

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1245 Building Construction

**SPONSOR(S):** Regulatory Affairs Committee; Appropriations Committee, Business & Professional Regulation Subcommittee; Davis

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1252

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N, As CS	Livingston	Luczynski
2) Appropriations Committee	26 Y, 0 N, As CS	Topp	Leznoff
3) Regulatory Affairs Committee	17 Y, 0 N, As CS	Livingston	Hamon

### SUMMARY ANALYSIS

The bill amends a number of provisions related to building construction in the state. The bill:

- revises noticing requirements of alleged violators of local codes and ordinances;
- requires county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions to specify the use of lumber, timber, and other forest products produced and manufactured in Florida if wood is a component of the project, with certain exceptions;
- provides that certain residential construction may not impact sewage treatment or disposal systems or encroach on septic areas as determined by a local health department floor and site plan review;
- exempts certain demolition work on a construction project from the requirements for licensure as a contractor;
- increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;
- revises local government and Department of Business and Professional Regulation (DBPR) collection retention percentages for unpaid fines and costs ordered by the Construction Industry Licensing Board;
- removes a requirement that local governments send minor violation notices of noncompliance to contractors prior to seeking fines and other disciplinary penalties;
- increases the maximum civil penalty by local code enforcement officers against unlicensed electrical and alarm system contractors from \$500 to \$2,000;
- prohibits adopting a mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;
- authorizes the use of an electronic copy of a building site plan to be maintained for record retention and inspection purposes at a building site;
- specifies DBPR procedures for Florida Building Code product approval compliance and authorizes the process for expedited 10-day approval reviews;
- renames the statewide standard for energy efficiency;
- specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment;
- changes the purpose of the Florida Building Energy-Efficiency Rating Act from rating system development to energy rating system oversight;
- removes the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings;
- eliminates the DBPR's responsibilities regarding a statewide uniform building energy-efficiency rating system and provides building energy-efficiency system definitions; and
- creates the Florida Concrete Masonry Council, Inc., specifies its composition and duties, and provides for funding assessments.

The bill appropriates \$119,618 in recurring funds and \$263,143 in nonrecurring funds from the Professional Regulation Trust Fund within the DBPR to provide for the implementation of this act in the 2013-2014 fiscal year.

The effective date of the bill is July 1, 2013.

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

STORAGE NAME: h1245g.RAC

DATE: 4/29/2013

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present situation

#### **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 to the address listed in the tax collector's office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

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.

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.

#### **Florida Energy Conservation and Sustainable Buildings Act**

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,<sup>1</sup> which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.251-255.2575, F.S.) provides that, "Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings."<sup>2</sup>

Sections 255.252(3) and (4), F.S., provides that buildings constructed and financed by the state must be designed, constructed, and renovated to comply with a sustainable building rating or a national model green building code. "Sustainable building rating or national model green building code" means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IGCC),
- Green Building Initiative's Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.<sup>3</sup>

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<sup>1</sup> HB 7135 (Chapter 2008-227, L.O.F.)

<sup>2</sup> Section 255.252(2), F.S.

<sup>3</sup> Section 255.253(7), F.S.

## **Onsite Sewage Treatment and Disposal Systems and Remodeling**

An “onsite sewage treatment and disposal system (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.<sup>4</sup>

Section 381.0065(3), F.S., authorizes the Department of Health (DOH) to adopt rules administering system provisions and to perform system application reviews, site evaluations and issue permits. In addition, DOH may inspect residential system construction, modification, and repair. Currently, a system modification, replacement, or upgrade is not required for a remodeling addition to a single-family home if a bedroom is not added.<sup>5</sup>

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

Contracting is defined in the context of the regulation of construction contracting under ch. 489, F.S.

Section 489.103, F.S., specifies several exemptions from licensure as a contractor and includes owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors and the owner complies with qualifying criteria specified in this section.

