

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 Committee on Regulated Industries

BILL: CS/CS/SB 1252

INTRODUCER: Regulated Industries Committee, Community Affairs Committee, and Senator Simpson

SUBJECT: Building Construction

DATE: April 9, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.	Oxamendi	Imhof	RI	Fav/CS
3.			AP	
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:

CS/CS/SB 1252 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;
- Exempts specified septic tank system inspections and evaluations when remodeling a home and establishes guidelines for construction proximity to a system;
- Revises a definition for licensed plumbing contractors;
- 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 to contractors prior to seeking fines and other disciplinary penalties;
- Extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses;

- Clarifies a prohibition to adopt any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;
- Adds a member to Florida Building Commission from the natural gas distribution industry;
- Authorizes that an electronic copy of a building site plan may 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;
- Eliminates the DBPR's responsibilities regarding a statewide uniform building energy-efficiency rating system;
- Provides building energy-efficiency system definitions; and
- Creates the Florida Concrete and Masonry Council, Inc., as a direct support organization of the Florida Building Commission and specifies its composition and duties.

This bill amends the following sections of the Florida Statutes: 162.12, 381.0065, 489.105, 489.127, 489.131, 489.514, 489.531, 553.73, 553.74, 553.79, 553.842, 553.901, 553.902, 553.903, 553.904, 553.905, 553.906, 553.912, 553.991, 553.992, 553.993, 553.994, 553.995, 553.996, 553.997, and 553.998. This bill creates unnumbered sections of the Florida Statutes.

II. 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., [relating to publication of notices and the physical posting of notices, respectively]

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

- 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.¹

¹ See ss. 162.12(1)(b)-(d), F.S.

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.²

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.³

Section 381.0065(3), F.S., authorizes the Department of Health (DOH) to adopt rules administering system statute 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.⁴

Construction Contracting Regulation

Construction and electrical contracting is regulated under ch. 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR).⁵ Section 489.115, F.S., provides that contractors must either be certified (licensed by the state to contract statewide) or registered (licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only) to engage in contracting in Florida.

The CILB is divided into two divisions: Division I and Division II.⁶ Division I of the CILB has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II of the CILB has jurisdiction over the remaining contractors defined in s. 489.105(3), F.S., which include contractors in sheet metal, roofing, air conditioning, pools and spas, plumbing, underground utilities, solar panels, and pollutant storage systems.

Plumbing Contractors

Section 489.105(3)(m), F.S., defines “plumbing contractor.” This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6), F.S., and does not require certification or registration of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.⁷

Liquefied Petroleum Gas Licenses

² See s.162.12(2), F.S.

³ Section 381.0065(2)(k), F.S.

⁴ Section 381.0065(4)(aa), F.S.

⁵ See s. 489.103, F.S., for statutory exemptions.

⁶ Section 489.107(4)(a)-(b), F.S.

⁷ The limit of the scope of work and responsibility of a specialty contractor shall be established by the CILB by rule.

Chapter 527, F.S., governs the sale of liquefied petroleum gas and defines the following licensing categories:

- Category I liquefied petroleum gas dealer;
- Category II liquefied petroleum gas dispenser;
- Category III liquefied petroleum gas cylinder exchange operator;
- Category IV liquefied petroleum gas dispenser and recreational vehicle servicer;
- Category V liquefied petroleum gas dealer for industrial uses only;
- LP gas installer;
- Specialty installer;
- Dealer in liquefied petroleum gas appliances and equipment;
- Manufacturer of liquefied petroleum gas appliances and equipment;
- Requalifier of cylinders; or
- Fabricator, repairer, and tester of vehicles and cargo tanks.

To lawfully engage in the above activities, a person must obtain a license from Department of Agriculture and Consumer Services.⁸

Grandfathering Provisions for Electrical and Alarm System Contractors

As noted, ch. 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 CILB 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. Applicants wishing to obtain a “certificate” pursuant to this statutory “grandfather” allowance were required to make application by November 1, 2004.⁹

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.”

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.

⁸ See ss. 527.01 and 527.02, F.S.

⁹ Chapter 2012-211, s. 6, L.O.F., re-opened and extended a similar grandfather allowance for construction contractors in s. 489.118, F.S.

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.¹⁰ The maximum civil penalty which may be levied for a citation shall not exceed \$500.¹¹

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.¹²

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 Department of Business and Professional Regulation (DBPR).¹³ 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.¹⁴ 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."¹⁵ 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.¹⁶ Pursuant to the enacted prohibition, the Florida Building Commission did not adopt the current version section as part of

¹⁰ See ss. 489.127(5)(c) and 489.531(4)(c), F.S.

