

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 593 Building Construction

**SPONSOR(S):** Government Operations Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Eagle and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	13 Y, 0 N, As CS	Whittier	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Topp	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

CS/HB 593 contains provisions related to building construction, codes, permitting, and energy-efficiency rating. The bill does the following:

- Provides an additional method for local governments to provide notices to alleged code enforcement violators;
- Requires application to the Department of Health 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;
- 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;
- Clarifies that a repair or alteration to an existing home does not mandate a hard-wired smoke alarm if a 10-year battery-operated alarm is installed;
- Provides that, effective January 1, 2015, a newly-installed or replaced battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years; and
- Revises the definition of "building energy-efficiency rating system" to spell out what a rating system is comprised of and the criteria that should be considered for new and existing construction and deletes the list of qualified entities that comprises the current definition.

The bill is not anticipated to have a fiscal impact.

The bill takes effect July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Local Government Codes and Ordinances (Section 1)**

##### 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, return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. 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 the notice at the violator's usual place of 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.<sup>1</sup>

Some local governments have reported finding it costly to have to send notices by certified mail with return receipt requested.

##### Effect of Proposed Changes

The bill authorizes an additional method – first class mail – for local governments to provide notices to alleged code enforcement violators. See DRAFTING ISSUES OR OTHER COMMENTS section.

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

##### Present Situation

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 Department of Health (department) would continue to have jurisdiction over the operating permits for public swimming pools.<sup>2</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,

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<sup>1</sup> Section 162.12(2), F.S.

<sup>2</sup> Chapter 2012-184, Laws of Fla.

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>3</sup>

In order to operate or continue to operate a public swimming pool, a valid operating permit from the department 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 department.<sup>4</sup>

If the department determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and departmental rules, the department will issue a permit. However, if the department determines that the pool is not in compliance with state laws and departmental rules, the department 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>5</sup> The operating permit must be renewed annually and posted in a conspicuous place.<sup>6</sup>

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

### Effect of Proposed Changes

The bill requires those desiring to construct, develop, or modify a public swimming pool to apply to the Department of Health for an operating permit before applying for a building permit from the local enforcement agency. A local enforcement agency is an “agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.”<sup>7</sup>

The bill prohibits the local enforcement agency from issuing a building permit to construct, develop, or modify a public swimming pool without proof of application for an operating permit and does not allow issuance of a certificate of completion or occupancy until the operating permit is issued.

The bill also adds the following to the list of information that is to accompany the operating permit application:

- A description of the structure, its appurtenances, and its operation.
- A copy of the final approval from the local enforcing agency.

## **Florida Building Code Requirements for Construction or Modification of Manufactured Buildings and Building Modules (Section 4)**

### Present Situation

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<sup>3</sup> Section 514.011(2), F.S.

<sup>4</sup> Section 514.031(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 514.031(4), F.S.

<sup>7</sup> Section 553.71(5), F.S.

The Florida Building Commission (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.<sup>8</sup>

Section 553.72, F.S., provides the following regarding the Florida Building Code:

The purpose and intent of this act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, to be called the Florida Building Code, which consists of 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 to the enforcement of such requirements and which 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.

Section 553.37(1), F.S., requires the commission to adopt, within the Florida Building Code, requirements for construction or modification of manufactured buildings and building modules, to address:

- Submittal to and approval by the department of manufacturers' drawings and specifications, including any amendments.
- Submittal 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 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>9</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>10</sup>

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<sup>8</sup> Section 553.74, F.S.

<sup>9</sup> Section 553.36(13), F.S.

<sup>10</sup> Section 553.36(15), F.S.

## Effect of Proposed Changes

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

- Observe the first building built, or with regard to components, observe the first unit assembled, after certification of the manufacturer,<sup>11</sup> from start to finish, inspecting all subsystems: electrical, plumbing, structural, mechanical or thermal;
- Continue observation of the manufacturing process until the approved inspection agency determines that the manufacturer’s quality control program, in conjunction with the application of the plans approved by the approved inspection agency, will result in a building and components that meet or exceed the applicable Florida Building Code requirements;
- Thereafter, inspect each module produced during at least one point of the manufacturing process and inspect at least 75 percent of the subsystems of each module: electrical, plumbing, structural, mechanical or thermal; and
- With respect to components, inspect at least 75 percent of the manufactured building components and at least 20 percent of the storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less.

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

### Present Situation

Section 553.775, F.S., authorizes the Florida Building Code (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 specified in Part I of Chapter 553, F.S.<sup>12</sup>

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.

### Effect of Proposed Changes

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)**

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<sup>11</sup> The manufacturer must be certified by the Florida Building Commission.

<sup>12</sup> Email correspondence with staff of the Department of Business and Professional Regulation (March 5, 2014) (on file with the Business & Professional Regulation Subcommittee).