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. Prior to changes to this definition during the 2012 legislative session, demolition of buildings or residences that were three stories in height or less, as well as, steel tanks, towers and other structures 50 feet in height or less did not require licensure pursuant to ch. 489, F.S.

## **Licensing of Contractors and Subcontractors**

Section 489.113, F.S., requires that a person must be certified or registered in order to engage in the business of contracting. However, subcontractors who are not certified or registered may perform construction work under the supervision of a certified or registered contractor, provided that the work is within the scope of the supervising contractor’s license, the supervising contractor is responsible for the work, and the supervised subcontractor is not engaged in construction work that would require a specialty contractor license under s. 489.105(3)(d)-(o), F.S. This provision was last amended during the 2012 Regular Session by s. 11 of ch. 2012-13, L.O.F., which replaced the term “person” with “subcontractor.” It also replaced the term “supervisor’s license” with “supervising contractor’s license.”

## **Grandfathering Provisions for Electrical and Alarm System Contractors**

Chapter 489, F.S., requires that all individuals who practice construction and electrical contracting in Florida must either be “certified” or “registered.” Section 489.514, F.S., provides that the Electrical Contractors Licensing Board issue a “certification” to an electrical, electrical specialty or alarm system contractor who is “registered” upon receipt of a completed application, payment of an appropriate fee, and evidence that he or she meets statutorily specified criteria. The criteria include possessing a registered local license, passing an approved written examination, and having at least five years of contracting experience. Formerly, applicants wishing to obtain a “certificate” pursuant to this statutory “grandfather” allowance were required to make application by November 1, 2004.

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<sup>4</sup> Section 381.0065(2)(k), F.S.

<sup>5</sup> Section 381.0065(4)(aa), F.S.

## 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 for violations.<sup>6</sup> The maximum civil penalty to be levied for a citation may not exceed \$500.<sup>7</sup>

A person charged with a violation has two options: correct the cited violation and pay the civil penalty, or, request an administrative hearing before the enforcement or licensing board or designated special magistrate. If either of these entities finds that a violation exists, it may order the violator to pay a civil penalty of not less than the original citation but not more than \$1,000 per day for each construction contracting violation and \$500 for each electrical contracting violation.<sup>8</sup>

## Outstanding Fines Issued by the Florida Construction Industry Licensing Board

Section 489.127(6), F.S., authorizes local municipalities and counties to collect unpaid fines and costs ordered by the Florida Construction Industry Licensing Board. These local governments may retain 25 percent of the total amount collected if they remit the remaining 75 percent to the DBPR.<sup>9</sup> According to DBPR, the department currently uses the Department of Financial Services' approved collections vendor to collect unpaid fines and costs when a required payment remains delinquent for more than 6 months.<sup>10</sup> The vendor charges a 23 percent fee in order to collect the ordered amount. This fee becomes due upon collection regardless of who collects the unpaid fine.

## Compliance with State Law and Local Ordinances on Contracting

Section 489.131(7)(a), F.S., provides that local government contracting fines and other penalties are assessed for the primary purpose of gaining compliance with the laws regulating the unlicensed practice of contracting. The subsection further requires that local jurisdictions issue a notice of noncompliance prior to seeking fines and other penalties for first-time "minor violations."<sup>11</sup> Such notices of non-compliance must identify the ordinance violated, specify a method of compliance, and provide a reasonable time period for compliance. Failure to address a notice of non-compliance is grounds for additional disciplinary proceedings.

## Residential Fire Sprinklers

In 2010, the Legislature amended s. 553.73(17), F.S., to prohibit the Florida Building Commission from adopting or incorporating mandatory fire sprinklers provisions in section R313 of the most current version of the International Residential Code (IRC) as part of the Florida Building Code or as a local amendment to the Code.<sup>12</sup> Pursuant to the enacted prohibition, the Florida Building Commission did not adopt the current version section as part of the 2010 Florida Building Code and, according to DBPR, the Commission is not considering it for the next edition of the Code.<sup>13</sup>

## Florida Building Commission

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<sup>6</sup> See ss. 489.127(5)(c) and 489.531(4)(c), F.S.

