

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 915 Building Codes  
**SPONSOR(S):** Business & Professions Subcommittee; Eagle  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Whittier	Luczynski
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	White	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The bill makes the following changes to law:

- Makes several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator;
- Amends the definition of “contractor” to allow licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of an existing water heater;
- Adds Division II contractors (sheet metal, roofing, Class A air-conditioning, Class B air-conditioning, Class C air-conditioning, mechanical, commercial pool/spa, residential pool/spa, swimming pool/spa servicing, plumbing, underground utility and excavation, solar, pollutant storage systems, and specialty) to the Florida Homeowners’ Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempts low-voltage landscape lighting with a cord and a plug from having to be installed by a licensed electrical contractor;
- Considers a portable pool sponsored or provided by school districts used for swimming lessons as a private pool;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Code informal interpretations;
- Authorizes local building officials to issue phased permits for the construction of the foundation or any other part of a building or structure before the construction documents for the entire building or structure have been submitted;
- Removes provisions regarding the development of advanced courses related to the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code;
- Adds Underwriters Laboratories, LLC, to the list of entities that are authorized to produce information on which product approvals are based, related to the code; and
- Requires local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which includes energy raters and HVAC contractors.

The bill has an insignificant negative fiscal impact on state government and does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Building Code Administrators, Plans Examiners, and Inspectors Certifications (Section 1)**

##### Present Situation

As the housing market and construction industry in the state slowed down in recent years, local building code departments began trimming their staffs. Now, as the economy is beginning to recover, local building code departments are struggling to find individuals to fill Florida Building Code (code) inspector positions because the municipalities rely on inspectors with multiple inspection certifications to complete several inspections on a single trip. The current rules and statutes related to obtaining certifications, however, makes acquiring multiple certifications difficult.

##### *Building Code Inspector and Plans Examiner*

In order to take the examination for building code inspector or plans examiner certification, s. 468.609(2), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

No.	Requirements
Option 1.	Demonstrates five years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 3.	Demonstrates a combination of technical education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 4.	Currently holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (Board) or a firesafety inspector license issued pursuant to chapter 633, has a minimum of five years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The Board shall establish by rule criteria for the development and implementation of the training programs.
Option 5.	Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of two years' experience in the field of building code inspection; plan review; fire code inspections and fire plans review of new buildings as a firesafety inspector; or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program <sup>1</sup> of not less than 300 hours which is approved by the Board in the chosen category of building code inspection or plan review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

Individuals are able to meet the above requirements for a single certification; however, it is difficult to earn additional certifications while employed as an inspector or plans examiner.

##### *Building Code Administrator*

<sup>1</sup> The Board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program.

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

No.	Requirements
Option 1.	Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of such experience in supervisory positions.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or related field, no more than five years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least five years of such total being experience in supervisory positions.

Effect of Proposed Changes

The bill makes several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator. Specifically, the bill makes the following major changes to the certification requirements:

*Building Code Inspector and Plans Examiner*

For Option 4 above, under *Building Code Inspector and Plans Examiner*, the bill reduces the number of years' experience in inspection or plan review from five to three years and lowers the hour requirements for the training program from 200 to 100 hours.

For Option 5 above, under *Building Code Inspector and Plans Examiner*, the bill lowers the hour requirements for the training program from 300 to 200 hours and limits the required hours of instruction from not less than 20 hours to at least 20 hours but not more than 30 hours.

The bill adds a sixth option for eligibility requirements to take the building code inspector or plans examiner certification exam. The bill provides:

No.	Requirements
Option 6.	Currently holds a standard certificate issued by the Board or a firesafety inspector license issued pursuant to chapter 633 and: <ul style="list-style-type: none"> <li>• Has at least five years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of five years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633; and</li> <li>• Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the Board. The Board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.</li> </ul>

## *Building Code Administrator*

For Option 1 above, under *Building Code Administrator*, the bill reduces the number of combined years' experience from 10 to seven years and the required number of years of experience in supervisory positions from five to three. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

For Option 2 above, under *Building Code Administrator*, the bill reduces the number of combined years' experience from 10 to seven years and the required number of years of experience in supervisory positions from five to three. It adds a requirement of at least 20 hours but not more than 30 hours of training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

