

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 1106

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

SUBJECT: Building Construction

DATE: April 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
3.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1106 amends several statutes related to building construction, codes, and permitting. The bill:

- Creates an exception to the rule that the Florida Building Commission may not accept a petition for waiver or variance for the Florida Accessibility Code for Building Construction and from the public swimming and public bathing places provisions, added to the Florida Building Code (code) under s. 553.77(7), F.S.;
- Requires the Florida Building Commission (commission) to provide criteria and procedures for granting variances from the Florida Building Code relating to public swimming pools and public bathing places;
- Gives local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of local codes and ordinances.
- Requires an 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, and an order they should be met;
- Revises the allocation of funds from building permit surcharges to include \$250,000 allocated to the Future Builders of America Program;
- Prohibits an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of

the Florida Building Code, except when the equipment is being replaced or moved during reroofing.

- 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;
- 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 under s. 514.031, F.S. A certificate of completion or occupancy may not be issued until such operating permit is issued;
- Allows site plans or building permits to be maintained in the original form or in the form of an electronic copy at the worksite. These plans and permits must be open to inspection as required by the Florida Building Code;
- Requires counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of public schools that are subject to the Florida Building Code, rather than public school districts;
- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program;
- Provides homeowners doing renovations with an additional fire safety alarm option;
- Provides a criteria-based definition for “building energy-efficiency rating system”;
- Exempts certain tents from the Florida Fire Prevention Code;
- Removes the requirement that a member of the Fire Code Interpretation Committee must notify the committee that he or she is unable to respond before an alternate can respond to a request for a nonbinding interpretation of Florida Fire Prevention Code; and
- Provides an effective date of July 1, 2014.

II. Present Situation:

Florida Building Commission

The commission, which is housed within the Department of Business and Professional Regulation (department), 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.¹

Code Enforcement Notices

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. Under s. 162.12(1), F.S., notices may be provided 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

¹ Sections 553.74, 553.76 and 553.77, F.S.

signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs s. 162.12(2)(b)1. and 2., F.S;²

- Hand delivery by the sheriff, code inspector, or other designated person;
- Leaving the notice 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.³

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.⁴

Pool Construction and Operation in Florida

The DOH estimates that there are approximately 37,000 public pools in Florida.⁵ 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.⁶

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.⁷

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

² Relating to publication of notices and the physical posting of notices, respectively.

³ See ss. 162.12(1)(b)-(d), F.S.

⁴ See s.162.12(2), F.S.

⁵ E-mail from DOH staff (March 27, 2014).

⁶ Section 514.011(2), F.S.

⁷ Section 514.011(4), F.S.

and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.⁸ 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.⁹

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.¹⁰ The operating permit must be renewed annually and posted in a conspicuous place.¹¹

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:¹²

- Submission to and approval by the department of manufacturers’ drawings and specifications, including any amendments.
- Submission to and approval by the department 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 for installation or erection as a finished building or as part of a finished building, including, but not 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.¹³

⁸ Chapter 2012-184, Laws of Fla.

⁹ Section 514.031(1), F.S.

¹⁰ *Id.*

¹¹ Section 514.031(4), F.S.

¹² Section 553.37(1), F.S.

¹³ Section 553.36(13), F.S.

“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.¹⁴

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.¹⁵ In order for the department 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.¹⁶

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.¹⁷ The funds that are collected from the surcharge and remitted to the department 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.¹⁸

Future Builders of America

The Future Builders of America Program is a non-profit workforce development and student leadership program of the Florida Home Builders Foundation. The program links students in school with local building communities and industries.¹⁹ 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.²⁰

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 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.

¹⁴ Section 553.36(15), F.S.

¹⁵ Section 553.72(3), F.S.

¹⁶ The minimum amount collected on any permit issued is \$2. Section 553.721, F.S.

¹⁷ *2014 Legislative Bill Analysis for HB 593*, Department of Business and Professional Regulation (Feb. 20, 2014).

¹⁸ The Florida Building Code Compliance and Mitigation Program is established in Section 553.841, F.S.

¹⁹ Future Builders of America, <http://www.futurebuildersofamerica.org> (Last visited March 26, 2014).