¹¹ *Id.*

¹² See 489.127(5)(f) and 489.531(4)(f), F.S.

¹³ DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.

¹⁴ Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

¹⁵ 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.

¹⁶ Chapter 2010-176, s. 32, L.O.F.

the 2010 Florida Building Code and, according to DBPR, the Commission is not considering it for the next edition of the Code.¹⁷

Florida Building Commission

The Florida Building Commission 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.¹⁸

Electronic Documents

The Building Code requires that a permit applicant 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.¹⁹ Construction documents include at a minimum “a floor plan; site plan; foundation plan; floor/roof framing plan or truss layout; all fenestration penetrations; flashing; and rough opening dimensions; and all exterior elevations” pursuant to s. 107.3.5, Florida Building Code, Building (2010). 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 shall 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 structural products (i.e., panel walls, exterior doors, roofing products; skylights, windows, shutters, structural components, and new and innovative products) and provides manufacturers of these products with the choice of obtaining state approval as an alternative to receiving local approval.²⁰

To obtain state approval for his or her products, 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.

¹⁷ Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

¹⁸ See ss. 553.76 and 553.77, F.S.

¹⁹ See s. 468.604(4), F.S.

²⁰ See s. 553.842, F.S.

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.

The Florida Energy Code

Part V of ch. 553, F.S.(ss. 553.900 – 553.912), titled “Florida Thermal Efficiency Code,” was enacted in 1979 in response to the oil crisis of the 70s and required 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 as the foundation for Florida’s Energy Code, while retaining the Florida-specific criteria which were established as part of the FEECBC.²¹ 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.

Although “Florida’s 2010 Florida Building Code – Energy Conservation” is different from the “Florida Energy Efficiency Code for Building Construction,” 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.²²

The 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.²³ Energy raters are trained and tested by FSEC and the Department issues the rater a certificate based on completion of the FSEC program. The rating system is a voluntary program and does not require any rating 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

²¹ Chapter 2008-227, s. 108, L.O.F.

²² Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

²³ *Id.* The remainder of this section of the analysis is drawn from the DBPR Agency Analysis of the bill.

adoption of the NASEO standard, Florida BERS raters are also required to undertake national examinations and certifications.

III. Effect of Proposed Changes:

Section 1 amends s. 162.12, F.S., which relates to noticing alleged violators of local codes and ordinances to qualify that a notice sent by certified mail include a return receipt request. The bill provides that 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. 381.0065, F.S., which relates to on onsite sewage treatment and disposal systems when remodeling a single family home that does not include the addition of a bedroom. Currently, a system modification, replacement, or upgrade of a system is not required in these types of remodeling projects. This bill specifies that an "existing inspection or evaluation and assessment, or an existing system tank pump-out" is also not required for such remodels.

The bill provides that the remodeling addition or modification may not cover any part of the system or encroach upon a required setback or the unobstructed area as determined by a timely local health department floor and site plan review. It provides that the Department of Health would determine whether the setback or unobstructed area is impacted through a review and verification of the floor plan for the proposed remodeling of, or addition to, a home. If the review and verification is not completed within seven days, the proposed remodeling or addition is deemed approved.

Section 3 amends the definition of the term "contractor" in s. 489.105(3), F.S., to include the demolition of buildings or residences of more than three stories.

The bill also amends the definition of a plumbing contractor in s. 489.105(3)(m), F.S., 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 a water heater.

Section 4 provides 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 5 amends s. 489.127, F.S., relating to construction contracting prohibitions and penalties, 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 6 amends s. 489.131, F.S., which relates to compliance with state law and local ordinances for contractors, to remove the statement of Legislative intent that collection of fines and imposition of other penalties is secondary to the goal of attaining compliance with current 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 7 amends s. 489.514, F.S., relating to the certification of registered contractors, to re-open and extend the period for grandfathering of “registered” electrical, specialty electrical and alarm system contractor licenses to statewide “certified” licenses until November 1, 2015. Current law requires a license application by November 1, 2002.

Section 8 amends s. 489.531, F.S., relating to electrical and alarm systems contracting prohibitions and penalties, to increase, from \$500 to \$2,000, the maximum amount local municipalities and counties may charge for unlicensed contracting citations.

Section 9 amends s. 553.73(17), F.S., to prohibit the adoption of any mandatory fire sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code. The section also clarifies that cost-saving incentives for IRC fire sprinklers are permissible when mutually agreed upon between a builder and code official.

Section 10 amends s. 553.74, F.S., to add a 26th member to the Florida Building Commission to represent the natural gas distribution system industry.

Section 11 amends s. 553.79, F.S., relating to the Florida Building Code permits and applications, to authorize that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site.

Section 12 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.

