

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 535 Building Codes

SPONSOR(S): Government Operations Appropriations Subcommittee; Business & Professions Subcommittee; Eagle

TIED BILLS: **IDEN./SIM. BILLS:** SB 704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 1 N, As CS	Whittier	Anstead
2) Government Operations Appropriations Subcommittee	11 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 examinations for building code inspector, plans examiner, and building code administrator;
- Allows Category I liquefied petroleum gas dealers, liquefied petroleum gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of existing water heaters;
- Exempts employees of apartment communities with 100 or more units from contractor licensing requirements if making minor repairs to existing electric water heaters or existing electric HVAC systems, if they meet certain training and experience criteria, and if the repair involves parts costing under \$500;
- Adds 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;
- Exempts specific low-voltage landscape lighting from having to be installed by a licensed electrical contractor;
- Clarifies that portable pools used for swimming lessons under certain conditions are not subject to regulation;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Prevention Code informal interpretations;
- Restricts the Florida Building Code (Code) from requiring more than one fire service access elevator in residential buildings of a certain height, allows the creation of local boards to address conflicts between the Code and the Florida Fire Prevention Code (Fire Code), and adds new provisions to the Fire Code;
- Authorizes local building officials to issue phased permits for construction;
- Replaces advanced course provisions for Code training with Code-related training regarding the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the Code;
- Prohibits local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing or recording evidence of worker's compensation insurance coverage by a contractor;
- 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;
- Exempts wi-fi smoke alarms and those that contain multiple sensors, such as those combined with carbon monoxide alarms, from the 10-year, nonremovable, nonreplaceable battery provision;
- The bill prohibits adopting mandatory blower door/air infiltration testing and mechanical ventilation device requirements into the 2014 Code and reverts to the 2010 Code;
- Reinstates a wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Adds provisions to the Code regarding fire separation distance and roof overhang projections;
- Creates the Construction Industry Task Force within the University of Florida Rinker School of Construction;
- Allows a specific energy rating index as an option for compliance with the energy code; and
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on specific standards, especially with regard to minimizing risks of electrocutions linked to swimming pools.

The bill has an insignificant negative fiscal impact on state government. The bill may have a negative fiscal impact on local governments. The bill provides an effective date of July 1, 2016.

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

STORAGE NAME: h0535c.GOAS

DATE: 2/1/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Building Code and the Florida Building Commission

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.¹

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Code), and that 1st edition replaced all local codes on March 1, 2002. In 2004, for the 2nd edition of the Code, the state adopted the International Code Council's I-Codes.² All subsequent Codes have been adopted utilizing the International Code Council I-Codes as the foundation code. The most recent Code is the 5th edition which is referred to as the 2014 Code. The 2014 Code went into effect June 30, 2015.³

The Florida Building Commission (FBC) was statutorily created to implement the Code. The FBC, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body responsible for the development, maintenance, and interpretation of the Code. The FBC also approves products for statewide acceptance. 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.⁴

Most substantive issues before the FBC are vetted through a workgroup process where consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input.

According to the FBC,

General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100 percent acceptance or support is not achievable, final decisions require at least 75 percent favorable vote of all members present and voting.⁵

¹ <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Nov. 25, 2015).

² The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All fifty states have adopted the I-Codes.

³ <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Nov. 25, 2015).

⁴ s. 553.74, F.S.

⁵ <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Nov. 25, 2015).

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

Present Situation

Building Code Inspector and Plans Examiner

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

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 plans 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 plans review and a minimum of two years' experience in the field of building code inspection; plans 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 ⁶ of not less than 300 hours which is approved by the Board in the chosen category of building code inspection or plans 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.

Although individuals have been able to meet the above requirements for a single certification; it is difficult to earn additional certifications while employed as an inspector or plans examiner.

Effects of Proposed Changes

The bill makes the following major changes to the training and experience required to take the examination for building code inspector and plans examiner certification:

For Option 4, the bill reduces the number of years' experience in inspection or plans review from five to three years and lowers the hours requirement for the training program from 200 to 100 hours.

For Option 5, 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.

⁶ The Board shall coordinate with the Building Officials Association of Florida, Inc., to establish, by rule, the development and implementation of the training program.

The bill adds the following sixth option for eligibility requirements to take the building code inspector or plans examiner certification examination:

No.	Requirements
Option 6.	<p>Currently holds a standard certificate issued by the Board or a firesafety inspector license issued pursuant to chapter 633 and:</p> <ul style="list-style-type: none"> • 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 • Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours of training 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.

Present Situation

Building Code Administrator

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 years of age, be of good moral character, and meet of one of the following eligibility requirements:

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.

Effects of Proposed Changes

The bill makes the following adjustment to the training and experience required to take the examination for building code administrator certification:

For Option 2, the bill adds a requirement of at least 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder, in Board-approved courses not to exceed 30 hours.

Apartment Maintenance Employees (Section 6)

Present Situation

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is “necessary in the interest of the public health, safety, and welfare to regulate the construction industry.”⁷ Section 489.103, F.S., provides exemptions to Part I.

Section 489.103(9), F.S. (also referred to as the “Handyman Exemption”), provides an exemption to Part I for any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000. The exemption does not apply:

- If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading Part I; or
- To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

Effects of Proposed Changes

The bill adds an exemption to Part I for an employee of an apartment community or apartment community management company who makes minor repairs to existing electric water heaters or to existing electric heating, venting, and air-conditioning systems.