<sup>7</sup> Id.

<sup>8</sup> See 489.127(5)(f) and 489.531(4)(f), F.S.

<sup>9</sup> DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.

<sup>10</sup> Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee).

<sup>11</sup> A violation is deemed "minor" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.

<sup>12</sup> Chapter 2010-176, s. 32, Laws of Florida.

<sup>13</sup> Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee).

The Florida Building Commission (ss. 553.76 and 553.77, F.S.) is a 25-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.

### **Electronic Documents**

The Building Code requires that an applicant for a construction permit submit one or more copies of construction documents to the building official and specifically authorizes applicants to submit such documents electronically when authorized by the local building official.<sup>14</sup> Once reviewed and approved by the building official, the Florida Building Code requires that one set of construction documents be retained by the building official and another be provided to the applicant to “be kept at the site of work and be open to inspection by the building official or a duly authorized representative” pursuant to s.107.3.1, Florida Building Code, Building (2010).

### **Florida Building Code and the State Product Approval Program**

The State Product Approval System, which went into effect October 1, 2003, covers certain products (such as, panel walls, exterior doors, windows, among others) and provides manufacturers of these products with the choice of obtaining state approval as an alternative to receiving local approval.<sup>15</sup>

To obtain state approval, a manufacturer must demonstrate compliance with applicable standards and provisions of the Florida Building Code by submitting one of the following reports:

- a certification mark or listing from an approved certification agency,
- a test report from an approved test laboratory,
- a product evaluation report from an evaluation entity authorized under s. 553.842(8)(a), F.S., or
- a product evaluation report developed, signed and sealed by a Florida licensed engineer or architect.

Currently, applications for product approval using the test report method and evaluation report method are subject to approval by the Florida Building Commission using the normal approval process. However, applications for product approval using the certification method are subject to approval by DBPR using the expedited 10-day review process as outlined in s. 553.842(5), F.S.

### **Florida Energy Code**

Part V of ch. 553, F.S.(ss. 553.900 – 553.912), titled “Florida Thermal Efficiency Code,” requires the establishment of a “statewide thermal efficiency code.” The Florida Building Commission adopted the Florida Energy Efficiency Code for Building Construction (FEECBC), which remained Florida’s statewide energy code from 1979 to 2012.

In 2008, s. 553.73(7)(a), F.S., was amended to require the Florida Building Commission to use the International Energy Conservation Code (IECC) as the foundation for Florida’s Energy Code, while retaining the Florida-specific criteria which were established as part of the FEECBC.<sup>16</sup> The 2008 legislation required the Florida Building Commission to effectively adopt both the International Energy Code and the Florida Energy Efficiency Code for Building Construction. On March 15, 2012, the Florida Building Commission adopted the 2010 Florida Building Code – Energy Conservation, which is based on the 2009 IECC but maintains the Florida-specific criteria of the FEECBC.

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<sup>14</sup> See s. 468.604(4), F.S.

<sup>15</sup> See s. 553.842, F.S.

<sup>16</sup> Chapter 2008-227, s. 108, Laws of Florida.

Although Florida's 2010 Florida Building Code – Energy Conservation is different from the FEECBC, according to DBPR, most of the significant changes to its content result directly from the Florida-specific changes approved by the Florida Building Commission through the code update process.<sup>17</sup>

### **Florida Building Energy Efficiency Rating System (BERS)**

Chapter 553, part VIII, F.S., is known as the “Florida Building Energy-Efficiency Rating Act.” The Act requires DBPR to provide a statewide uniform system for rating the energy efficiency of buildings. In addition, DBPR is required to develop a training and certification program to certify energy raters. DBPR established the Building Energy Raters System (BERS) program to train and certify energy raters. DBPR currently outsources administration of the BERS program to the Florida Solar Energy Center (FSEC) on a no-cost basis through a Memorandum of Understanding.<sup>18</sup> Energy raters are trained and tested by FSEC and the DBPR issues the rater a certificate based on completion of the FSEC program. The rating system is a voluntary program and does not require a rating to be performed.