## Present Situation

The Department of Business and Professional Regulation (department) administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the Florida Building Code (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>13</sup> 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 the department.<sup>14</sup>

## Effect of Proposed Changes

The bill revises education and training requirements of the program to include, in addition to maintaining a thorough knowledge of the code, a thorough knowledge of code compliance and enforcement, duties related to consumers, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. It expands the program to include people employed in the design and construction industries.

## **Smoke Alarms in One-Family and Two-Family Dwellings and Townhomes (Section 9)**

### Present Situation

In relation to smoke alarms in one-family and two-family dwellings and townhomes, the Florida Building Code (code) provides that, "When alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings."<sup>15</sup>

Exceptions include the following:

- Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck.
- Installation, alteration or repairs of plumbing or mechanical systems.<sup>16</sup>

With regard to power sources for alarms, the code requires that smoke alarms receive their primary power from the building wiring when the wiring is served from a commercial source, and when primary power is interrupted, receive power from a battery. Wiring must be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke alarms must be interconnected.<sup>17</sup>

Exceptions include the following:

- Smoke alarms may be battery-operated when installed in buildings without commercial power.
- Interconnection and hard-wiring of smoke alarms in existing areas are not required where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available which could provide access for hard wiring and interconnection without the removal of interior finishes.<sup>18</sup>

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<sup>13</sup> Section 553.841(2), F.S.

<sup>14</sup> Section 553.841(3), F.S.

<sup>15</sup> Section R314.3.1 of the 2010 Florida Building Code, Residential.

<sup>16</sup> *Id.*

<sup>17</sup> Section R314.4 of the 2010 Florida Building Code, Residential.

<sup>18</sup> *Id.*

## Effect of Proposed Changes

The bill creates s. 553.883, F.S., to address smoke alarms in one-family and two-family dwellings and townhomes. The bill requires owners of one-family and two-family dwellings and townhomes undergoing a repair, or an alteration level 1 as defined in the Florida Existing Building Code<sup>19</sup> to use a smoke alarm powered by a 10-year non-removable, non-replaceable battery in lieu of retrofitting the dwelling with a smoke alarm powered by the electrical system.

The bill requires that, effective January 1, 2015, a battery-powered smoke alarm that is installed or that replaces an existing battery-powered smoke alarm be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years.

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

### Present Situation

Part VIII of ch. 553, F.S., is entitled the “Florida Building Energy-Efficiency Rating Act.” The intent is for the state to “encourage the consideration of energy-efficiency rating systems in the market so as to provide market rewards for energy-efficient buildings and to those persons or companies designing, building, or selling energy-efficient buildings,”<sup>20</sup> and applies to all public, commercial, and residential buildings in the state.<sup>21</sup> An energy-efficiency rating is an “unbiased indication of a building’s relative energy efficiency based on consistent inspection procedures, operating assumptions, climate data, and calculation methods.”<sup>22</sup> Utilization of rating systems is voluntary for public and commercial buildings.<sup>23</sup>

Historically, the Department of Business and Professional Regulation (DBPR) provided a statewide uniform system for rating the energy efficiency of buildings and developed a training and certification program to certify energy raters. The DBPR established the Building Energy Raters System (BERS) program to train and certify energy raters and outsourced administration of the BERS program to the Florida Solar Energy Center (FSEC) on a no-cost basis through a Memorandum of Understanding. An energy rater is “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.”<sup>24</sup> Energy raters were trained and tested by FSEC and DBPR issued the rater a certificate based on completion of the FSEC program.

The BERS rules adopted, 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.<sup>25, 26</sup>

In 2013, the Legislature removed the energy-efficiency rating jurisdiction from DBPR and defined “building energy-efficiency rating system” to mean 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.<sup>27</sup>

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<sup>19</sup> See DRAFTING ISSUES OR OTHER COMMENTS section.

<sup>20</sup> Section 553.991, F.S.

<sup>21</sup> Section 553.994, F.S.

<sup>22</sup> Section 553.993(6), F.S.

<sup>23</sup> Department of Business and Professional Regulation, Agency Analysis of SB 1251 (March 13, 2013) (on file with the Business & Professional Regulation Subcommittee).

<sup>24</sup> Section 553.993(7), F.S.

<sup>25</sup> Department of Business and Professional Regulation, Agency Analysis of SB 1251 (March 13, 2013) (on file with the Business & Professional Regulation Subcommittee).

<sup>26</sup> Based on adoption of the NASEO standard, Florida BERS raters are also required to take national examinations and certifications

<sup>27</sup> Section 553.993(3), F.S.

## Effect of Changes

The bill amends s. 553.993(3), F.S., to specify criteria to be used in a building energy-efficiency rating system rather than listing qualified entities. It must be a system that “provides a reliable and scientifically-based analysis of a building’s energy consumption or energy features and allows comparison to similar building types in similar climate zones where applicable.”

Specifically, the rating system must do the following:

- Use standard calculations, formulas, and scoring methods;
- Be applicable nationally;
- Compare a building to a clearly defined and researched baseline or benchmark;
- Require qualified professionals to conduct the rating or assessment; and
- Provide a labeling and recognition program with specific criteria or levels.