The following four conditions must be met if utilizing this exemption:

- The employee:
 - Does not hold himself or herself or his or her employer out to be licensed or qualified by a licensee;
 - Does not perform any acts, other than acts authorized by this exemption, that constitute contracting;
 - Receives compensation from and is under the supervision and control of an employer who deducts the FICA and withholding tax and who provides workers' compensation, as prescribed by law; and
 - Holds a current certificate for apartment maintenance technicians issued by the National Apartment Association and accredited by the American National Standards Institute. Requirements for obtaining a certificate for apartment maintenance technician must include at least:
 - One year of apartment or rental housing maintenance experience;
 - Successful completion of at least 90 hours of courses or online content that cover electrical maintenance and repair; plumbing maintenance and repair; heating, venting, or air-conditioning system maintenance and repair; appliance maintenance and repair; and interior and exterior maintenance and repair; and
 - Completion of all examination requirements.
- The equipment:
 - Is already installed on the property owned by the apartment community or managed by the apartment community management company;
 - Is not being modified except to replace components necessary to return the equipment to its original condition and the partial disassembly associated with the replacement;
 - Is a type of equipment commonly installed in similar locations; and
 - Is repaired with new parts that are functionally identical to the parts being replaced.
- An individual repair does not involve replacement parts that cost more than \$500. An individual repair may not be so extensive as to be a functional replacement of the electric water heater or the existing electric heating, venting, or air-conditioning system being repaired. Further, an

⁷ s. 489.101, F.S.

individual repair may not be a part of a larger or major project that is divided for the purposes of evading the \$500 limit.

- The property owned by the apartment community or managed by the apartment community management company includes at least 100 apartments.

Propane Gas Water Heater Installations (Section 7)

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 natural gas and propane appliances 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.⁸

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, liquefied petroleum gas installers, and specialty installers.

Florida Homeowners’ Construction Recovery Fund (Sections 9-13)

Present Situation

Florida Homeowners’ Construction Recovery Fund and the Construction Industry Licensing Board

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 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,⁹ financially responsible officer, or business organization licensed under ch. 489, F.S.¹⁰

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.¹¹ The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.^{12, 13} A claimant must be a homeowner and the damage must have been caused by a Division I contractor.¹⁴

⁸ Email from Dale Calhoun, President of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).

⁹ Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

¹⁰ s. 489.1402(1)(g), F.S.

¹¹ s. 468.631(1), F.S.

¹² *Id.*

¹³ 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 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.

¹⁴ s. 489.1402(1)(c), (d), and (f), F.S.

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	• Residential contractors
• Building 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.

The Construction Industry Licensing Board (CILB) consists of 18 members who are responsible for licensing and regulating the construction industry in the state.¹⁵ The CILB is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, with the jurisdiction falling to each division relative to their scope.¹⁶ 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.¹⁷ It engages in rulemaking to implement the provisions set forth in the statutes and conducts other general business, as necessary.¹⁸

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.¹⁹ 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 s. 489.143, F.S. Action by the Board shall be considered final agency action.”²⁰

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 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 of the project, or fraudulent statement of the contractor²¹ 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),

¹⁵ s. 489.107, F.S.

¹⁶ s. 489.107(4)(c), F.S.

¹⁷ Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, *available at* <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (Last visited Nov. 23, 2015).

¹⁸ s. 489.108, F.S.

¹⁹ s. 489.142(1), F.S.

²⁰ Rule 61G4-21.004(7), F.A.C.

²¹ Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.²²

Claims

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.²³

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.²⁴ 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.²⁵ Claims are paid in the order that they are filed.²⁶

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;
- 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].²⁷

The fund is also not permitted 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.

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 \$2,500.²⁸

Effects of Proposed Changes

Claims

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,

²² Rule 61G4-21.003(3), F.A.C.

²³ Rule 61G4-21.003(5), F.A.C.

²⁴ s. 489.143(2) and (5), F.S.

²⁵ *Id.*

²⁶ s. 489.143(6), F.S.

²⁷ Rule 61G4-21.004(3), F.A.C.

²⁸ s. 489.1425, F.S.

2017, for any contract entered into after July 1, 2016. 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, 2016.

Duty of Contractor to Give Notice of Fund

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 14)

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.²⁹

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 16 through 18)

Present Situation

The Florida Building Commission (FBC) has included standards for the construction of public swimming pools in the Code which are enforced by local building departments throughout the state. In 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.³⁰

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 operating criteria and the school district cannot use them for that purpose.³¹

Effects of Proposed Changes

The bill amends the definition of a private pool in s. 514.011, F.S., to include 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 provides that these pools shall not be regulated as public pools.

²⁹ s. 489.501, F.S.

³⁰ Ch. 2012-184, Laws of Fla.

³¹ March 24, 2015, email on file with the Government Operations Appropriations Subcommittee.

Florida Accessibility Code for Building Construction (Sections 19 and 22)

Present Situation

The 1993 Legislature created the Florida Americans with Disability Accessibility Implementation Act which incorporated the architectural accessibility requirements of the Americans with Disabilities Act of 1990.³² The Florida Accessibility Code for Building Construction contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied during the design, construction, additions to, and alteration of sites, facilities, buildings, and elements.³³

Section 553.512, F.S., directs the FBC to provide criteria for granting individual modifications of, or exceptions from, the “literal requirements of this part upon a determination of unnecessary, unreasonable, or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council.”

The Accessibility Advisory Council consists of seven members, who are to be knowledgeable in the area of accessibility for persons with disabilities. The Secretary of DBPR is to appoint the following for the membership:

- A representative from the Advocacy Center for Persons with Disabilities, Inc.;
- A representative from the Division of Blind Services;
- A representative from the Division of Vocational Rehabilitation;
- A representative from a statewide organization representing the physically handicapped;
- A representative from the hearing impaired;
- A representative from the Florida Council of Handicapped Organizations; and
- A representative from the Paralyzed Veterans of America.

According to DBPR, the Florida Council of Handicapped Organizations no longer exists.³⁴

All Accessibility Advisory Council members are limited to two four-year terms and any member may be replaced by the Secretary if he or she has three unexcused absences from meetings. The members serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided by s. 112.061, F.S.