Currently, BERS rules adopt by reference the 2006 Mortgage Industry National Home Energy Rating Systems Accreditation Standards, promulgated by the National Association of State Energy Officials (NASEO)/Residential Energy Services Network (RESNET) as the standard for energy rater certifications under the BERS program. As a national program for energy rating, RESNET's services and rating procedures are similar to those of the BERS program. Based on adoption of the NASEO standard, Florida BERS raters are also required to take national examinations and certifications.

#### Effect of proposed changes

Section 1 amends s. 162.12, F.S., to specify that a notice sent by certified mail include a return receipt request. The notice may be sent to either an address from the tax collector's office or one from the database of the county property appraiser. The bill also allows the local government to provide notices to any address it may have for the property owner or through publication or posting methods.

Section 2 amends s. 255.20, F.S., to require county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures to use lumber, timber, and other forest products produced and manufactured in Florida if wood is a component of the project and if the products are available and their price, fitness, and quality are equal. An exception is created for transportation projects that utilize federal aid funds.

Section 3 amends s. 255.2575, F.S., to require state agencies, county officials, boards of county commissioners, school boards, city councils, city commissioners, and other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures to use lumber, timber, and other forest products produced and manufactured in Florida if wood is a component of the project and if the products are available and their price, fitness, and quality are equal. Exceptions are specified for plywood specified for monolithic concrete forms, jobs with structural or service requirements for timber that cannot be supplied by native species, construction projects financed from federal funds with the requirement that there be no restrictions as to species or place of manufacture, and transportation projects for which federal aid funds are available.

Section 4 amends s. 255.257, F.S., to clarify that when a state agency is constructing new buildings or renovating existing buildings and are required to select a sustainable building rating system or national model green building code, the selection is made on a project-by-project basis and is not a choice that encompasses all projects within that particular agency.

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<sup>17</sup> Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee).

<sup>18</sup> Id. The remainder of this section of the analysis is drawn from the DBPR Agency Analysis of the bill.

Section 5 amends s. 381.0065, F.S., to clarify the responsibilities of the Department of Health relating to onsite sewage treatment and disposal systems when remodeling a single family home that does not include the addition of a bedroom and provides that the remodeling addition or modification may not cover any part of the sewage treatment or disposal systems or encroach upon a required setback or the unobstructed area as determined by a local health department floor and site plan review. If the determination is not completed within 7 days the project is considered approved.

Section 6 amends s. 489.105, F.S., to define the term “demolish,” for purposes of licensure, as it existed prior to changes in 2012, and create an exemption from licensure for work that applies to 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.

Section 7 states that the amendments to s. 489.113(2), F.S., by s. 11 of ch. 2012, L.O.F., are remedial in nature and intended to clarify existing law. It provides that this section applies retroactively to any action initiated or pending on or after March 23, 2012.

Section 8 amends s. 489.127, F.S., to increase the maximum amount local municipalities and counties may charge for unlicensed contracting citations from \$500 to \$2,000 and to increase the maximum civil penalties for unlicensed contracting from \$1,000 to \$1,500 per day of each violation. In addition, the bill increases the percentage of funds a local government may retain when they collect unpaid fines and costs ordered by the Construction Industry Licensing Board from 25 percent to 75 percent. The remaining 25 percent would be remitted to DBPR.

Section 9 amends s. 489.131, F.S., to remove the statutory intent that collection of fines and imposition of other penalties is secondary to the goal of attaining compliance with current construction contracting regulations. In addition, the bill removes the requirement that local counties and municipalities issue a notice of non-compliance for first time minor violations prior to seeking fines and other disciplinary penalties.