²⁰ *Id.*

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 department 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.²¹ The program is geared toward persons *licensed* in the design and 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 department.²²

Building Energy-Efficiency Rating System

In 1993, the Legislature enacted the Florida Building Energy-Efficiency Rating Act²³ in order to identify systems for rating the energy efficiency of buildings, and encourage the consideration of energy-efficiency rating systems in the market.²⁴ 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."²⁵ 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.²⁶

III. Effect of Proposed Changes:

Public Swimming Pools and Public Bathing Places (Sections 1, 4, 5, 9, 11)

The bill amends s. 514.03, F.S., to require 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.

The bill amends s 514.031, F.S., to provide that a certificate of occupancy may not be issued until the operating permit is issued. Additional documentation is required in the operating permit application: proof of final inspection, and a description of the structure, its appurtenances, and its operation.

²¹ Section 553.841(2), F.S.

²² Section 553.841(3), F.S.

²³ Chapter 93-249, s.12, Laws of Fla.

²⁴ Section 553.991, F.S.

²⁵ Section 553.993(3), F.S.

²⁶ Section 553.997(1), F.S.

The bill amends s. 120.80(16)(a), F.S., creating an exception to the rule that the Florida Building Commission may not accept a petition for waiver or variance for:

- Applications to waive the requirements of the Florida Accessibility Code for Building Construction provided under s. 553.512, F.S.; and
- Variances from the public swimming and public bathing places provisions added to the Florida Building Code under s. 553.77(7), F.S.

The bill creates subsection (7) under 553.77, F.S, requiring the commission to provide criteria and procedures for providing variances from provisions in the Florida Building Code relating to swimming pools and public bathing places. The commission can only grant a variance once it is shown that the individual applying for one has not intentionally caused the hardship, that no reasonable alternative exists, and that the health and safety of pool patrons is not at risk. Applications must be approved, approved with conditions, or denied based on a majority vote of the commission taken after a recommendation from the Swimming Pool Technical Advisory Committee, which may include a representative of the DOH who has knowledge of swimming pool regulations.

The bill amends s. 553.79, F.S., to prohibit 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 under s. 514.031, F.S. A certificate of completion or occupancy may not be issued until such operating permit is issued.

Code Violation Notices (Section 2)

The bill amends s. 162.12, F.S., to give local government the option of requiring a return receipt request when sending notices by certified mail to alleged violators of local codes and ordinances.

Construction or Modification of Manufactured Buildings and Building Modules (Section 6)

The bill amends s. 553.37, F.S., to detail inspection criteria that must be adopted by the Florida Building Commission within the Florida Building Code. The criteria require 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 of the manufacturer;
- 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;
- Thereafter, with respect to manufactured buildings, inspect each module produced at least once during the manufacturing process and to inspect at least 75 percent of the subsystems of each module; and
- 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 7)

The bill amends s. 553.721, F.S. to allocate \$250,000 per year, beginning in Fiscal Year 2014-2015, from the building permit fees remitted to the department to the Future Builders of America Program.

Florida Building Code Restriction (Section 8)

The bill amends s. 553.73(15), F.S., prohibiting an agency or local government from requiring that existing mechanical equipment located on or above the surface of a roof be installed in compliance with the requirements of the Florida Building Code except when it is not in compliance and is being replaced or removed during reroofing.

Florida Building Code Interpretation (Section 10)

The bill amends s. 553.775, F.S., to authorize building officials, local enforcement agencies, and the commission to interpret the accessibility code and to remove language restricting declaratory statements to Florida-specific requirements of the accessibility code.

Worksite Plans and Inspection and Record Retention (Section 3, 11)

The bill amends s. 440.103, F.S., to allow the evidence that is required as a condition to applying for a building permit, proving compensation has been secured for an employer's employees, to be presented electronically or physically. The bill cross references s. 553.79(19), F.S., as to the provision below.

The bill amends s. 553.79, F.S., to allow site plans or building permits to be maintained in the original form or in the form of an electronic copy at the worksite, and these plans and permits must be open to inspection as required by the Florida Building Code.

Expedited Building Construction Requirements for Schools (Section 12)

The bill amends s. 553.80(6)(b)(2), F.S., to require counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of public schools that are subject to the Florida Building Code, rather than for public school districts.

Florida Building Code Compliance and Mitigation Program (Section 13)

The bill amends s. 553.841, F.S., to revise 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.

