

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 269	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Energy & Utilities Subcommittee; Beshears; Davis	119 Y's	0 N's
COMPANION BILLS:	(CS/CS/SB 156 and CS/CS/CS/HB 1245)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 269 passed the House on April 4, 2013. The bill was amended by the Senate on April 30, 2013, and subsequently passed the House on May 2, 2013. The bill provides the following, relating to building construction:

- Revises noticing requirements of alleged violators of local codes and ordinances;
- Adds that an existing-system inspection or evaluation and assessment of onsite sewage treatment and disposal systems is not required for a residential remodeling addition or modification to a single-family home if a bedroom is not added;
- 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 and clarifies that a verification of the location of a system is not an inspection or evaluation and assessment of the system;
- Increases the maximum amount municipalities and counties may charge for unlicensed contractors and unlicensed electrical and alarm system contracting citations to \$2,000 and increases the civil penalties to \$2,500 per day for each violation;
- 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;
- Extends the period for grandfathering of "registered" electrical, specialty electrical and alarm system contractor licenses to statewide "certified" licenses;
- Prohibits adopting mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;
- Adds to the Florida Building Commission a representative of a natural gas distribution system;
- Specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment;
- Removes the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings and expands the list of entities that may provide building energy-efficiency rating systems to four named entities; and
- Eliminates the DBPR's responsibilities regarding a statewide uniform building energy-efficiency rating system and provides building energy-efficiency system definitions.

DBPR estimates the following revenues, which may be generated by application, licensing and renewal fees associated with the reopening of electrical grandfathering: \$570,080 in FY 2013-14, \$488,040 in FY 2014-15, and \$570,080 in FY 2015-16.

The bill was approved by the Governor on June 14, 2013, ch. 2013-193, L.O.F., and will become effective on July 1, 2013.

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

STORAGE NAME: h0269z1.EUS

DATE: June 26, 2013

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

County and Municipality Development Permits (Sections 1 and 3)

Present Situation

Section 125.022, F.S., provides that a county, when issuing a development permit, is not creating any rights for the applicant to obtain a permit from a state or federal agency. Further, issuing a development permit does not create any liability on the part of the county if the applicant fails to obtain the proper approvals or fulfill obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county may attach such disclaimer to the permit and may include a condition that all other applicable state or federal permits be obtained before commencement of the development.

Section 166.033, F.S., provides similar disclaimer language authority for municipalities.

Effect of Changes

The bill *requires* counties and municipalities to attach the disclaimer to the permit and *requires* that the counties and municipalities include a condition that all other applicable state or federal permits be obtained before commencement of the development.

Code Enforcement Notices (Section 2)

Present Situation

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., for providing notices:

- 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;
- By hand delivery by the sheriff or other law enforcement officer, code inspector, or other designated person;
- By leaving at the violator's residence with any person residing there above the age of 15; or
- For commercial premises, by leaving the notice with the manager or other person in charge.

In addition to those noticing provisions, the code enforcement board may serve notice through publication or posting methods.

Effect of Changes

The bill requires that a notice sent by certified mail include a return receipt request. It provides that the notice may be sent to an address from the county property appraiser's database. 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.

Public Construction Projects and the Florida Energy Conservation and Sustainable Buildings Act (Sections 4, 5, and 6)

Present Situation

In 2008, the Legislature passed a comprehensive energy package,¹ which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, 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.”²

Section 255.257(4)(a), F.S., requires all state agencies to adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings.” Section 255.2575(2), F.S., provides that, “All county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code.”³

The Department of Management Services (DMS) states on its website, the following:

State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency’s ultimate decision must be made on the basis of long-term cost-effectiveness.⁴

DMS rules pertaining to sustainable building ratings⁵ implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. DMS then evaluates this life-cycle cost analysis for technical correctness and completeness.⁶ According to DMS, these rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

Sections 255.252(3) and (4), F.S., provide 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

¹ HB 7135 (Chapter 2008-227, L.O.F.).

² Section 255.252(2), F.S.

³ This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.

⁴ http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives.