Section 553.775, F.S., provides procedures that may be invoked regarding interpretations of the Florida Accessibility Code for Building Construction, which include requiring the FBC to coordinate with the Building Officials Association of Florida, Inc., to designate panels of five members each to hear requests to review decisions of local building officials.

Effects of Proposed Changes

The bill replaces the defunct Florida Council of Handicapped Organizations appointee category with Pensacola Pen Wheels Inc. Employ the Handicapped Council, which is

An advocacy group that strives to aid the disabled through improving quality of life, work placement, and community involvement. For over forty years the Pensacola-based group has led the disabled community by working together, growing together, and winning together. The organization focuses on ensuring accessibility for the disabled (ADA

³² Preface to the 2010 Florida Building Code, Accessibility.

³³ Section 101.1, of the 2012 Florida Accessibility Code for Building Construction.

³⁴ Correspondence from Department of Business and Professional Regulation to Mr. Warren H. Jernigan, President, Pensacola Pen Wheels Inc. Employ the Handicapped Council, Feb. 19, 2014.

compliance, encouraging businesses and government organizations to improve their facilities to better accommodate the disabled).³⁵

The bill also reduces the review panels of five members each to one panel of seven members. Five of the members must be licensed as building code administrators, one member must be a licensed architect, and one member must be licensed as an engineer.

Building Code Compliance and Mitigation Program (Sections 20 and 25) and Code-Related Training (Sections 2, 3, 4, 5, 8 and 15)

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.³⁶ 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.³⁷

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 FBC 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 FBC. 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 Program Oversight Committee and then take it to the full FBC for approval. The courses are the same whether they get a stamp of "advanced" or not.³⁸

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

³⁵ Email correspondence from staff of Representative Clay Ingram, Apr. 16, 2015.

³⁶ s. 553.841(2), F.S.

³⁷ s. 553.841(3), F.S.

³⁸ Email from Kari Roth, representing the Building Industry, RE: advanced courses in Florida Building Code Compliance and Mitigation Program (Mar. 8, 2015).

the FBC.³⁹ 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.⁴⁰

Building Code System Uniform Implementation Evaluation Workgroup

The Building Code System Uniform Implementation Evaluation Workgroup was created on January 31, 2012, by the FBC and is composed of building industry stakeholders. Its objective was to evaluate the success of the FBC to implement a unified building code throughout the state.⁴¹

Fire Code Interpretation Committee

Section 633.212, F.S., provides legislative intent that the “Florida Fire Prevention Code (Fire 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 Fire Code provisions.⁴²

Each nonbinding interpretation of Fire 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.^{43, 44}

Effects of Proposed Changes

Education and Training Requirements

The bill authorizes, rather than directs, DBPR to develop Code-related training, in place of advanced modules, for each profession when administering the Florida Building Code Compliance and Mitigation Program. The bill also removes the requirement that the FBC 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 2016-2017, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup. It also provides that funds collected from the surcharge also be used to fund Fire Code informal (nonbinding) interpretations, not to exceed \$15,000 each fiscal year.

The bill provides the State Fire Marshal with rule-making authority to address changes made concerning Fire Code informal interpretations.

³⁹ The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.

⁴⁰ Funds used by DBPR as well as funds to be transferred to DOH shall be as prescribed in the annual General Appropriations Act.

⁴¹ Jeff A. Blair, *Building Code System Uniform Implementation Evaluation Workgroup Report to the Florida Building Commission*, p. 19 (Apr. 8, 2013).

⁴² s. 633.212(1), F.S.

⁴³ s. 633.212(3), F.S.

⁴⁴ The Division of State Fire Marshal may charge a fee, not to exceed \$150, for each request for a review or nonbinding interpretation.

Florida Building Code and the Florida Fire Prevention Code (Sections 21 and 22)

Present Situation

Section 553.73(11)(a), F.S., provides that,

In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

Any decision made by the local fire official and the local building official may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Code or the Fire Code and the Life Safety Code, the board may not alter the decision unless the board determines that the application of such code is not reasonable.⁴⁵

If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.⁴⁶

If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Code and the Fire Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.⁴⁷

Prior to June 30, 2015, the Code required that high-rise buildings with occupied floors in excess of 120 feet above the lowest level of fire department vehicle access have at least one fire service access elevator.⁴⁸

On June 30, 2015, the 2014 Code went into effect. Included in the 2014 Code was the following requirement (including bolded, italicized emphasis):

403.6.1 Fire service access elevator. In buildings with an occupied floor more than 120 feet (36,576 mm) above the lowest level of fire department vehicle access, no fewer than two fire service access elevators, or all elevators, whichever is less, shall be provided in accordance with Section 3007. Each fire service access elevator shall have a capacity of not less than 3500 pounds (1588 kg).⁴⁹

In Special Session 2015-A, prior to the Code going into effect, the Legislature delayed the effective date of this provision until June 30, 2016.⁵⁰ See the *Special Session 2015-A* discussion on Page 18 of this analysis for further discussion of the Special Session provision.

Effects of Proposed Changes

⁴⁵ s. 553.73(11)(b), F.S.

⁴⁶ *Id.*

⁴⁷ s. 553.73(11)(c), F.S.

⁴⁸ Section 403.6.1 of the 2010 Florida Building Code, Building.

⁴⁹ Section 403.6.1 of the 2014 Florida Building Code, Building.

⁵⁰ See 2015 SB 2502-A (Implementing Bill for General Appropriations Act).

The bill authorizes local boards that are created to address issues arising under the Code and the Fire Code to combine the appeals boards to create a single, local board having jurisdiction over matters arising under either or both codes. This combined board has the authority to grant alternatives or modifications but doesn't have the authority to waive the requirements of the Fire Code. The bill provides that in order to meet the quorum requirement, there must be at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a Fire Code enforcement professional.

