

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1106

INTRODUCER: Community Affairs Committee and Senator Simpson

SUBJECT: Building Construction

DATE: March 19, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	<b>Fav/CS</b>
2.			HP	
3.			RI	
4.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1106 contains several provisions related to building construction, codes, and permitting. The bill does the following:

- Requires application to the Department of Health (DOH) for an operating permit for a public swimming pool before an application may be filed for a building permit, and provides additional requirements for obtaining an operating permit;
- Specifies inspection criteria for construction or modification of manufactured buildings or building modules;
- Revises the allocation of funds from building permit surcharges to include the Future Builders of America Program;
- Authorizes building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations;
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program;
- Provides a criteria-based definition for “building energy-efficiency rating system”;
- Provides homeowners doing renovations with an additional fire safety alarm option; and
- Exempts tents from the Florida Fire Prevention Code.

The bill allocates to the Future Builders of America Program \$250,000 from funds that are remitted to the Professional Regulation Trust Fund each year, beginning with FY 2014-2015. These funds are generated from an existing 1.5 percent surcharge on each building permit application fee.

The bill takes effect July 1, 2014.

## II. Present Situation:

### Florida Building Commission

The Florida Building Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 26-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.<sup>1</sup>

### Code Enforcement Notices

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

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.<sup>2</sup>

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.<sup>3</sup>

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<sup>1</sup> Sections 553.74, 553.76 and 553.77, F.S.

<sup>2</sup> See ss. 162.12(1)(b)-(d), F.S.

<sup>3</sup> See s.162.12(2), F.S.

## Pool Construction and Operation in Florida

The DOH estimates that there are approximately 37,000 public pools in Florida.<sup>4</sup> A “public swimming pool” or “public pool” is defined as:

A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.<sup>5</sup>

A “public bathing place” is defined as:

A body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.<sup>6</sup>

In 2012, the Legislature determined that local building departments would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.<sup>7</sup> In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. Application for an operating permit must include the following:

- Description of the source or sources of water supply, and the amount and quality of water available and intended to be used;
- Method and manner of water purification, treatment, disinfection, and heating;
- Safety equipment and standards to be used; and
- Any other pertinent information deemed necessary by the DOH.<sup>8</sup>

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<sup>4</sup> Florida Dep’t of Health, *2013 Legislative Analysis for SB 156* (Jan. 7, 2013).

<sup>5</sup> Section 514.011(2), F.S.

<sup>6</sup> Section 514.011(4), F.S.

<sup>7</sup> Chapter 2012-184, Laws of Fla.

<sup>8</sup> Section 514.031(1), F.S.

If the DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the DOH will issue a permit. However, if the DOH determines that the pool is not in compliance with state laws and departmental rules, the DOH will deny the application for a permit. The denial must be in writing and must list the circumstances for the denial. Upon correction of those circumstances, the applicant may reapply for a permit.<sup>9</sup> The operating permit must be renewed annually and posted in a conspicuous place.<sup>10</sup>

Currently, the order of the permitting process that is required to build a public swimming pool or public bathing place is unclear. Local governments have reported entire public swimming pools being completed before owners discovered issues or problems after applying for the operating permit.

### **Manufactured Buildings and Building Modules per the Florida Building Code**

Section 553.72, F.S., provides that the Florida Building Code (code) is “a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state,” and its enforcement “will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer.” The Florida Building Commission adopts requirements, within the Florida Building Code, for construction or modification of manufactured buildings and building modules, to address:<sup>11</sup>

- Submittal to and approval by the DBPR of manufacturers’ drawings and specifications, including any amendments.
- Submittal to and approval by the DBPR of manufacturers’ internal quality control procedures and manuals, including any amendments.
- Minimum inspection criteria.

“Manufactured building” or “modular building” means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection as a finished building or as part of a finished building, which shall include, but not be limited to, residential, commercial, institutional, storage, and industrial structures. The term includes buildings not intended for human habitation such as lawn storage buildings and storage sheds manufactured and assembled offsite by a manufacturer certified in conformance with this part, but does not include a mobile home.<sup>12</sup>

“Module” means a separately transported three-dimensional component of a manufactured building which contains all or a portion of structural systems, electrical systems, plumbing systems, mechanical systems, fire systems, and thermal systems.<sup>13</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Section 514.031(4), F.S.

<sup>11</sup> Section 553.37(1), F.S.

<sup>12</sup> Section 553.36(13), F.S.

<sup>13</sup> Section 553.36(15), F.S.