⁵ Chapter 60D, F.A.C.

⁶ Rule 60D-4.004(1)(c)1 and 2, F.A.C.

- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.⁷

Among many other standards within these rating systems are requirements for utilizing specific timber programs for any wood products that will be used in construction that meets sustainable building ratings or national model green building codes. There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Forest Stewardship Council,⁸ the American Tree Farm System,⁹ and the Sustainable Forestry Initiative¹⁰ are some commonly-used programs.

Effect of Changes

The bill requires all state agencies, 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 such products are available and their price, fitness, and quality are equal. Exceptions are currently provided for plywood specified for monolithic concrete forms, if the structural or service requirements for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture. The bill also exempts transportation projects that utilize federal aid funds.

According to DMS,

The Florida wood, timber, and lumber included in this requirement is primarily used for residential construction, such as housing and apartments. In the last 20 years, DMS has only constructed 2 or 3 projects with wood framing. Nearly all construction performed by DMS is commercial, non-combustible construction. That is, the only wood or timber found within our construction would be plywood specified for monolithic concrete forms, not applicable to the requirement under this statute, or for light framing or millwork. In this construction, DMS does not procure “wood or timber” directly, but rather competitively procures a general contractor or construction manager for a low bid, lump sum of materials and labor.¹¹

The bill clarifies that when a state agency is constructing a new building or renovating an existing building and is required to select a sustainable building rating system or national model green building code in accordance with s. 255.257(4)(a), F.S., the selection is made on a project-by-project basis and is not a choice that encompasses all projects within that particular agency.

Onsite Sewage Treatment and Disposal Systems and Remodeling (Section 7)

⁷ Section 255.253(7), F.S.

⁸ The Forest Stewardship Council (FSC) is an independent, non-profit organization. “Membership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all FSC-certified forests conform to the requirements contained within an FSC forest management standard....Certifiers are independent of FSC and the companies they are auditing.” See <https://us.fsc.org/about-certification.198.htm>.

⁹ The American Tree Farm System (ATFS) “offers certification to landowners who are committed to good forest management....Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest...protecting economic, social and environmental benefits.” See <https://us.fsc.org/about-certification.198.htm>.

¹⁰ The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their “forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value. See <http://www.sfiprogram.org/sustainable-forestry-initiative/>.

¹¹ February 22, 2013, correspondence with DMS staff.

Present Situation

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.¹²

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.¹³

Effect of Changes

The bill clarifies the responsibilities of DOH relating to onsite sewage treatment and disposal systems by adding that an existing-system inspection or evaluation and assessment of onsite sewage treatment and disposal systems is also not required for a residential remodeling addition or modification to a single-family home if a bedroom is not added. It 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 and clarifies that a verification of the location of a system is not an inspection or evaluation and assessment of the system. If the determination is not completed within seven days the project is considered approved.

Non-Certified Subcontractors (Section 8)

Present Situation

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 Session, replacing the terms “person” with “subcontractor” and “supervisor’s license” with “supervising contractor’s license.”¹⁴

Effect of Changes

The bill provides that the amendments to s. 489.113(2), F.S., by s. 11 of ch. 2012-13, 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.

Penalties for Unlicensed Construction Contracting (Section 9)

Present Situation

Section 489.127(6), F.S., authorizes municipalities and counties to collect unpaid fines and costs ordered by the Florida Construction Industry Licensing Board. The maximum civil penalty for

¹² Section 381.0065(2)(k), F.S.

¹³ Section 381.0065(4)(aa), F.S.

¹⁴ Chapter 2012-13, s. 11, L.O.F.

unlicensed contractors who are engaging in activity for which a license or certification is required cannot exceed \$500. If the enforcement or licensing board or designated special magistrate finds that a violation exists, the violator may be required to pay a civil penalty of not less than the original citation but not more than \$1,000 per day for each violation. 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).¹⁵ 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.¹⁶ 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.

Effect of Changes

The bill increases the maximum amount municipalities and counties may charge for unlicensed contracting citations from \$500 to \$2,000 and increases the civil penalties for unlicensed contracting from \$1,000 to \$2,500 per day for 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.