The bill prohibits the Code from requiring more than one fire service access elevator in residential occupancies where the highest occupiable floor is less than 420 feet above the level of fire service access. The remaining elevators must be provided with specified emergency operations.

The bill gives specific requirements for situations where fire service access elevators are required and where transient residential occupancies occur at floor levels above 420 feet above the level of fire service access.

Phased Permitting (Section 23)

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 from the appropriate enforcing agency.⁵¹ 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 FBC 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.⁵²

⁵¹ s. 553.79(1), F.S.

⁵² s. 553.79(6), F.S.

Section 105.13, F.S. (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. 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.

Local Government Fees (Section 24)

Present Situation

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is "necessary in the interest of the public health, safety, and welfare to regulate the construction industry."⁵³ Section 489.113(1), F.S., provides for individuals to become certified as a contractor in order to provide contracting services state-wide after the applicant meets licensure requirements and pays a fee. Likewise, those seeking to engage in contracting on other than a statewide basis may be registered, rather than certified, but must first submit a fee and file evidence of successful compliance with the local examination and licensure requirements for the geographical area for which the person wishes to be registered.⁵⁴

Section 553.80, F.S., provides that, except for construction regarding correctional and mental health facilities, elevators, storage facilities, educational institutions, and toll collection facilities,⁵⁵ each local government and each legally constituted enforcement district with statutory authority shall regulate building construction. Section 553.80(7), F.S., authorizes local governments to provide a schedule of consistent reasonable fees to be used solely for carrying out the local government's responsibilities in enforcing the Code. The basis for the fee structure must relate to the level of service provided by the local government.

Local governments have created fee schedules to be submitted by contractors at the time of application for a building permit. These fees include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including repermitting fees, time extension fees, reinspection fees, and licensure and worker's compensation recording fees.⁵⁶

⁵³ s. 489.101, F.S.

⁵⁴ s. 489.117(1), F.S.

⁵⁵ s. 553.80(1), F.S.

⁵⁶ General fee information obtained on the website of Pasco County, Florida, *Permitting Document, Forms and Fees*, found at <http://www.flvec.com/pasco/content/UrlView?id=1529>.

Effects of Proposed Changes

The bill prohibits local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor.

Product Evaluation and Approval (Section 26)

Present Situation

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the FBC rather than seeking approval in each local jurisdiction where the product is used.⁵⁷ Section 553.842, F.S., directs the FBC to adopt rules to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the Code. The FBC 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 FBC 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 FBC is directed to specifically approve the following evaluation entities:⁵⁸

- 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.

Effects of Proposed Changes

The bill adds Underwriters Laboratories, LLC (commonly known as "UL"), an independent safety consulting and certification company,⁵⁹ to the list of entities that are authorized to produce information on which product approvals are based.

Windstorm Loss Mitigation (Section 27)

Present Situation

Section 553.844, F.S., requires the FBC to implement windstorm loss mitigation techniques into the Code to combat property damage associated with hurricanes. The code requires buildings located in wind-borne debris regions to be designed to withstand the minimum wind loads prescribed for that region.⁶⁰

In 2010, the Legislature provided that, notwithstanding other provisions of law, exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms,

⁵⁷ Florida Department of Business and Professional Regulation, Agency Analysis of 2016 SB 704 (Nov. 19, 2015).

⁵⁸ Architects and engineers licensed in this state are also approved to conduct product evaluations, as provided in s. 553.842(5), F.S.

⁵⁹ 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 Nov. 23, 2015).

⁶⁰ Section 1609 of the 2014 Florida Building Code, Building.

curbs, or slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code. The provision was set to expire on the effective date of the 2010 Code (March 15, 2012).⁶¹

In 2012, the Legislature added that further support or enclosure of the exposed mechanical equipment and appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs is not required. The provision was set to expire on the effective date of the most recent Code.⁶²

Effects of Proposed Changes

The bill removes the expiration date from s. 553.844, F.S., thereby reinstating the windstorm mitigation exemption from the requirements of the section discussed above and adds walls to the list of items installed on the ground.

Smoke Alarms in One-Family and Two-Family Homes (Section 28)

Present Situation

In relation to smoke alarms in one-family and two-family dwellings and townhomes, the 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."⁶³

Section 553.883, F.S., requires owners of one-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Code, 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.

Effective January 1, 2015, each battery-powered smoke alarm that is installed or that replaces an existing battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years. These battery requirements do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system.

Effects of Proposed Changes

The bill adds the following exceptions to the smoke alarm battery requirement:

- An alarm that uses a low-power or radio frequency wireless communication signal; or
- An alarm that contains multiple sensors, such as a smoke alarm combined with a carbon monoxide alarm or other devices as the State Fire Marshal designates by rule.

Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices (Section 29)

Present Situation

Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices

Building contractors install certain features to intentionally ventilate and exhaust unwanted odors or combustion byproducts from a home—such as exhaust fans in the bathroom and above the stove. Unintentional air leakage can occur because of the construction techniques used and/or lack of

⁶¹ Florida Department of Business and Professional Regulation, *available at* http://www.floridabuilding.org/fbc/thecode/FBC_2009_lcode_Supplement.htm (last visited Dec. 8, 2015).

⁶² The most recent Code is the 2014 code, which was effective June 30, 2015.