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 13 amends s. 553.901, F.S., to change the title of statewide standard for energy efficiency from the Florida Energy Efficiency Code for Building Construction to 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 14 amends s. 553.902, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 13 of the bill.

Section 15 amends s. 553.903, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 13 of the bill.

Section 16 amends s. 553.904, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 13 of the bill.

Section 17 amends s. 553.905, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 13 of the bill.

Section 18 amends s. 553.906, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 13 of the bill.

Section 19 amends s. 553.912, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 13 of the bill. The bill also codifies the current energy code provision applicable to existing residential heating and cooling equipment to exempt that equipment, including system size and duct sealing, from meeting minimum equipment efficiencies unless necessary to preserve the listing of the equipment.

Section 20 amends s. 553.991, F.S., of Florida Building Energy-Efficiency Rating Act to identify the purpose of the act as statewide oversight of energy rating systems to promote energy efficiency instead of to develop a statewide rating system.

Section 21 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 22 amends s. 553.993, F.S., to include a definition of "building energy-efficiency rating system" as a system established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center. The section also provides definitions for "energy auditor," "energy-efficiency rating," and "energy rater."

Section 23 amends s. 553.994, F.S., to reference the "building energy-efficiency system" instead of the "rating system" that applies to all public, commercial, and residential buildings in this state.

Section 24 amends s. 553.995, F.S., to delete the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings. The bill also deletes the requirement that the DBPR establish a voluntary working group of interested persons to provide input on the adoption and administration of the system; and to specify that DBPR approve training and certification programs applicable to raters.

Section 25 amends s. 553.996, F.S., to delete the DBPR's responsibility 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 26 amends s. 553.997, F.S., to delete the DBPR's responsibility 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 27 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 28 creates the Concrete Masonry Products Research, Education, and Promotion Act. This provision creates the Florida Concrete Masonry Council, Inc., (council) as a nonprofit corporation that operates as a direct-support organization of the commission. The bill defines the purposes of the council, which include the development, implementation, and monitoring of a system for the system of masonry products and for collecting a self-imposed voluntary assessment from masonry manufacturers. The council responsibilities also includes the development of markets, the development of educational materials, and the development of methods to improve the energy-efficiency of masonry product. The council may contract for scientific research with educational institutions.

The governing board of the council would consist of 15 members. Nine members would represent concrete masonry manufacturers. The commission and the Florida Home Builders Association would each have one member represented on the council. There would be one member with expertise in apprenticeship or vocational training, and two members who are masonry contractors and members of the Masonry Association of Florida. There would also be one member who is not affiliated with the masonry industry.

The council could accept grants, donations, contributions, or gifts from any source, provided that they are not restricted in any manner and are consistent with the objectives of the program. If manufacturers pay a self impose a voluntary assessment, the manufacturer must list and separately identify the assessment as the "Florida Building Sustainability Assessment" on its invoice to the purchaser. Manufacturers who commit to the voluntary assessment must make such commitment for one year.

Section 29 provides an effective date of July 1, 2013.

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:

The bill provides 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 also provides that this section applies retroactively to any action initiated or pending on or after March 23, 2012.

In regards to the retroactive application of law, the general rule courts follow is that, in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities, and duties is presumed to apply prospectively.²⁴ The Florida Supreme Court has addressed retroactive application of statutes. The court follows an analysis with two interrelated inquiries. The first inquiry is one of statutory construction, which asks whether there is clear evidence of legislative intent to apply the statute retrospectively. If the legislation clearly expresses intent that it apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.²⁵ If a statute attaches new legal consequences to events completed before its enactment, the courts will not apply the statute to pending cases, absent clear legislative intent favoring retroactive application. This analysis is not necessary where the language of a statute contains an express command that the statute is retroactive.²⁶

When the language expressly states that it applies retroactively, the courts review a statute on the basis only of whether it is constitutionally permissible. A court must determine whether substantive or procedural rights are affected by the retroactive application of the new statute. In *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla.1994), the Supreme Court stated that “substantive law prescribes duties and rights and procedural law concerns the means and methods to apply and enforce those duties and rights.” A substantive, vested right is “an immediate right of present enjoyment, or a present, fixed right of future enjoyment.” A retroactive abolition of substantive vested rights is prohibited by constitutional due process considerations.²⁷

In 2001, a Florida court interpreted the possible retroactive application of a 2000 amendment to s. 489.128, F.S.²⁸ In this case, a contractor brought suit after the owner terminated the contract. The Legislature amended s. 489.128, F.S., while the suit was pending by removing a provision in the statute that provided a contractor with the ability to cure his or her unlicensed status. At issue was whether s. 489.128, F.S., could be applied retroactively without the deleted provision that allowed the contractor to cure its unlicensed status. The court held that the 2000 amendment changed the contractor’s substantive rights because it removed the contractor’s previously existing right to cure. The 2000 amendment, therefore, did not operate retroactively.