Compliance (Section 10)

Present Situation

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."¹⁷ Such notices of noncompliance must identify the ordinance violated, specify a method of compliance, and provide a reasonable time period for compliance. Failure to address a notice of noncompliance is grounds for additional disciplinary proceedings.

Effect of Changes

The bill removes 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 counties and municipalities issue a notice of noncompliance for first time minor violations prior to seeking fines and other disciplinary penalties.

Grandfathering Provisions for Electrical and Alarm System Contractors (Section 11)

Present Situation

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

¹⁵ DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.

¹⁶ DBPR Bill Analysis of SB 1252, dated March 13, 2013.

¹⁷ 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.

contracting experience. Formerly, applicants wishing to obtain a “certificate” pursuant to this statutory “grandfather” allowance were required to make application by November 1, 2004.

Effect of Changes

The bill extends 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.

Penalties for Unlicensed Electrical and Alarm System Contracting (Section 12)

Present Situation

Prohibitions and penalties for electrical and alarm system contracting are found in Part II of ch. 489, 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.¹⁸ The maximum civil penalty to be levied for a citation cannot exceed \$500.¹⁹

A person charged with a violation may 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 the enforcement or licensing board or designated special magistrate finds that a violation exists, the violator may be required to pay a civil penalty of not less than the original citation but not more than \$500 for each electrical contracting violation.²⁰

Effect of Changes

The bill increases the maximum amount municipalities and counties may charge for unlicensed electrical and alarm system contracting citations from \$500 to \$2,000 and increases the civil penalties for unlicensed electrical and alarm system contracting from \$500 to \$2,500 per day for each violation.

Florida Building Code and Residential Fire Sprinklers (Sections 13 and 14)

Present Situation

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.²¹ 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.²²

Effect of Changes

The bill provides that applications of cost-savings incentives for residential fire sprinklers that are authorized in the IRC upon a mutual agreement between the builder and the code official are not prohibited.

¹⁸ Section 489.531(4)(c), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Chapter 2010-176, s. 32, L.O.F.

²² DBPR Bill Analysis of SB 1252, dated March 13, 2013.

The bill amends s. 553.71, F.S., defining "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."

Florida Building Commission (Section 15)

Present Situation

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 the following design professionals, contractors, and government experts in the various disciplines covered by the code:

- One architect registered to practice in this state and actively engaged in the profession.
- One structural engineer registered to practice in this state and actively engaged in the profession.
- One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession.
- One electrical contractor certified to do business in this state and actively engaged in the profession.
- One member from fire protection engineering or technology who is actively engaged in the profession.
- One general contractor certified to do business in this state and actively engaged in the profession.
- One plumbing contractor licensed to do business in this state and actively engaged in the profession.
- One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession.
- One residential contractor licensed to do business in this state and actively engaged in the profession.
- Three members who are municipal or district codes enforcement officials, one of whom is also a fire official.
- One member who represents the Department of Financial Services.
- One member who is a county codes enforcement official.
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state.
- One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry.
- One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession.
- One member who is a representative of a municipality or a charter county.
- One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry.
- One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management.
- One member who is a representative of the insurance industry.
- One member who is a representative of public education.
- One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession.
- One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or

Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

- One member who shall be the chair.

Effect of Changes

The bill adds a representative of the natural gas distribution system industry who is actively engaged in the distribution of natural gas in the state to the Florida Building Commission.

Electronic Documents (Section 16)

Present Situation

The Florida 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.²³ 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.”²⁴

Effect of Changes

The bill 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.

Florida Building Code and the State Product Approval System (Section 17)

Present Situation

The State Product Approval System, which went into effect October 1, 2003, covers the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by commission rule. It provides manufacturers of these products with the choice of obtaining state approval as an alternative to receiving local approval.²⁵

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 of 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.²⁶

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

²³ Section 468.604(4), F.S.

²⁴ Section 107.3.1, Florida Building Code (2010).

²⁵ Section 553.842, F.S.