⁶³ Section R314.3.1 of the 2010 Florida Building Code, Residential.

attention to proper air sealing during construction. Air leakage can cause homes to be less energy efficient.⁶⁴

To identify and measure the cracks and holes present in a building's envelope, a "blower door test" or an air infiltration test is used which measures the airtightness of a building by changing the building's static pressure with respect to the outdoors and recording the amount of air flow required for that change. Results of the blower door test provide a standard measure of the leakage of a home, measured in cubic feet per minute of airflow which is then converted to air changes per hour so a home's leakage can be compared to standard recommendations for healthy and energy-efficient homes. While less leakage is typically considered better, a home that has very little leakage can also cause poor indoor air quality. In order to prevent poor indoor air quality caused by a house that does not have proper ventilation or is sealed too tight, contractors use mechanical ventilation devices to filter outside air through the house's HVAC system.⁶⁵

On June 30, 2015, the 2014 Code went into effect. Included in the 2014 Code was the requirement that a home be tested via a blower door/air infiltration test to demonstrate specific air infiltration levels. Also part of the 2014 Code was required installation of a mechanical ventilation device designed to filter outside air through an HVAC system under certain circumstances.

In Special Session 2015-A, prior to the Code going into effect, the Legislature delayed the effective date of these two provisions until June 30, 2016.⁶⁶

Special Session 2015-A

Section 553.73(7)(a), F.S., requires that the FBC update, by rule, the Code every three years. Section 633.202(4), F.S., requires the State Fire Marshal to update, by rule, the Fire Code every three years.

Section 120.541, F.S., requires a statement of estimated regulatory costs under certain circumstances when a department is proposing a rule and provides criteria for determining when these statements are necessary. Section 120.541(3), F.S., provides that if the adverse impact or regulatory costs of the rule exceed any of the criteria established in the section, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

Exceptions to this requirement include the adoption of the following:

- Federal standards pursuant to s. 120.54(6), F.S.;
- Triennial updates of and amendments to the Code; and
- Triennial updates of and amendments to the Fire Code.

The 2015 General Appropriations Act, SB 2500-A, provided \$35,000 (Specific Appropriation 2250) to the Department of Economic Opportunity to conduct a study on the "regulatory compliance cost impact upon the effected elements of the construction of certain provisions" of the Code. The proviso language required that, at a minimum, the analysis should include estimates of the minimum and maximum:

- Incremental cost of compliance to the construction industry;
- Number of construction projects impacted; and
- Resulting increase in cost to the final purchaser of such construction projects.

The report was to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2015.

⁶⁴ Florida Department of Agriculture and Consumer Services, *available at* <http://www.myfloridahomeenergy.com/help/library/contractors-certifications/testing-for-air-leakage/#sthash.CdEA11HA.dpbs> (last visited Nov. 30, 2015).

⁶⁵ *Id.*

⁶⁶ See 2015 SB 2502-A (Implementing Bill for General Appropriations Act).

However, the funding and proviso related to this report was vetoed by Governor Scott on June 23, 2015. Although the Department of Economic Opportunity was directed by the vetoed language to perform the analysis, in accordance with s. 553.77(1)(b), F.S., the FBC has contracted with the University of Florida to conduct the study. The final study should be released in the late spring of 2016.

An interim report was submitted on November 13, 2015. The report stated that the focus of the study is to provide an assessment of the potential economic impacts of implementing three legislatively delayed requirements of the Florida Building Code, 5th Edition (2014): residential air leak testing, residential whole-house mechanical ventilation, and two fire service access elevators for applicable buildings. Work on the study has included fulfilling Institutional Review Board (IRB) requirements, background research, organizing and convening two industry advisory committees, developing and administering two online surveys, sending out surveys, and reviewing initial survey response data.

Effects of Proposed Changes

The bill prohibits adopting mandatory blower door/air infiltration testing and mechanical ventilation device requirements into the 2014 Code and reverts to the 2010 Code.

Florida Fire Prevention Code (Sections 30, 31, 32 and 33)

Present Situation

State law on fire prevention and control is provided in ch. 633, F.S. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of the State Fire Marshal (division) within the Department of Financial Services.⁶⁷ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

The State Fire Marshal is required to adopt the Fire Code by rule every three years. The Fire Code contains or references all firesafety laws and rules regarding public and private buildings that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.⁶⁸

Effects of Proposed Changes

The bill adds the following provisions to the Fire Code:

- In all new high-rise and existing high-rise buildings, minimum radio signal strength for fire department communications shall be maintained at a level determined by the authority having jurisdiction.
 - Existing buildings may not be required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Fire Code until January 1, 2022. However, by December 31, 2019, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must initiate an application for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2022.
 - Existing apartment buildings may not be required to comply until January 1, 2025. However, existing apartment buildings are required to initiate the appropriate permit for the required communications installation by December 31, 2022.

⁶⁷ s. 633.104, F.S.

⁶⁸ s. 633.202, F.S.

- Areas of refuge shall be provided when required by the Florida Building Code-Accessibility. Required portions of an area of refuge shall be accessible from the space they serve by an accessible means of egress.
- The home environment provisions enumerated in the most current edition of the codes adopted by the division may be applied to existing assisted living facilities, at the option of each facility, notwithstanding the edition of the codes applied at the time of construction.
- The fire official may consider the Fire Safety Evaluation System⁶⁹ as an acceptable tool to identify low cost alternatives. It is acceptable to use the Fire Safety Evaluation System for Board and Care Facilities using prompt evacuation capabilities parameter values on existing residential high-rise buildings.
- It is acceptable for a fire protection contractor licensed under ch. 633, F.S., to subcontract with companies providing advanced technical services for installing, servicing, and maintaining fire pump control panels and fire pump drivers. To ensure the integrity of the system and to protect the interests of the property owner, those providing technical support services for fire pump control panels and drivers must be under contract with a licensed fire protection contractor.

Calder Sloan Swimming Pool Electrical-Safety Task Force (Section 34)

Present Situation

DOH is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. Sanitation and safety standards for public pools have been adopted by rule under Chapter 64E-9 of the Florida Administrative Code.