Regarding the provision’s intent to clarify existing law, the courts have considered a subsequent amendment to clarify original legislative intent of a statute when the amendment was enacted soon after a controversy regarding the statute's interpretation

²⁴ *Metropolitan Dade County v. Chase Federal Housing Authority Corp.*, 737 So. 2d 494, 499 (Fla. 1999).

²⁵ *Id.* at 499.

²⁶ *Id.* at 500.

²⁷ *Id.* at 503.

²⁸ *The Palms v. Magil Construction Florida, Inc.*, 785 So. 2d 597 (Fla. 3rd DCA 2001).

arose.²⁹ However, courts have held that it is inappropriate to use an amendment to clarify intent when the amendment was enacted seven years after the original statute.³⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill amends s. 489.127(6), F.S., to increase the percentage of outstanding fines collected by local government collection from 25 percent to 75 percent. According to the DBPR, certain DFS approved collection vendors currently utilized by DBPR may experience indeterminate revenue losses related to the collection retention percentage changes in the bill.

The bill amends s. 381.0065(4)(aa), F.S., to provide that an existing system inspection or evaluation, or pump-out of an existing septic tank for a remodeling or addition to a single-family residence is not required. According to the Department of Health, homeowners may experience more failures and incur repair costs due to the lack of such inspections. However, homeowners would not incur costs related to existing system evaluations and pump-outs, which the Department of Health estimates to cost between \$250 and \$500.

C. Government Sector Impact:

According to the DBPR, the amendment to s. 489.127(6), F.S., will have an indeterminate impact on DBPR and local government revenue. The department does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.³¹ It is unknown to what extent the bill's increase in the local government collection retention percentage from 25 percent to 75 percent may entice local governments to begin such collections. Any collections by local governments would increase local revenue at the expense of DBPR revenue.

According to the Department of Health, the amendment to s. 381.0065(4)(aa), F.S., to provide that an existing system inspection or evaluation, or pump-out of an existing septic tank for a remodeling or addition to a single-family residence is not required will have an indeterminate fiscal impact from the loss or revenue from the inspections.

VI. Technical Deficiencies:

None.

²⁹ See *Lowry v. Parole & Prob. Comm'n*, 473 So.2d 1248, 1250 (Fla.1985), in which the relevant statute was signed by the Governor two days before the date of the court's opinion.

³⁰ See *McKenzie Check Advance of Florida, LLC v. Betts*, 928 So.2d 1204 (Fla., 2006).

³¹ Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Regulated Industries on April 9, 2013:

The committee substitute (CS) differs from CS/SB 1252 as follows:

The CS creates an unnumbered section of the Florida Statutes to provide 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, and that this section applies retroactively to any action initiated or pending on or after March 23, 2012.

The CS amends s. 381.0065, F.S., to reference the “evaluation and assessment” of an onsite sewage treatment and disposal system. It provides that the Department of Health would determine whether the setback or unobstructed area is impacted through a review and verification of the floor plan for the proposed remodeling of, or addition to, the home. It also increases from five to seven days the period of time during which the Department of Health must complete its review and verification of the proposed remodeling or addition before the proposed remodeling or addition is deemed approved.

The CS amends the definition of the term “contractor” in s. 489.105(3), F.S., to include the demolition of buildings or residences of more than three stories.

The CS amends s. 553.842, F.S., to include impact protective systems among the categories of products that must receive the approval of the commission.

The CS amends s. 553.912, F.S., to provide that legislative intent that all replacement systems be installed using quality installation procedures in residential equipment sizing analysis and duct inspection. It also references system size and duct sealing as the type of existing heating and cooling equipment in residential applications that do not have to meet minimum equipment efficiencies.

The CS 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.

The CS amends s. 553.994, F.S., to reference the “building energy-efficiency system” instead of the “rating system” that applies to all public, commercial, and residential buildings in this state.

The CS amends s. 553.996, F.S., to delete the DBPR’s responsibility 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 CS requires that the building energy-efficiency rating system providers must prepare the information on building ratings and make it available for distribution.

The CS amends s. 553.997, F.S., to delete the DBPS's responsibility to make available energy-efficiency practices information for individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.

The CS 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.

The CS creates the Concrete Masonry Products Research, Education, and Promotion Act to establish the Florida Concrete and Masonry Council, Inc., as a direct support organization of the Florida Building Commission and to provide its composition and duties.

CS by Community Affairs on March 20, 2013:

- Revises noticing requirements regarding alleged violation of local codes and ordinances.
- 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.

B. Amendments:

None.