### **Florida Building Code Surcharge**

The Florida Building Commission is authorized to adopt, modify, update, interpret, and maintain the Florida Building Code and provide that code enforcement will be performed by authorized state and local government enforcement agencies.<sup>14</sup> In order for DBPR to administer and carry out the code provisions, there is a surcharge that is assessed at 1.5 percent of the permit fees associated with enforcement of the code.<sup>15</sup>

The amount of revenue generated by the surcharge has ranged from approximately \$1,000,000 to \$5,000,000 per year over the past 10 years.<sup>16</sup> The funds that are collected from the surcharge and remitted to DBPR are deposited in the Professional Regulation Trust Fund and then allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program.<sup>17</sup> Funds allocated to the Florida Building Code Compliance and Mitigation Program are \$925,000 each fiscal year.<sup>18</sup>

### **Florida Building Code Interpretation**

Section 553.775, F.S., authorizes the Florida Building Code to be interpreted by building officials, local enforcement agencies, and the Florida Building Commission (commission) and provides specific procedures to be used when interpreting the code.

The Florida Accessibility Code for Building Construction (accessibility code), an element of the code, is adopted by the commission and prescribes requirements related to ensuring access for the disabled for new construction activity, including things such as ramps, door widths, and particular plumbing fixtures. The accessibility code combines requirements imposed by the federal regulations that implement the Americans with Disabilities Act and Florida-specific requirements described in part I of ch. 553, F.S.

In accordance with s. 120.565, F.S., the commission may render declaratory statements relating to the provisions of the accessibility code not attributable to the Americans with Disabilities Act Accessibility Guidelines. However, the accessibility code may not be interpreted by building officials, local enforcement agencies, and the commission.

### **Florida Building Code Compliance and Mitigation Program**

The DBPR administers the Florida Building Code Compliance and Mitigation Program, which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.<sup>19</sup> The program is geared toward persons *licensed* in the design and

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<sup>14</sup> Section 553.72(3), F.S.

<sup>15</sup> The minimum amount collected on any permit issued is \$2. Section 553.721, F.S.

<sup>16</sup> DBPR, *Legislative Analysis of HB 593* (Feb. 20, 2014).

<sup>17</sup> The Florida Building Code Compliance and Mitigation Program is established in Section 553.841, F.S.

<sup>18</sup> Funds used by DBPR as well as funds to be transferred to the Department of Health shall be as prescribed in the annual General Appropriations Act.

<sup>19</sup> Section 553.841(2), F.S.

construction industries, but does not address those *employed* in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.<sup>20</sup>

### **Building Energy-Efficiency Rating System**

In 1993, the Legislature enacted the Florida Building Energy-Efficiency Rating Act,<sup>21</sup> in order to identify systems for rating the energy efficiency of buildings, and encourage the consideration of energy-efficiency rating systems in the market.<sup>22</sup> The current statutory definition of such a rating system specifically relies upon identification by “the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Center.”<sup>23</sup> Information about a building’s energy-efficiency must be provided to a prospective purchaser of real property, if available. Prior to contracting for construction, renovation, or acquisition of a public building, the building must be rated pursuant to the system provided for in s. 553.995, F.S. Public bodies proposing to contract must consider energy-efficiency ratings when comparing contract alternatives.<sup>24</sup>

## **III. Effect of Proposed Changes:**

### **Code Violation Notices (Section 1)**

The bill amends s. 162.12, F.S., which relates to noticing alleged violators of local codes and ordinances to qualify that when a notice is sent to the tax collector’s office by certified mail, the local government has the option of requiring inclusion of a return receipt request.

### **Public Swimming Pools and Public Bathing Places (Sections 2, 3, and 7)**

The bill requires those desiring to construct, develop, or modify a public swimming pool to apply to the DOH for an operating permit before applying for a building permit. It prohibits the local enforcing agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application for an operating permit. The bill provides that a certificate of occupancy may not be issued until the operating permit is issued. The bill also adds to the list of information that is to accompany the operating permit application, by requiring proof of final inspection, a description of the structure, its appurtenances, and its operation.

### **Construction or Modification of Manufactured Buildings and Building Modules (Section 4)**

The bill details the “minimum inspection criteria” under s. 553.37(1), F.S., by requiring the approved inspection agency to do the following:

- Inspect the first building built, or the first unit assembled with components, and all its subsystems, after certification from the manufacturer.

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<sup>20</sup> Section 553.841(3), F.S.

<sup>21</sup> Chapter 93-249, s.12, Laws of Fla.

<sup>22</sup> Section 553.991, F.S.

<sup>23</sup> Section 553.993(3), F.S.

<sup>24</sup> Section 553.997(1), F.S.

