designed for human habitation, chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida, among others.

Currently, new construction or alteration of structures used for hunting are subject to the permitting, plan review, and inspection standards to comply with structural and safety requirements of the building code.

## Effect of changes

The bill amends s. 553.73, F.S., to exempt a building or structure having less than 1,000 square feet in area, which is constructed/altered and owned by a natural person for hunting related purposes, from the administrative, structural, and life safety requirements of the Florida Building Code. In general, buildings used for hunting will not be required to meet minimum construction standards.

## **Windstorm Loss Mitigation**

### Present Situation

The Commission is required to implement windstorm loss mitigation techniques into the Building Code to combat property damage associated with hurricanes. The Building Code requires buildings located in wind-borne debris regions be designed to withstand the minimum wind loads prescribed for that region.

The Commission is required by law to update the Florida Building Code every three years. The 2010 Edition represents the third update and fourth edition of the Code. The update process is based on the code development cycle of the national model building codes, which serve as the “foundation” codes for the Florida Building Code.

Section 553.844, F.S., specifies that, notwithstanding other provisions of law, exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code and, therefore, exempt from any wind resistance standards adopted in the 2007 update of the building code. This exemption provision expired on the effective date of the adoption of the 2010 Florida Building Code.

### Effect of changes

The bill removes the reference to 2010 and inserts 2013. This change revives and extends the exemption from compliance with any wind resistance requirements of the 2007 version of the building code that may apply to the applicable equipment or appliances until the adoption of the 2013 building code edition.

## **Study group on hurricane screens**

### Present situation

Chapter 553.77(1)(b), F.S., requires the Commission to make a continual study of the Florida Building Code and related laws and on a triennial basis to report findings and recommendations to the Legislature for provisions of law that should be changed.

The Commission’s 2011 recommendations to the 2012 Florida Legislature states: “The Commission has no recommendations requiring Legislative action for the 2012 Legislature.”<sup>8</sup>

The report further notes that Commission Chairman Rodriguez appointed workgroups of Commission members and representative stakeholders to develop consensus on packages of recommendations in their respective subject areas. The workgroups included the: Florida Accessibility Code Workgroup, Soffit Systems Workgroup, Uniform Mitigation Reporting Form Workgroup, Asphalt Shingles Workgroup, Threshold Building Renovation Workgroup, Hinged Entry Door Workgroup, and the Hurricane Research Advisory Committee.

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<sup>8</sup> FBC REPORT AND RECOMMENDATIONS TO THE 2012 LEGISLATURE, page 4, last reviewed on 02/12/2012.



Each of these groups worked with stakeholders to identify issues, evaluate a full range of options and submit consensus recommendations to the Florida Building Commission on their respective topics. Additionally, the Chair convened the Building Code System Assessment Ad Hoc Committee to evaluate the Florida Building Code System and the 2013 Florida Building Code Update Process Ad Hoc Committee to develop recommendations for the 2013 Code Update.<sup>9</sup>

### Effect of changes

The bill requires the Commission to establish a workgroup to address high wind impacts on screen enclosures. The workgroup is to consist of 11 industry members and requires the final adoption of a rule by the Commission to be incorporated into the next version of the code.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### 1. Revenues:

None.

#### 2. Expenditures:

Local government code enforcement agencies 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.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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

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.

### **D. FISCAL COMMENTS:**

Currently, the Florida Building Code Compliance and Mitigation Program is designed to recommend methods for mitigation of storm-related damage as part of the building code processes under the

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<sup>9</sup> Id, page 5, last reviewed 02/12/2012.

Building Commission. Funding is supported by a surcharge on construction permit fees. The Program has historically received funds by appropriation. The bill statutorily provides for revenue sharing of funds collected from the building permit surcharge between the Commission and the Program. The bill specifies that the Program's funding shall be \$925,000 annually beginning in fiscal year 2013-2014.