## **Propane Gas Water Heater Installations (Section 2)**

### Present Situation

Currently, natural gas utility employees have the authority under s. 489.105, F.S., to disconnect and reconnect water lines when servicing and replacing "existing" water heaters. Although natural gas and propane are piped in the same manner and have the same properties and pressures inside homes, the propane industry does not have the authority to disconnect and reconnect water lines and must contract with plumbers to start and complete this task. This creates additional costs for propane water heater customers. According to the Florida Natural Gas Association, the installers of each of these gases have the same capabilities for their job duties. For example, currently there are three companies within the state that have natural gas and propane sides to their operations. Their employees can disconnect and reconnect water lines when servicing natural gas water heaters, but the same employees cannot do this when servicing propane water heaters.<sup>2</sup>

### Effects of Proposed Changes

The bill extends the authority to disconnect and reconnect water lines in the servicing or replacement of an existing water heater to licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers.

## **Florida Homeowners' Construction Recovery Fund (Sections 3-7)**

The Florida Homeowners' Construction Recovery Fund (fund) is created in s. 489.140, F.S., as a separate account in the Professional Regulation Trust Fund.

According to the Department of Business and Professional Regulation (DBPR), the fund was created in 1993, after Hurricane Andrew, as a fund of last resort to compensate consumers who contracted for construction, repair, or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment, or fraudulent statement of the licensed contractor,<sup>3</sup> financially responsible officer, or business organization licensed under ch. 489, F.S.<sup>4</sup>

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Florida Building Code.<sup>5</sup> The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.<sup>6, 7</sup>

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<sup>2</sup> Email from a representative of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).

<sup>3</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

<sup>4</sup> s. 489.1402(1)(g), F.S.

<sup>5</sup> s. 468.631(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> In 2013, the Legislature gave DBPR the authority to transfer excess cash to the fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; however, DBPR may not transfer excess

A claimant must be a homeowner and the damage must have been caused by a Division I contractor.<sup>8</sup> The fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

Division I contractors are listed in s. 489.105(3)(a)-(c), F.S., as the following:

- General contractors
- Building contractors
- Residential contractors

Division II contractors are listed in s. 489.105(3)(d)-(q), F.S., as the following:

• Sheet metal contractors	• Residential pool/spa contractors
• Roofing contractors	• Swimming pool/spa servicing contractors
• Class A air-conditioning contractors	• Plumbing contractors
• Class B air-conditioning contractors	• Underground utility and excavation contractors
• Class C air-conditioning contractors	• Solar contractors
• Mechanical contractors	• Pollutant storage systems contractors
• Commercial pool/spa contractors	• Specialty contractors

Decisions regarding the fund are made by the Construction Industry Licensing Board which is housed within DBPR.

#### *Construction Industry Licensing Board*

The Construction Industry Licensing Board (CILB) consists of 18 members who are responsible for licensing and regulating the construction industry in this state.<sup>9</sup> The CILB is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, jurisdiction falling to each division relative to their scope.<sup>10</sup> Five members constitute a quorum for each division.

The CILB meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.<sup>11</sup> It engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.<sup>12</sup>

The CILB, with respect to actions for recovery from the fund, may “intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review” on behalf of the state.<sup>13</sup> In accordance with DBPR rules, “The Board shall either authorize payment of the claim in full or in part, or deny the claim in full, by entry of a Final Order in accordance with Section 489.143, F.S. Action by the Board shall be considered final agency action.”<sup>14</sup>

Section 489.129, F.S., grants the CILB the authority to take actions against any certificateholder or registrant if the contractor, financially responsible officer, or business organization for which the

cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S. See sect. 2, ch. 2013-187, Laws of Fla.

<sup>8</sup> s. 489.1402(1)(c), (d), and (f), F.S.

<sup>9</sup> s. 489.107, F.S.

<sup>10</sup> s. 489.107(4)(c), F.S.

<sup>11</sup> Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, *available at* <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (Last visited Mar. 18, 2015).

<sup>12</sup> s. 489.108, F.S.

<sup>13</sup> s. 489.142(1), F.S.