Section 10 amends s. 489.514, F.S., to re-enact and extend the period for grandfathering of “registered” electrical, specialty electrical and alarm system contractor licenses to statewide “certified” licenses until November 1, 2015. The extension is similar to a grandfather allowance for construction contractors, which in 2012 was extended to November 1, 2015.

Section 11 amends s. 489.531, F.S., to increase the maximum amount local municipalities and counties may charge for unlicensed electrical and alarm system contracting citations from \$500 to \$2,000.

Section 12 amends s. 553.71, F.S., to add a definition for purposes of the Florida Building Code to include “local technical amendment” to mean “an action by a local governing authority that results in a technical change to the Florida Building Code and its local enforcement.”

Section 13 amends s. 553.73, F.S., to prohibit adopting any mandatory fire sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code.

Section 14 amends s. 553.74, F.S., relating to the Florida Building Commission to add a 26th member to the Commission to represent the natural gas distribution system industry.

Section 15 amends s. 553.79, F.S., to authorize that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site as an alternative to a hard copy.

Section 16 amends s. 553.842, F.S., to include impact protective systems among the categories of products that must receive the approval of the commission. Current law includes the categories of

panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by commission rule.

This section of the bill also requires that DBPR approve products that demonstrate compliance with the Florida Building Code using product evaluation reports from approved evaluation entities. Applications for product approval using product evaluation reports may be considered and approved by DBPR under the expedited 10-day review process. The current procedure requires applications be held until the next meeting of the Florida Building Commission.

Section 17 amends s. 553.901, F.S., to rename the statewide standard for energy efficiency as the Florida Building Code-Energy Conservation, to reflect a coordination of construction standards related to energy efficiency within the Florida Building Code adopted in accordance with s. 553.73(7)(a), F.S.

Section 18 amends s. 553.902, F.S., to conform to the change made by section 17.

Section 19 amends s. 553.903, F.S., to conform to the change made by section 17.

Section 20 amends s. 553.904, F.S., to conform to the change made by section 17.

Section 21 amends s. 553.905, F.S., to conform to the change made by section 17.

Section 22 amends s. 553.906, F.S., to conform to the change made by section 17.

Section 23 amends s. 553.912, F.S., to conform to the change made by Section 17. The bill specifies that existing residential heating and cooling equipment in residential applications need not meet the minimum equipment efficiency ratings of the Florida Building Code-Energy Conservation.

Section 24 amends s. 553.991, F.S., of the Florida Building Energy-Efficiency Rating Act, to specify that the purpose of the Act is to identify energy rating systems to promote energy efficiency rather than to develop a statewide rating system.

Section 25 repeals s. 553.992, F.S., to eliminate the DBPR's responsibility to adopt, update, and maintain a statewide uniform building energy-efficiency rating system.

Section 26 amends s. 553.993, F.S., to include a definition of "building energy-efficiency rating system" as a system created by one of three national systems or the Florida Solar Energy System. The section also provides definitions for "energy auditor," "energy-efficiency rating," and "energy rater."

Section 27 amends s. 553.994, F.S., to reference the "building energy-efficiency system" instead of the "rating system" that applies to public, commercial, and residential buildings in this state.

Section 28 amends s. 553.995, F.S., to remove the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings; to direct the efforts of a designated stakeholders' group to provide input on the adoption and administration of the system; and removes the requirement that DBPR approve training and certification programs applicable to raters.

Section 29 amends s. 553.996, F.S., to delete the DBPR's responsibility and make state agencies with building and maintenance responsibilities solely responsible to prepare, and make available for distribution, at no cost, a brochure that informs the prospective purchasers of real property about the option for an energy efficiency rating on the building. The bill requires that the building energy-efficiency rating system providers must prepare the information on building ratings and make it available for distribution.

Section 30 amends s. 553.997, F.S., to delete the DBPR's responsibility and make state agencies with building and maintenance responsibilities solely responsible to make available energy-efficiency practices information for individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.



Section 31 amends s. 553.998, F.S., to delete the DBPR's responsibility to adopt rules for the tools and procedures used to develop energy-efficiency ratings.