- Continue observation of the manufacturing process until the agency determines that the manufacturer's quality control program and the plans approved by the agency will result in a building and components that meet or exceed the applicable Florida Building Code requirements.
- With respect to manufactured buildings, inspect each module produced at least once during the manufacturing process, and inspect the entire production line during each plant inspection, to ensure that at least one electrical, plumbing, structural, mechanical, or thermal subsystem is exposed during inspection of at least 75 percent of the modules inspected. The requirement appears to have been derived from the 2007 edition of the Florida Building Code, which was amended in the 2010 edition to require that 75 percent of the subsystems were inspected per plan. The proposed legislation would only require inspection of one subsystem in 75 percent of the buildings.
- With respect to components, inspect at least 75 percent of the manufactured building components or 20 percent of storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

### **Florida Building Code Surcharge (Section 5)**

From the building permit fees remitted to DBPR, the bill allocates to the Future Builders of America Program \$250,000 per fiscal year, beginning in FY 2014-2015.

The Future Builders of America Program is a nonprofit workforce development and student leadership program of the Florida Home Builders Foundation. The program links students in school with local building communities and industries.<sup>25</sup> As of November 2013, there were 11 chapters in Florida, located in Charlotte, DeSoto, Manatee, Okaloosa, Polk, Sarasota, Volusia, and Walton Counties, and the Treasure Coast.<sup>26</sup>

### **Florida Building Code Interpretation (Section 6)**

The bill authorizes building officials, local enforcement agencies, and the commission to interpret the accessibility code and removes language restricting declaratory statements to Florida-specific requirements of the accessibility code.

### **Florida Building Code Compliance and Mitigation Program (Section 8)**

The bill revises education and training requirements of the Florida Building Code Compliance and Mitigation program. In addition to maintaining a thorough knowledge of the code, participants in the design and construction industry should have a thorough knowledge of:

- Code compliance and enforcement;
- Duties related to consumers;
- Project completion; and
- Compliance of design and construction to protect from consumer harm, and storm damage.

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<sup>25</sup> Future Builders of America, <http://www.futurebuildersofamerica.org/> (Last visited Mar. 14, 2014).

<sup>26</sup> *Id.*

The bill expands the scope of the program to provide education and outreach concerning compliance with the Florida Fire Prevention Code, construction plan and permitting requirements, and construction liens. The bill further expands the applicability of the program to include people employed in the design and construction industries.

### **Smoke Alarms (Section 9)**

The bill would allow homeowners doing a renovation to install a smoke alarm with a nonremovable, nonreplaceable, ten-year battery, instead of hardwiring a smoke alarm into the electrical system. Currently, s. 553.88, F.S., provides for the adoption of electrical and alarm standards, which includes the adoption of the National Fire Alarm Code.<sup>27</sup>

### **Building Energy-Efficiency Rating System (Section 10)**

The bill provides a definition for “Building energy-efficiency rating system” with specific criteria, including:

- The ability to provide reliable and scientifically-based analysis of a building’s energy consumption or energy features;
- The ability to compare similar building types in similar climate zones;
- Use of standard calculations, formulas, and scoring methods;
- National applicability;
- Clearly defined and researched baselines or benchmarks;
- Ratings that are performed by qualified professionals;
- A labeling and recognition program with specific criteria or levels; and
- At least one level of oversight performed by a group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods.

### **Tents (Section 11)**

The bill exempts tents smaller than 30 feet by 30 feet from the Florida Fire Prevention Code.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>27</sup> NFPA No. 72.



**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill provides a clarification regarding the order in which permits must be obtained for public swimming pools and public bathing places. This may result in cost savings due to issues and problems being identified prior to construction.

**C. Government Sector Impact:**

The bill allocates \$250,000 to the Future Builders of America Program from funds that are remitted to the Professional Regulation Trust Fund. These funds are generated from an existing 1.5 percent surcharge on each building permit application fee.

**VI. Technical Deficiencies:**

Section 2 of the bill requires application to DOH for an operating permit for a public swimming pool before applying for a building permit. Section 3 provides criteria for the application of the operating permit. One of the criteria is proof of final inspection. It is unclear how an applicant is to provide proof of final inspection before applying for a building permit.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 162.12, 514.03, 514.031, 553.37, 553.721, 553.775, 553.79, and 553.841.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs Committee on March 19, 2014:**

- Adds proof of inspection to the list of items required as part of an application for a public swimming pool operating permit;
- Clarifies that final inspection of a pool can occur prior to obtaining an operating permit, but issuance of a certificate of completion may not;
- Clarifies that inspection is required of each subsystem of the first manufactured building assembled;
- Increases the percent of manufactured building components that must be inspected from 50 percent to 75 percent;

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- Allows homeowners doing a renovation to install a smoke alarm with a ten year battery, instead of hardwiring a smoke alarm into the electrical system;
  - Defines “building energy-efficiency rating system”; and
  - Recognizes that a tent need not adhere to the Florida Fire Prevention Code.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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