<sup>14</sup> Rule 61G4-21.004(7), F.A.C.

contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of certain acts, including the acts that may qualify a claim to the fund. Specifically, the acts that may qualify a claim to the fund are financial misconduct, abandonment, or fraudulent statement of the contractor<sup>15</sup> and are described in s. 489.129(1)(g), (j), or (k), F.S. If the violation is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.<sup>16</sup>

### *Financial Misconduct*

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or
- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

### *Abandonment of the Project*

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, which is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

### *Fraudulent Statement by the Contractor*

Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or
- Falsely indicating that workers' compensation and public liability insurance are provided.

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<sup>15</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

<sup>16</sup> Rule 61G4-21.003(3), F.A.C.

## *Discipline*

Section 489.129, F.S., allows the Board to take the following actions given the circumstances above:

- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of part 1 of ch. 489, F.S.;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

## *Claims Process*

The claimant must have obtained a final judgment, arbitration award, or Board-issued restitution order against the contractor for damages that are a direct result of a compensable violation. A claim for recovery must be made within one year after the conclusion of any civil, criminal, administrative action, or award in arbitration based on the act.<sup>17</sup>

Completed claim forms must be submitted with:

- A copy of the complaint that initiated action against the contractor, a certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance; and
- Certified copies of levy and execution documents and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the Board to determine causation of injury or specific actual damages.<sup>18</sup>

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum. For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000 per claim with a total life time aggregate limit of \$250,000 per licensee.<sup>19</sup> For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total lifetime aggregate of \$500,000 per licensee.<sup>20</sup> Claims are paid in the order that they are filed.<sup>21</sup>

The Board will not compensate claimants from the recovery fund for any of the following reasons.

- The claimant is a licensee who acted as the contractor;
- The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;
- The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;
- The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;
- The claimant was associated in a business relationship with the licensee other than the contract at issue;
- When, after notice, the claimant has failed to provide documentation in support of the claims required by rule;

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<sup>17</sup> Rule 61G4-21.003(5), F.A.C.

<sup>18</sup> Rule 61G4-21.003(2), F.A.C.

<sup>19</sup> s. 489.143(2) and (5), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> s. 489.143(6), F.S.

- Where the licensee has reached the aggregate limit; or
- The claimant has contracted for scope of work described in s. 489.105(3)(d)-(q), F.S. [Division II contractors].<sup>22</sup>

The fund is also not permitted to compensate consumers who suffered damages as a result of payments made in violation of Florida Construction Lien Law under part I of ch. 713, F.S.

#### *Duty of Contractor to Give Notice of Fund*

Any agreement or contract for the repair, restoration, improvement, or construction to residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the recovery fund, unless the total contract price is less than \$2,500.<sup>23</sup>

#### Effects of Proposed Changes

The bill revises the law to include Division II contractors within the parameters of the fund. Specifically, it revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2016, for any contract entered into after July 1, 2015. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee.

The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2015.

The bill revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund to advise that payments from the fund are up to a limited amount.

### **Low-Voltage Landscape Lighting (Section 8)**

#### Present Situation

Chapter 489, Part II, regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.<sup>24</sup>

Section 489.503, F.S., provides exemptions to Part II for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, a lightning rod or related systems installer, etc.

#### Effects of Proposed Changes

The bill creates an exemption from the requirement to be a licensed electrical contractor for a person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation, wiring, or other modification to the electrical wiring of a structure.

### **Public Portable Swimming Pools (Sections 9 through 11)**

#### Present Situation

The Florida Building Commission (Commission) has included standards for the construction of public swimming pools in the code which are enforced by local building departments throughout the state. In

<sup>22</sup> Rule 61G4-21.004(3), F.A.C.

<sup>23</sup> s. 489.1425, F.S.

<sup>24</sup> s. 489.501, F.S.