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 14)

The bill amends s. 553.883, F.S., to allow homeowners in the process of a renovation to install a smoke alarm with a non-removable, non-replaceable, 10-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.²⁷

Building Energy-Efficiency Rating System (Section 15)

The bill amends s. 553.993, F.S., to define the “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;
- Residential program benchmarks that must be consistent with national building standards and home energy rating standards; 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 16)

The bill amends s. 633.202, F.S., to exempt tents smaller than 30 feet by 30 feet from the Florida Fire Prevention Code.

Informal Interpretations of the Florida Fire Prevention Code (Section 17)

The bill amends s. 633.212, F.S., removing the requirement that a member of the Fire Code Interpretation Committee must notify the committee that he or she is unable to respond, before an alternate member can respond to a request for a nonbinding interpretation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ NFPA No. 72.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

CS/CS/SB 1106 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.

According to the department, the bill will cause an indeterminate reduction in expenditures, due to decreased inspection requirements.

C. Government Sector Impact:

The bill allocates \$250,000 each fiscal year 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. The bill does not designate specifically how this \$250,000 will be used each year under the program.

According to the department, the bill will have an indeterminate impact on government expenditure.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 2 of the bill requires application to the 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 including proof of final inspection. It is unclear how an applicant is to provide proof of final inspection before applying for a building permit.

If an applicant is unable to provide a final inspection in their initial application, these provisions would cause that permit application to be submitted incomplete. Under s. 120.60, F.S., the DOH would be required to notify the applicant within 30 days of receipt of the application that the

application is incomplete. After receiving this notification, the applicant may request additional time to complete the application which the DOH must grant.

This back and forth process could create a logistical obstacle course for some people who are applying for swimming pool operating permits. This process could be streamlined by exempting the DOH from the timeframes under s. 120.60, F.S., for such permit applications and granting the DOH rulemaking authority to create a specific application process for these permits.

The Florida Building Code is required to include inspection criteria for manufactured buildings. The code would have to be amended to be consistent with the provisions added by section 4 of the bill.²⁸ The Florida Building Code's provisions relating to smoke alarms would have to be amended to incorporate the provisions of section nine of the bill.²⁹

The expedited Building Construction process in Section 12 has been extended to projects of public schools, not the school district. This may no longer relate to buildings of the public school district which are not public schools, but may still be projects of the district.

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/CS by Regulated Industries Committee on April 10, 2014:

The CS for CS for SB 1106:

- Adds a provision under s. 120.80(16), F.S., allowing the commission to grant a waiver or variance for applications to waive requirements of the Florida Building Code for construction provided in s. 553.512, F.S., and variances under s. 553.77(7), F.S.
- Creates a subsection (7) under 553.77, F.S., requiring the commission to provide criteria and procedures for providing variances from provisions in the Florida Building Code relating to swimming pools and public bathing places. The section provides requirements for the commission to grant variances, and requires them to receive a recommendation from the Pool Technical Advisory Committee before doing so.
- Requires that the inspection of manufactured buildings and building modules under s. 553.37(1)(c), F.S., be done after the required observation of the first unit built including inspection of the subsystems and the manufacturer's quality control system.
- Amends s. 553.73, F.S., the Florida Building Code, to include mechanical equipment located above the surface of a roof. An agency or local government may not require

²⁸ 2014 Legislative Bill Analysis for SB 1106, Department of Business and Professional Relation (April 3, 2014).

²⁹ *Id.*

existing mechanical equipment to be installed in compliance with the requirements of the code, except when the equipment is being replaced or moved during reroofing.

- Adds building permits to what may be maintained at the worksite for purposes of inspection and record retention under s. 553.79, F.S., and allows them to be in the original or electronic form, which must be open to inspection.
- Amends s. 553.80(6)(b)(2), F.S., to require counties and municipalities to expedite building construction permitting, building plans review, and inspections of projects of public schools that are subject to the Florida Building Code, not public school districts.
- Allows an alternate member of the Fire Code Interpretation Committee to respond to a nonbinding interpretation if a member is unable to respond, without notifying the committee when he or she is unable to respond.

CS by Community Affairs Committee on March 19, 2014:

The CS for SB 1106:

- 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;
- Allows homeowners doing a renovation to install a smoke alarm with a 10-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.