Section 32 contains an unnumbered section of the statutes to create the Florida Concrete Masonry Council, Inc., (council) as a direct-support organization of the Florida Building Commission. The bill creates a governing board of the council to consist of 15 members to include:

- nine members representing concrete masonry manufacturers;
- one member representing the Florida Building Commission;
- one member representing the Florida Home Builders Association;
- one member with expertise in apprenticeship or vocational training;
- two members who are masonry contractors and members of the Masonry Association of Florida; and
- one member who is not a masonry contractor or manufacturer or an employee of a masonry contractor or manufacturer, but who is otherwise a stakeholder in the masonry industry.

The council is created for the purpose of research, education, promotion, and consumer and industry information on concrete masonry products in this state and in the nation.

The council will be self-funded. The bill requires the council to adopt bylaws to carry out the intent and purposes of the council. The bill requires the bylaws to also address any matter not in conflict with the general laws of the state.

Section 33 provides an appropriation to the DBPR to implement the provisions of the bill.

Section 34 provides an effective date of July 1, 2013.

## B. SECTION DIRECTORY:

See A., Effect of proposed changes, above.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

DBPR indicates that the bill will likely produce revenues (that will exceed expenditures) related to implementation primarily of the licensure sections of the bill of: \$677,159 in FY 2013-14, \$518,219 in FY 2014-15, and \$601,509 in FY 2015-16.<sup>19</sup>

Section 5, amending s. 381.0065, F.S., does not address whether a local health department may charge a fee for the required review and verification of a floor plan and site plan of a proposed remodeling addition or modification to a single-family home to determine if a setback or the unobstructed area is impacted. However, if a fee is necessary to cover the costs of providing such reviews and verifications, s. 381.0066, F.S., may provide the authority.<sup>20</sup> The Department of Health (DOH) indicates the bill will result in a loss of revenue from the prohibition on existing system inspections and evaluations. The loss of revenue is expected to be minimal.

<sup>19</sup> Department of Business and Professional Regulation, Bill Analysis on CS/HB 1245, dated April 3, 2013, on file with House Appropriations Committee.

<sup>20</sup> s. 381.0066, F.S., provides in part "The department may collect fees for services provided with respect to onsite sewage treatment and disposal systems. The total fees assessed under this section must be sufficient to meet the cost of administering this section and ss. 381.0065 . . ."

2. Expenditures:

The bill appropriates \$119,618 in recurring funds and \$263,143 in nonrecurring funds from the Professional Regulation Trust Fund within the DBPR to provide for the implementation of this act in the 2013-2014 fiscal year related to the implementation of changes to the Building Energy Rating System. However, the bill has been amended to remove the proposed new DBPR responsibilities related to the Building Energy Rating System, consequently, the appropriation appears to be no longer needed.

The bill may impact the workload of the Department of Health when reviewing and verifying floor plans and site plans of construction projects and the potential impact to onsite sewage treatment and disposal systems. A fiscal impact is indeterminate as the bill specifies that a verification of the location of a system is not an inspection or evaluation and assessment of the system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

*See Fiscal Comments.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain DFS approved collection vendors currently utilized by DBPR may experience indeterminate revenue losses related to the collection retention percentage changes in the bill.

D. FISCAL COMMENTS:

The bill may have an initial insignificant negative fiscal impact on DBPR related to the collection of fines from local governments. DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.<sup>21</sup> It is unknown to what extent the bill's change in the local government collection retention percentage (from 25 percent to 75 percent) may entice local governments to begin such collections. In future years it is possible fine collections could see a positive fiscal impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

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<sup>21</sup> Florida Department of Business and Professional Regulation, Agency Analysis of SB 1252: Building Construction (Mar. 13, 2013) (on file with the Business and Professional Regulation Subcommittee).