²⁶ *Id.*

DBPR which requires that applications be held until the next meeting of the Florida Building Commission.

Effect of Changes

The bill adds “impact protective systems” to the categories of products that must receive the approval of the commission.

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.

Florida Energy Code (Sections 18-24)

Present Situation

Part V of ch. 553, F.S., entitled “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 2012.²⁷

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.²⁸ 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.²⁹

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.³⁰

Effect of Changes

The bill renames 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. Several sections of law are amended to conform to this change.

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.

Florida Building Energy-Efficiency Rating System (Sections 25-32)

Present Situation

Part VIII of ch. 553, F.S., is entitled 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. The

²⁷ DBPR Bill Analysis of SB 1252, dated March 13, 2013.

²⁸ Chapter 2008-227, s. 108, L.O.F.

²⁹ DBPR Bill Analysis of SB 1252, dated March 13, 2013.

³⁰ *Id.*

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. Energy raters are trained and tested by FSEC and 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.³¹

According to DBPR,

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.³²

Effect of Changes

The bill amends s. 553.991, F.S., 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. The bill repeals s. 553.992, F.S., which eliminates DBPR's responsibility to adopt, update, and maintain a statewide uniform building energy-efficiency rating system. It removes DBPR's authority to adopt rules for the tools and procedures used to develop energy-efficiency ratings.

The bill creates the following definitions with regard to the Florida Building Energy-Efficiency Rating System:

- "Building energy-efficiency rating system" means a whole building energy evaluation system established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center.
- "Energy auditor" means a trained and certified professional who conducts energy evaluations of an existing building and uses tools to identify the building's current energy usage and the condition of the building and equipment.
- "Energy-efficiency rating" means an unbiased indication of a building's relative energy efficiency based on consistent inspection procedures, operating assumptions, climate data, and calculation methods.
- "Energy rater" means an individual certified by a building energy-efficiency rating system to perform building energy-efficiency ratings for the building type and in the rating class for which the rater is certified.

The bill replaces the term "rating system" with "building energy-efficiency ratings system" that applies to public, commercial, and residential buildings in the state. It removes the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings, removes direction to 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.

The bill directs state agencies with building and maintenance responsibilities to prepare and make available for distribution, information for prospective purchasers of real property about the option for an energy-efficiency rating on the building. These state agencies also must make available energy-efficiency practices information for individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments.

³¹ DBPR Bill Analysis of SB 1252, dated March 13, 2013.

³² *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR

DBPR estimates the following revenues, which may be generated by application, licensing and renewal fees associated with the reopening of electrical grandfathering: \$570,080 in FY 2013-14, \$488,040 in FY 2014-15, and \$570,080 in FY 2015-16.^{33, 34}

DOH

Insignificant.

2. Expenditures:

DBPR

None.

DOH

Insignificant.³⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See *Fiscal Comments*.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida-based lumber and timber companies could see an increase in sales. Certain DFS-approved collection vendors currently utilized by DBPR may experience indeterminate revenue losses related to the collection retention percentage changes in the bill. Residential property owners may see a savings when having HVAC inspections.

D. FISCAL COMMENTS:

According to DBPR, as locally licensed contractors transfer to the state certified contractor's license, the local licensing authority would likely see a reduction in their licensing fees. The amount and extent of the effect is indeterminate because each jurisdiction has different fees and number of licensees.³⁶

³³ Email correspondence with DBPR staff on May 16, 2013.

³⁴ Email correspondence with DPBR staff on May 17, 2013.

³⁵ Per DOH, through May 16, 2013, email correspondence, "Only in those occasions that the department needs to go to a site for verification will the fee not cover the cost. We anticipate this happening rarely. Therefore the fiscal impact will probably be negligible."

³⁶ Email correspondence with DPBR staff on May 16, 2013.

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.³⁷ It is unknown to what extent the bill's change in the local government collection retention percentage (from 25 percent to 75 percent) may result in local governments beginning such collections.

³⁷ DBPR Bill Analysis of SB 1252, dated March 13, 2013. Further corroborated through email correspondence with DPBR staff on May 16, 2013.