2012, the Legislature determined that local building entities would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the Department of Health (DOH) would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.<sup>25</sup>

The Miami-Dade school district has operated a learn-to-swim program for over 20 years. One of the ways they provide swimming lessons is through the use of portable pools. The DOH recently advised the school district that using portable pools to provide swimming lessons do not meet DOH's criteria and the school district cannot use them for that purpose.<sup>26</sup>

### Effect of Proposed Changes

The bill amends the definition of a private pool in s. 514.011, F.S., to consider portable pools used exclusively for the purpose of providing swimming lessons or related instruction in support of an established "Learn to Swim" educational program sponsored or provided by a county school district as a private pool and shall not be regulated as a public pool.

## **Building Code Compliance and Mitigation Program (Sections 12 and 14)**

### Present Situation

#### *Education and Training Requirements*

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to persons who are required to comply with the 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>27</sup> The program is geared toward persons licensed and 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>28</sup>

The education and training requirements of the program include 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. The Commission establishes, via rules, the qualifications of accreditors and criteria for the accreditation of courses. Currently, the program requires advanced code courses for each profession referenced in the code.

Proponents of the bill state the following:

The advanced code course(s) was initiated when we first adopted a statewide uniform building code. It was mandated that all contractors and design professionals take the "advanced" code course. The various boards adopted the mandate as part of their rules and it became synonymous with any course that was "approved" by the Florida Building Commission. It is now just a duplicative process in that you have to get a course approved by the FBC as an "advanced" course to access any of the training dollars through the Building A Safer Florida program. The same courses are approved individually by the various professional boards. It is a duplicative, costly process—you have to pay an accreditor to accredit the course, take it to the FBC Education POC and then take it to the

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<sup>25</sup> Ch. 2012-184, Laws of Fla.

<sup>26</sup> March 24, 2015 email on file with the Government Operations Appropriations Subcommittee.

<sup>27</sup> s. 553.841(2), F.S.

<sup>28</sup> s. 553.841(3), F.S.

full Commission for approval. The courses are the same whether they get a stamp of “advanced” or not.<sup>29</sup>

### *Surcharge*

Section 553.721, F.S., provides for the DBPR to collect a surcharge that is 1.5 percent of the permit fees associated with enforcement of the code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting. The minimum amount to be collected on any permit issued is \$2. The proceeds that are collected from the surcharge are remitted to DBPR and deposited in the Professional Regulation Trust Fund quarterly. These monies fund the Florida Building Code Compliance and Mitigation Program and the Commission.<sup>30</sup> Section 553.721, F.S., provides that the Florida Building Code Compliance and Mitigation Program is allocated \$925,000 from this fund each fiscal year.<sup>31</sup>

### *Building Code System Uniform Implementation Evaluation Workgroup*

The Building Code System Uniform Implementation Evaluation Workgroup was created on January 31, 2012, by the Commission and is composed of building industry stakeholders. Its objective was to evaluate the success of the Commission to implement a unified building code throughout the state.<sup>32</sup>

### *Fire Code Interpretation Committee*

Section 633.212, F.S., provides legislative intent that the “Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations.” Further, it is the intent of the Legislature that the Division of State Fire Marshal establish a Fire Code Interpretation Committee composed of seven members and seven alternates, equally representing each area of the state, to which a person can pose questions regarding the interpretation of the Florida Fire Prevention Code provisions.<sup>33</sup>

Each nonbinding interpretation of Florida Fire Prevention Code provisions must be provided within 15 business days after receipt of a request for interpretation. The response period may be waived with the written consent of the party requesting the nonbinding interpretation and the State Fire Marshal. The interpretations are advisory only and nonbinding on the parties or the State Fire Marshal.<sup>34, 35</sup>

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<sup>29</sup> Email from a representative of the Building Industry, RE: advanced courses in Florida Building Code Compliance and Mitigation Program (March 8, 2015).

<sup>30</sup> The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.

<sup>31</sup> Funds used by DBPR as well as funds to be transferred to DOH shall be as prescribed in the annual General Appropriations Act.

<sup>32</sup> Jeff A. Blair, *Building Code System Uniform Implementation Evaluation Workgroup Report to the Florida Building Commission*, p. 19 (Apr. 8, 2013).

<sup>33</sup> s. 633.212(1), F.S.

<sup>34</sup> s. 633.212(3), F.S.

<sup>35</sup> The Division of State Fire Marshal may charge a fee, not to exceed \$150, for each request for a review or nonbinding interpretation.