Current construction rules for public pools require that written approval must be received from DOH before construction can begin.⁷⁰ Plans are required to show the pool layout, tile markings, size of the pool ladder, gutter heights and, if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3 of the Florida Administrative Code, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.⁷¹

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule are those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. As a part of the plan approval, the electrical contractor or electrical inspector must certify a pool's compliance, on a form designated by DOH.⁷²

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting circuits in and around pools, spas, and hot tubs.⁷³ The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection as the NEC provisions for spas only became effective in 1981 and that "electrical incidents involving underwater pool lighting were more numerous than those involving any other consumer product used in or around pools, spas, and hot tubs."⁷⁴

Several news stories in South Florida in the past two years have also highlighted the issue. Three children were injured by electrical shocks in a Hialeah condominium community pool in April 2014. The

⁶⁹ This system is in NFPA 101A, Alternative Solutions to Life Safety, current edition, adopted by the State Fire Marshal.

⁷⁰ Rule 64E-9.005, F.A.C.

⁷¹ Rule 64E-9.006(2)(c)3, F.A.C.

⁷² Rule 64E-9.006(2)(d), F.A.C.

⁷³ U.S. Product Safety Commission, *Safety Alert, CPSC Document #5039* (Aug. 14, 2012), available at <http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited: Nov. 23, 2015).

⁷⁴ *Id.*

building inspector's report found that the pool pump was not properly grounded.⁷⁵ During the same month in North Miami, a 7-year-old boy, Calder Sloan, died from electrocution in his family's North Miami swimming pool due to faulty wiring.⁷⁶

Effects of Proposed Changes

The bill establishes within the FBC the Calder Sloan Swimming Pool Electrical-Safety Task Force (Task Force), the purpose of which is to study standards on grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools, especially with regard to minimizing risks of electrocutions linked to swimming pools.

The task force is to be composed of the Swimming Pool Committee and Electrical Technical Advisory Committee (both within the FBC) and is to be chaired by the Swimming Pool Contractor appointed to the FBC. The FBC will provide such staff, information, and other assistance as is reasonably necessary to assist the task force in carrying out its responsibilities.

The task force is directed to meet as often as necessary to fulfill its responsibilities, and meetings may be conducted by conference call, teleconferencing, or similar technology. The Task Force members are to serve without compensation.

The task force must submit a report on its findings, including recommended revisions to state law, if any, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016. The Task Force expires on December 31, 2016.

Construction Industry Workforce Task Force (Section 35)

Present Situation

Single-Family building permit activity, an indicator of new construction, reached its peak in Florida in 2005. During the recent recession, new construction declined significantly, bottoming out in 2009. New construction has increased in recent years, but contractors are having a hard time finding skilled labor.

Effects of Proposed Changes

The bill creates the Construction Industry Workforce Task Force within the University of Florida Rinker School of Construction. The goals of the task force are to :

- Address the critical shortage of individuals trained in building construction and inspection.
- Develop a consensus path for training the next generation of construction workers in the state.
- Determine the causes for the current shortage of a trained construction industry work force and address the impact of the shortages on the recovery of the real estate market.
- Review current methods and resources available for construction training.
- Review the state of construction training available in K-12 schools.
- Address training issues relating to building code inspectors to increase the number of qualified inspectors.

The task force consists of 19 members:

- A member of the House of Representatives appointed by the Speaker of the House of Representatives.
- A member of the Senate appointed by the President of the Senate.

⁷⁵ Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah*, Policy Say, LOCAL 10.COM, May 8, 2014, available at <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796>. (last visited Nov. 23, 2015).

⁷⁶ Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, LOCAL10.COM, April 17, 2014, available at <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited Nov. 23, 2015).

- A member representing the Florida Associated General Contractors Council.
- A member representing the Associated Builders and Contractors of Florida.
- A member representing the Florida Home Builders Association.
- A member representing the Florida Fire Sprinkler Association.
- A member representing the Florida Roofing, Sheet Metal and Air Conditioning Contractors Association.
- A member representing the Florida Refrigeration and Air Conditioning Contractors Association.
- A member representing the Florida Plumbing-Heating-Cooling Contractors Association.
- A member representing the Florida Swimming Pool Association.
- A member representing the National Utility Contractors Association of Florida.
- A member representing the Florida Concrete and Products Association.
- A member representing the Alarm Association of Florida.
- A member representing the Independent Electrical Contractors.
- A member representing the Florida AFL-CIO.
- A member representing the Building Officials Association of Florida.
- A member representing the Asphalt Contractors Association of Florida.
- A member representing the American Fire Sprinkler Association-Florida Chapter.
- The chair of the Florida Building Commission.

The task force will elect a chair from among its members. The University of Florida Rinker School of Construction will provide assistance to the task force in carrying out its responsibilities. The task force will meet as often as necessary to fulfill its responsibilities, but not fewer than three times. The first meeting will be held no later than September 1, 2016. The meetings may be conducted via conference call, teleconferencing, or similar technology.

The task force will submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2017. The Department of Business and Professional Regulation will provide \$50,000 from funds available for the Florida Building Code Compliance and Mitigation Program to the University of Florida Rinker School of Construction. This section expires July 1, 2017.

Fire Separation Distance and Roof Overhang Projections (Sections 36 and 37)

Present Situation

Pursuant to s. 553.73(7)(a), F.S., the FBC must update the Code every three years. When updating the Code, the FBC is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the international Electrical Code. These codes form the foundation codes of the updated Code.

Any amendments or modifications to the foundation codes found within the Code remain in effect only until the effective date of a new edition of the Code, every three years.⁷⁷ At that point, the amendments or modifications to the foundation codes are removed from the foundation code, unless the amendments or modifications are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties, which are carried forward into the next edition of the Code.

When a provision of the current Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the FBC during the Code adoption process in order to be considered for the next edition of the Code.⁷⁸

⁷⁷ s. 553.73(7)(g), F.S.

⁷⁸ s. 553.73(7)(g), F.S.