The bill requires that residential program benchmarks for new construction be consistent with national building standards and residential building program benchmarks for existing construction be consistent with national home energy rating standards.

The bill requires at least one level of oversight performed by “an organized and balanced group of professionals with subject matter expertise in energy efficiency, energy rating, and evaluation methods.”

The bill strikes the names of the qualified entities from the definition of “building energy-efficiency rating system.”

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 162.12, F.S., providing an additional method for local governments to provide notices to alleged code enforcement violators.

**Section 2.** Amends s. 514.03, F.S., requiring an application for an operating permit before filing an application for a building permit for a public swimming pool.

**Section 3.** Amends s. 514.031, F.S., providing additional requirements for obtaining a public swimming pool operating permit.

**Section 4.** Amends s. 553.37, F.S., specifying inspection criteria for construction or modification of manufactured buildings or modules.

**Section 5.** Amends s. 553.721, F.S., removing obsolete language.

**Section 6.** Amends s. 553.775, F.S., authorizing building officials, local enforcement agencies, and the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and specifies procedures for such interpretations.

**Section 7.** Amends s. 553.79, F.S., prohibiting a local enforcing agency from issuing a building permit for a public swimming pool without proof of application for an operating permit and requiring issuance of an operating permit before a certificate of completion or occupancy is issued.

**Section 8.** Amends s. 553.841, F.S., revising education and training requirements of the Florida Building Code Compliance and Mitigation Program.

**Section 9.** Creates s. 553.883, F.S., authorizing use of smoke alarms powered by 10-year non-removable, non-replaceable batteries in certain circumstances and requiring use of such alarms by January 1, 2015.



**Section 10.** Amends s. 553.993, F.S., revising the definition of the term “building energy-efficiency rating system” to require consistency with certain national standards for new construction and existing construction and providing for oversight.

**Section 11.** Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarification on the order of permit applications for public swimming pools may result in cost savings due to issues and problems being identified prior to construction.

It may be costly for owners of one-family and two-family dwellings who are installing or replacing battery-powered smoke alarms to replace them with battery-powered smoke alarms that are powered by 10-year non-removable, non-replaceable batteries, as required by the bill.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

According to the Department of Business and Professional Regulation, with regard to the provision allowing the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction, the U.S. Department of Justice confirmed that states that adopt the federal Americans with Disabilities Act guidelines as state law may interpret the provision, “provided that it is clear that it is an interpretation of STATE law and NOT of the federal guidelines.”<sup>28</sup>

**B. RULE-MAKING AUTHORITY:**

Not applicable

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

At the March 11, 2014, Business & Professional Regulation Subcommittee Meeting, Members discussed the ramifications of adding “first-class mail” as an option for local governments to give notice to an alleged building code violator since there would not be evidence that the alleged violator received the notice. The sponsor has agreed to review this option in Section 1. (s. 162.12(1)(a), F.S.) of the bill.

At the March 11, 2014, Business & Professional Regulation Subcommittee Meeting, Amendment 4, which was adopted to address smoke alarms in one-family and two-family dwellings and townhomes, had an incorrect section of code referenced. The correct section of code should be “Florida Building Code, Residential.”

The Department of Business and Professional Regulation notes that with regard to expanding the Florida Building Code Compliance and Mitigation Program to include persons employed in the design and construction industries, “The expansion of the program to include unlicensed employees in the construction industry may present significant challenges. The program will be required to devise some means to verify that recipients of services and materials of the program are employed within the construction industry and to determine the eligibility of all recipients to work in the United States.”<sup>29</sup>

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

On March 11, 2014, the Business & Professional Regulation Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The committee substitute contains the following changes:

- Adds to the list of requirements for obtaining a public swimming pool operating permit a copy of the final approval from the local enforcing agency.
- Requires issuance of an operating permit before a certificate of completion or occupancy may be issued for construction of a public swimming pool.
- Removes reference to “public bathing place” within the Department of Health’s statutes since public bathing places are no longer under the jurisdiction of that department.

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<sup>28</sup> Department of Business and Professional Regulation, Agency Analysis of HB 593 (February 20, 2014) (on file with the Business & Professional Regulation Subcommittee).

<sup>29</sup> *Id.*

- Replaces inspection criteria for manufactured buildings and building modules with language that is consistent with the current building code.
- Clarifies that a repair or alteration to an existing home does not mandate a hard-wired smoke alarm if a 10-year battery-operated alarm is installed. Provides that, effective January 1, 2015, a newly-installed or replaced battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years.
- Revises the definition of “building energy-efficiency rating system” to spell out what a rating system is comprised of and the criteria that should be considered for new and existing construction. Deletes the list of the qualified entities that comprises the current definition.

This staff analysis is drafted to reflect the committee substitute.

On March 31, 2014, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute contains the following change:

- Removes the allocation of \$250,000 to Future Builders of America Program.

This staff analysis has been updated to reflect the committee substitute.