## Effect of Proposed Changes

### *Education and Training Requirements*

The bill removes the requirement that DBPR develop advanced modules for each profession when administering the Florida Building Code Compliance and Mitigation Program. The bill also removes the requirement that the Commission provide for the accreditation of courses related to the code. When this requirement is removed, the Florida Building Code Compliance and Mitigation Program course providers will still be required to have their course reviewed and approved under the appropriate board that would be reviewing and approving the course for continuing education purposes.

### *Surcharge; Building Code System Uniform Implementation Evaluation Workgroup; and Fire Code Interpretation Committee*

The bill provides funding from the existing funds of the Florida Building Code Compliance and Mitigation Program, not to exceed \$30,000 in Fiscal Year 2015-2016, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup. It also provides funding for Florida Fire Code Committee for nonbinding interpretations, not to exceed \$15,000 each fiscal year.

## **Phased Permitting (Section 13)**

### Present Situation

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit therefor from the appropriate enforcing agency.<sup>36</sup> Further, a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Commission within the code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.<sup>37</sup>

Section 105.13 (phased permit approval), of the code provides the following:

After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

### Effects of Proposed Changes

The bill provides that after an applicant submits the appropriate construction documents, the local building official may issue a phased permit. If the building official issues a phased permit, an outside agency may not require additional reviews or approvals because the project will need additional outside agency reviews and approvals before the issuance of a master building permit. The holder of a phased permit for the foundation or other parts of a building or structure may proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

## **Product Evaluation and Approval (Section 15)**

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<sup>36</sup> s. 553.79(1), F.S.

<sup>37</sup> s. 553.79(6), F.S.

## Present Situation

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the Commission rather than seeking approval in each local jurisdiction where the product is used.<sup>38</sup> Section 553.842, F.S., directs the Commission to adopt rules to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the code. The Commission may enter into contracts to provide for administration of the product evaluation and approval system. The product evaluation and approval system is to rely on national and international consensus standards, whenever adopted by the code, for demonstrating compliance with code standards. Other standards which meet or exceed established state requirements are also to be considered.

Section 553.842(8), F.S., authorizes the Commission to adopt rules to approve the following types of entities that produce information on which product approvals are based. The entities must comply with a nationally recognized standard demonstrating independence or no conflict of interest. The Commission is directed to specifically approve the following evaluation entities:<sup>39</sup>

- The National Evaluation Service;
- The International Association of Plumbing and Mechanical Officials Evaluation Service;
- International Code Council Evaluation Services; and
- The Miami-Dade County Building Code Compliance Office Product Control Division.

## Effect of Proposed Changes

The bill adds Underwriters Laboratories, LLC (UL), an independent safety consulting and certification company,<sup>40</sup> to the list of entities that are authorized to produce information on which product approvals are based.

## **Duct and Air Infiltration Tests (Section 16)**

### Present Situation

As of June 30, 2015, the new 5<sup>th</sup> Edition (2014) Florida Building Code, Energy Conservation, will go into effect. Part of this new code is section R402.4.1.2 (see below). According to this section, a home constructed to this code will be required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.

Section R402.4.1.2 (testing), of the code provides the following:

The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). Where required by the *code official*, testing shall be conducted by an *approved* third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the *code official*. Testing shall be performed at any time after creation of all penetrations of the *building thermal envelope*.

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<sup>38</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2015 House Bill 915, p. 2 (Mar. 9, 2015).

<sup>39</sup> Architects and engineers licensed in this state are also approved to conduct product evaluations, as provided in s. 553.842(5), F.S.

<sup>40</sup> According to Underwriters Laboratories, LLC, "UL is a global independent safety science company with more than a century of expertise innovating safety solutions from the public adoption of electricity to new breakthroughs in sustainability, renewable energy and nanotechnology." <http://UL.com>, (last visited March 5, 2015).

## Effects of Proposed Changes

The bill requires local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which would include energy raters and HVAC contractors.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 468.609, F.S., relating to certification examination requirements for building code inspectors, plans examiners, and building code administrators.