Fire Separation Distance

With regard to fire safety, an external wall is a “special kind of wall that is different from ordinary internal walls, and may be different from fire walls and fire partitions. Within flame contact range, the external wall needs to function like a fire wall and cope with fire from both sides. Beyond flame contact range, but within radiation danger range, the external wall needs to cope with fire from inside and radiation on the outside.”⁷⁹ The risk of fire spreading from one building to another reduces as the distance between them increases.

In the 2014 Code, Fire Separation Distance was defined as:⁸⁰

- The distance measured from the building face to one of the following:
 - To the closest interior lot line;
 - To the centerline of a street, an alley or public way; or
 - To an imaginary line between two buildings on the lot.⁸¹

Roof Overhang Projections

A Florida-specific Code provision related to roof overhang projections was adopted by the FBC in the 2010 Code at the request of an industry member. Section R 302 Fire-Resistant Construction provides that “[c]onstruction, projections, openings, and penetrations of exterior walls of dwellings and accessory buildings shall comply with table R302.1.”

TABLE R302.1 EXTERIOR WALLS

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	(Fire-resistance rated)	1 hour-tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	0 feet
	(Not fire-resistance rated)	0 hours	3 feet
Projections	(Fire-resistance rated)	1 hour on the underside	2 feet
	(Not fire-resistance rated)	0 hours	3 feet
Openings in walls	Not allowed	N/A	N/A
	Unlimited	0 hours	3 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

For SI: 1 foot = 304.8 mm.

N/A = Not Applicable.⁸²

A number of exceptions were provided for in the 2010 code, including one that provides:

Openings and roof overhang projections shall be permitted on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of 6 feet or more, and the roof overhang

⁷⁹ C.R. Barnett, *Fire Separation Between External Walls of Buildings*, *Fire Safety Science - Proceedings of the Second International Symposium*, International Association for Fire Safety Science, p. 841.

⁸⁰ Section R202 of the 2010 Florida Building Code, Residential.

⁸¹ The distance must be measured at right angles from the face of the wall.

⁸² Table R302.1, Exterior Walls, of the 2010 Florida Building Code, Residential.

projection is separated from an adjacent building projection by a distance of 4 feet or more, with 1 hour fire resistive construction on the underside of the overhang required, unless the separation between projections is 6 feet or more.⁸³

During the adoption process of the 2014 Code, the industry failed to request that the exception to the Fire-Resistant Construction be included in the updated Code. Because there was no request from the building industry to include the exception, the exception was not included when the 2014 Code became effective.

Effects of Proposed Changes

Fire Separation Distance

The bill directs the FBC to reinsert, within the 2014 Code, the Fire Separation Distance definition with a fourth option of measurement to include an imaginary line between two buildings when the exterior wall of one building is located on a zero lot line.

Roof Overhang Projections

The bill directs the FBC to insert, within the 2014 Code, a provision that permit openings and roof overhang projections on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of six feet or more and the projections between that building and an adjacent building is four feet or more.

Energy Rating (Section 38)

Present Situation

The Energy Conservation volume of the Code prescribes a variety of energy efficiency and conservation requirements that buildings and homes must meet in order to comply with the Code. Currently, the International Code Council I-Codes codes, which are adopted triennially by the FBC as the foundation code for Florida, include an alternative Energy Rating Index that may be used as an option for meeting the energy conservation demands of the Code. The 2014 code does not include this option.

Effects of Proposed Changes

The bill directs the FBC to insert, within the 2014 Code, Energy Conservation volume, the Alternative Performance Path, Energy Rating Index of the 2015 International Energy Conservation Code as an option for demonstrating compliance with the Energy Conservation requirements of the code.

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. 468.627, F.S., conforming terminology.

Section 3. Amends s. 471.0195, F.S., conforming terminology.

Section 4. Amends s. 481.215, F.S., conforming terminology.

Section 5. Amends s. 481.313, F.S., conforming terminology.

Section 6. Amends s. 489.103, F.S., relating to exemptions from contracting requirements.

⁸³ Section R302.1 of the 2010 Florida Building Code, Residential.
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Section 7. Amends s. 489.105, F.S., relating to plumbing contractors.

Section 8. Amends s. 489.115, F.S., conforming terminology.

Section 9. Amends s. 489.1401, F.S., relating to the Florida Homeowners' Construction Recovery Fund.

Section 10. Amends s. 489.1402, F.S., amending definitions relating to the Florida Homeowners' Construction Recovery Fund.

Section 11. Amends s. 489.141, F.S., relating to claims against the Florida Homeowners' Construction Recovery Fund.

Section 12. Amends s. 489.1425, F.S., relating to notification provided by contractors regarding the recovery fund.

Section 13. Amends s. 489.143, F.S., relating to payments from the Florida Homeowners' Construction Recovery Fund.

Section 14. Amends s. 489.503, F.S., relating to an exemption for certain types of low-voltage landscape lighting.

Section 15. Amends s. 489.517, F.S., conforming terminology.

Section 16. Amends s. 514.011, F.S., relating to a definition of "private pool."

Section 17. Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation of public swimming pools and public bathing facilities.

Section 18. Amends s. 514.031, F.S., relating to permits necessary to operate public swimming pool.

Section 19. Amends s. 553.512, F.S., relating to the Accessibility Advisory Council.

Section 20. Amends s. 553.721, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

Section 21. Amends s. 553.73, F.S., relating to the Florida Building Code.

Section 22. Amends s. 553.775, F.S., relating to interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction.

Section 23. Amends s. 553.79, F.S., relating to phased permitting for construction.

Section 24. Amends s. 553.80, F.S., relating to local enforcement agencies and additional fees.

Section 25. Amends s. 553.841, F.S., relating to the Florida Building Code Compliance and Mitigation Program.