In section 8 of the bill amending s. 489.127, F.S., the bill appears to contain an internal inconsistency by requiring an enforcement authority or licensing board or special magistrate to assess a civil penalty which is no less than the citation amount, which may be as much as \$2,000, as amended by the bill, but no more than \$1,500. Since the maximum citation may be more than the maximum penalty, an enforcement or licensing board or magistrate would be unable to comply with the provisions.

In section 11 of the bill amending s. 489.531, F.S., the bill appears to contain an internal inconsistency, similar to the inconsistency in section 8, by requiring the enforcement authority or licensing board or special magistrate to assess a civil penalty which is no less than the citation amount, which may be as much as \$2,000, as amended by the bill, but no more than \$500. Since the maximum citation may be more than the maximum penalty, the enforcement authority or licensing board or special magistrate would be unable to comply with the provisions.

DBPR noted in its bill analysis that they have transferred the collection of the delinquent Final Order to a DFS approved collection vendor, under the terms of the DFS statewide contract, the approved collection vendor will receive 23 percent of the collection amount regardless of who collects it.

If as noted under the Fiscal Impact on State Government, Expenditures section above, the appropriation for the implementation of changes to the Building Energy Rating System is no longer needed as the proposed new responsibilities for DBPR were deleted in the strike-all adopted by the Regulatory Affairs Committee on April 16, 2013, then Section 33 should have been removed.

#### **IV. ADMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the Business & Professional Regulation Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute (CS). The significant differences between the CS and the bill as originally filed include the following:

- Revises noticing requirements of alleged violators of local codes and ordinances.
- Exempts certain demolition work and volunteer work on a construction project from the requirements for licensure as a contractor.
- Revises a definition for licensed plumbing contractors.
- Re-opens and extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses.
- Adds a member to Florida Building Commission from the natural gas distribution industry.
- Clarifies that cost-saving incentives for IRC fire sprinklers are permissible when mutually agreed upon between a builder and code official.
- Provides building energy-efficiency system definitions.

On April 10, 2013, the Appropriations Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided an appropriation of \$119,618 in recurring funds and \$263,143 in nonrecurring funds from the Professional Regulation Trust Fund in the Department of Business and Professional Regulation to implement the provisions of the bill in the 2013-2014 fiscal year.

On April 16, 2013, the Regulatory Affairs Committee adopted a strike-all amendment and reported the bill as a CS/CS/CS. The significant differences between the CS/CS/CS and the CS/CS include the following:

- Requires county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions to specify the use of lumber, timber, and other forest products produced and manufactured in Florida if wood is a component of the project, with certain exceptions;
- Clarifies the responsibilities of the Department of Health relating to onsite sewage treatment and disposal systems when remodeling a single family home that does not include the addition of a bedroom and provides that the remodeling addition or modification may not cover any part of the sewage treatment or disposal systems or encroach upon a required setback or the unobstructed area as determined by a local health department floor and site plan review.
- Removes language which would have created an exemption from contractor licensure for a person acting voluntarily or out of charity while assisting a residential property owner in making improvements to the owner's property.

- Removes language which would have defined a plumbing contractor to include a person licensed under the liquefied petroleum gas provisions of ch. 527, F.S., among those not requiring certification or registration as a plumbing contractor when disconnecting or reconnecting water lines in the servicing or replacement of an existing water heater.
- Provides that changes adopted during the 2012 Regular Session by s. 11 of ch. 2012-13, L.O.F., which replaced the term “person” with “subcontractor” applies retroactively to any action initiated or pending on or after March 23, 2012 to allow subcontractors who are not certified or registered to perform construction work under the supervision of a certified or registered contractor;
- Eliminates the DBPR’s responsibilities regarding a statewide uniform building energy-efficiency rating system and provides building energy-efficiency system definitions;
- Creates the Florida Concrete Masonry Council, Inc., as a direct-support organization of the Florida Building Commission, specifies its composition and duties, and provides for funding assessments.

The staff analysis is drafted to reflect the CS/CS/CS/HB 1245.