**Section 2.** Amends s. 489.105, F.S., relating to plumbing contractors.

**Section 3.** Amends s. 489.1401, F.S., relating to the Florida Homeowners' Construction Recovery Fund.

**Section 4.** Amends s. 489.1402, F.S., relating to definitions.

**Section 5.** Amends s. 489.141, F.S. relating to claims against the recovery fund.

**Section 6.** Amends s. 489.1425, F.S., relating to notification provided by contractors regarding the recovery fund.

**Section 7.** Amends s. 489.143, F.S., relating to payments from the Florida Homeowners' Construction Recovery Fund.

**Section 8.** Amends s. 489.503, F.S., relating to an exemption for certain types of low-voltage landscape lighting.

**Section 9.** Amends s. 514.011, F.S., relating to definitions.

**Section 10.** Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation.

**Section 11.** Amends s. 514.031, F.S., relating to permit necessary to operate public swimming pool.

**Section 12.** Amends s. 553.721, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

**Section 13.** Amends s. 553.79, F.S., relating to phased permitting for construction.

**Section 14.** Amends s. 553.841, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

**Section 15.** Amends s. 553.842, F.S., relating to Florida Building Code related product evaluation and approval.

**Section 16.** Amends s. 553.908, F.S., relating to duct and air infiltration tests.

**Section 17.** Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The DBPR reports that under the bill, the Florida Building Commission will no longer charge continuing education providers \$100 per application for accreditation of building code related

education courses. This will result in an approximate \$5,000 annual revenue reduction related to application fees (\$100 X 50 = \$5,000).

2. Expenditures:

See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.

D. FISCAL COMMENTS:

The DBPR reports that there will be an anticipated reduction in service charge transfers to general revenue of approximately \$400 per year, due to the revenue reduction. Additionally, the Florida Building Commission will no longer need a continuing education course accreditation program administrator resulting in an approximately \$22,000 in reduced expenditures.<sup>41</sup>

### 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The elimination of s. 553.841(4) and (7), F.S., relating to the approval of advanced modules for building code education may create some confusion as to the availability of building code education courses that satisfy the statutory continuing education requirements for certain licenses. However, ss. 553.781(3) and 553.841(3), F.S., appear to provide for the development of building code-related continuing education courses. Section 553.781(3), F.S., provides that any fines collected by a local jurisdiction ... shall be used initially to help set up the parts of the reporting system for which such local jurisdiction is responsible. Any remaining moneys shall be used solely for enforcing the Florida Building

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<sup>41</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2015 CS/HB 915 (Mar. 24, 2015).

Code, licensing activities relating to the Florida Building Code, or education and training on the Florida Building Code. Section 553.841(3)(a), F.S., provides that a program that is provided by a private, nonprofit corporation that is under contract with DBPR must “develop and deliver building code-related education, training, and outreach.”

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

On Tuesday, March 10, 2015, the Business & Professions Subcommittee adopted amendments and reported the bill favorably as a committee substitute. The committee substitute differs from the filed bill by:

- Making several adjustments to the training and experience required to take the certification exam for building code inspector, plans examiner, and building code administrator;
- Amending the definition of “contractor” to allow licensed Category I liquefied petroleum gas dealers, LP gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of an existing water heater;
- Adding Division II contractors to the Florida Homeowners’ Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempting low-voltage landscape lighting with a cord and a plug from having to be installed by a licensed electrical contractor;
- Amending list of documents that local enforcement agencies must abide by in order to obtain or retain a swimming pool operating permit to be consistent with a similar section that is being amended in the bill;
- Providing funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Code informal interpretations;
- Clarifying that water heater installation requires a water leak detection device if it is being installed or replaced in a conditioned space or attic;
- Authorizing local building officials to issue phased permits for the construction of the foundation or any other part of a building or structure before the construction documents for the whole building or structure have been submitted; and
- Requiring local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals, which includes energy raters and HVAC contractors.

On Tuesday, April 7, 2015, the Government Operations Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Removes language from the bill relating to the Department of Health’s regulation of public pools.
- Adds a portable pool sponsored or provided by school districts used for swimming lessons shall be considered a private pool and not be regulated as a public pool.
- Removes language relating to water heater leak detection devices.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.