Section 26. Amends s. 553.842, F.S., relating to Florida Building Code-related product evaluation and approval.

Section 27. Revives, readopts, and amends s. 553.844, F.S., relating to windstorm loss mitigation.

Section 28. Amends s. 553.883, F.S., relating to smoke alarms in one- and two-family dwellings and townhomes.

Section 29. Amends s. 553.908, F.S., relating to blower door and air infiltration tests and mechanical ventilation devices.

Section 30. Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code.

Section 31. Amends s. 633.206, F.S., relating to uniform firesafety standards.

Section 32. Amends s. 633.208, F.S., relating to minimum firesafety standards.

Section 33. Amends s. 633.336, F.S., relating to fire protection contracting.

Section 34. Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force.

Section 35. Creates the Construction Industry Workforce Task Force.

Section 36. Directs the Florida Building Commission to amend the Florida Building Code to define “fire separation distance.”

Section 37. Directs the Florida Building Commission to amend the Florida Building Code to specify openings and roof overhang projection requirements.

Section 38. Directs the Florida Building Commission to adopt a specific energy rating index as an option for compliance with the Florida Building Code.

Section 39. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

The Department of Business and Professional Regulation is authorized to collect a surcharge that is 1.5% of the permit fees associated with enforcement of the building code. The Florida Building Code Compliance and Mitigation Program receives \$925,000 annually from the surcharge. The bill provides up to \$15,000 in recurring funding from Florida Building Code Compliance and Mitigation Program to the State Fire Marshal in the Department of Financial Services. The bill also provides funding from the Florida Building Code Compliance and Mitigation Program, not to exceed \$30,000 in Fiscal Year 2016-2017, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup. The bill provides \$50,000 from the Florida Building Code Compliance and Mitigation Program to the University of Florida Rinker School of Construction for the Construction Industry Workforce Task Force.

The Department of Business and Professional Regulation estimates a reduction in revenues related to application fees of \$5,000 annually, a corresponding reduction to the Service Charge to General Revenue of \$400 annually, and a recurring positive fiscal impact of \$22,000 from a reduction in expenditures from no longer needing a continuing course accreditation program administrator.⁸⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown. Counties and municipalities that currently require a fee for recording a contracting license or workers' compensation insurance information will lose this source of revenue. It is not clear how many counties require these fees.

2. Expenditures:

⁸⁴ Florida Department of Business and Professional Regulation, Agency Analysis of HB 535 (November 30, 2015)

None.

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.

Apartment owners with communities of 100 or more apartments who have employees make minor repairs to existing electric water heaters or existing electric HVAC systems may experience savings if they meet the requirements of and utilize the contractor licensing requirements exemption.

D. FISCAL COMMENTS:

The bill allows funds to be paid out of the Florida Homeowners' Construction Recovery Fund for claims related to Division II licensees. There are currently 41,954 Division I licenses and 28,320 licenses.⁸⁵ The amount of yearly recovery fund payments is limited by the amount of funding received from a 1.5% surcharge on building permit fees. Therefore, due to the funding limits, the inclusion of additional claims may extend the amount of time it takes to pay each individual claim.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Chapter 489, F.S., requires certification as a contractor for individuals wishing to engage in contracting statewide or registration as a contractor if the individual wishes only to engage in contracting in a specific locale, such as a county. Both registration and certification, including the fee paid for such, are preempted to the state. Additionally, prior to certifying or registering a contractor, the state requires an applicant to provide proof of workers' compensation insurance to the state, and requires that the insurance be maintained and updated with the Department in order to maintain the license's active status with the state. This licensing information and workers' compensation insurance information is readily available and may be obtained without charge from the Department.

Article VII, s. 18 of the Florida Constitution, prohibits the legislature from enacting a general law that reduces the authority that municipalities or counties have to raise revenues in the aggregate. Currently, at least one county collects a fee from contractors to record a contractor's certification or registration to practice contracting and to record proof of workers' compensation insurance coverage prior to permitting the contractor to engage in contracting in the county's jurisdiction. Any fee required by a local jurisdiction for recording a license or workers' compensation insurance is preempted by the state. The provision in the bill related to prohibiting local jurisdictions from charging a fee related to proof of certification or registration with the state is a clarification of current law because local jurisdictions were never authorized to charge these fees. Thus, it appears that the provision in the bill prohibiting the charging of fees in this area would not constitute a local mandate.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the State Fire Marshal with rule-making authority to address changes made concerning Florida Fire Prevention Code informal interpretations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁸⁵ Email from Department of Business and Professional Regulation staff on December 29, 2015.
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IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Business & Professions Subcommittee adopted nine amendments and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Exempts from contracting licensure requirements any employee of an apartment community or apartment community management company who makes minor repairs where the parts to make the repairs do not cost more than \$500 and requires that an individual repair may not be a part of a larger or major project that is divided for the purpose of evading this part or otherwise;
- Corrected two typographical errors;
- Prohibits local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing or recording evidence of worker's compensation insurance coverage by a contractor;
- Reinstates the wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Removes from the bill the requirement that building code and fire prevention code changes that are identified in triennial studies be ratified by the Legislature;
- Requires the Florida Building Commission to amend the Florida Building Code to provide a definition for "fire separation distance;"
- Directs the Florida Building Commission to adopt a specific energy rating index as an option for compliance with the energy code; and
- Requires the Florida Building Commission to amend the Florida Building Code to provide that openings and roof overhang projections on zero lot lines are permitted when the exterior walls of adjacent buildings are 6 feet or more apart and the overhang projection is 4 feet or more from an adjacent building overhang.

On January 28, 2015, the Government Operations Appropriations adopted one amendment and reported the bill favorably as a committee substitute. The amendment created the Construction Industry Workforce Task Force within the University of Florida Rinker School of Construction.

The staff analysis is drafted to reflect the committee substitute.