

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 535 Building Codes

**SPONSOR(S):** Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Business & Professions Subcommittee; Eagle and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/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	15 Y, 0 N, As CS	Whittier	Hamon

### SUMMARY ANALYSIS

The bill makes the following changes to law:

- Makes several adjustments to the training and experience required to take certification examinations;
- 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 \$1000;
- Allows specified liquefied petroleum gas (propane) dealers, installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of existing propane water heaters;
- Adds Division II contractors to the Florida Homeowners' Construction Recovery Fund section, allowing 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;
- Clarifies that portable pools used for specific circumstances are not subject to regulation;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and for the Florida Fire Prevention Code informal interpretations;
- Requires the Florida Building Code to require two fire service elevators for buildings in certain circumstances; and requires a dining facility to have sprinklers, only if it has a fire area occupancy load of 200 patrons or more;
- Authorizes local building officials to issue phased construction permits and prohibits local governments from requiring the payment of any additional fees/charges associated with providing certain documents;
- Expands the list of entities authorized to produce certain Code-related information;
- 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;
- Authorizes mandatory blower door/air infiltration testing, effective July 1, 2017, provides air change and filtration rates, and provides entities that are authorized to evaluate methods for energy ratings;
- Reinstates a wind mitigation exemption for engineer certification of HVAC units being installed;
- Adds provisions to the Code regarding fire separation distance and roof overhang projections;
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force and the Construction Industry Workforce Task Force; and
- Allows a specific energy rating index as an option for compliance with the energy code.

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: h0535e.RAC

DATE: 2/29/2016

## 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.<sup>1</sup>

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 1<sup>st</sup> edition replaced all local codes on March 1, 2002. In 2004, for the 2<sup>nd</sup> edition of the Code, the state adopted the International Code Council's I-Codes.<sup>2</sup> All subsequent Codes have been adopted utilizing the International Code Council I-Codes as the foundation code. The most recent Code is the 5<sup>th</sup> edition which is referred to as the 2014 Code. The 2014 Code went into effect June 30, 2015.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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

<sup>2</sup> 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.

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

<sup>4</sup> s. 553.74, F.S.

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

In Special Session 2015-A, prior to the newest Code going into effect, the Legislature delayed the effective date of these two provisions until June 30, 2016.<sup>6</sup>

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.

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, 5<sup>th</sup> 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.

## **Certifications for Building Code Inspectors, Plans Examiners, and Administrators**

### 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:

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<sup>6</sup> See 2015 SB 2502-A (Implementing Bill for General Appropriations Act).

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 <sup>7</sup> 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.

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.	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</li> </ul>

<sup>7</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.

	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.
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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 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

### 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.”<sup>8</sup> 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 \$1000. An individual repair may not be so extensive as to be a functional replacement of the electric water heater or

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<sup>8</sup> s. 489.101, F.S.

the existing electric heating, venting, or air-conditioning system being repaired. Further, the bill prohibits division of a larger project into parts in order to avoid the restriction.

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

The bill provides that the exemption does not limit the authority of a local government to adopt or enforce an ordinance, rule, or regulation requiring licensure, certification, or registration of persons employed as an apartment maintenance technician, apartment repair worker, or any term or position that includes any part of the scope of work described by the exemption in the subsection.

## **Propane Gas Water Heater Installations**

### Present Situation

Natural gas and liquefied petroleum gas (propane) are different types of fuel used to heat homes utilizing similar appliances. 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.<sup>9</sup>

### Effects of Proposed Changes

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

## **Florida Homeowners’ Construction Recovery Fund**

### Present Situation

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

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

According to DBPR, the recovery 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>10</sup> financially responsible officer, or business organization licensed under ch. 489, F.S.<sup>11</sup>

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<sup>9</sup> Email from Dale Calhoun, President of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).

<sup>10</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

<sup>11</sup> s. 489.1402(1)(g), F.S.

The recovery fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.<sup>12</sup> The proceeds from the surcharge are allocated equally to the recovery fund and support the operations of the Building Code Administrators and Inspectors Board.<sup>13, 14</sup>

A claimant must be a homeowner and the damage must have been caused by a Division I contractor.<sup>15</sup> The recovery 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:

<ul style="list-style-type: none"> <li>• General contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Residential contractors</li> </ul>
<ul style="list-style-type: none"> <li>• Building contractors</li> </ul>	

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

<ul style="list-style-type: none"> <li>• Sheet metal contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Residential pool/spa contractors</li> </ul>
<ul style="list-style-type: none"> <li>• Roofing contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Swimming pool/spa servicing contractors</li> </ul>
<ul style="list-style-type: none"> <li>• Class A air-conditioning contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Plumbing contractors</li> </ul>
<ul style="list-style-type: none"> <li>• Class B air-conditioning contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Underground utility and excavation contractors</li> </ul>
<ul style="list-style-type: none"> <li>• Class C air-conditioning contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Solar contractors</li> </ul>
<ul style="list-style-type: none"> <li>• Mechanical contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Pollutant storage systems contractors</li> </ul>
<ul style="list-style-type: none"> <li>• Commercial pool/spa contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Specialty contractors</li> </ul>

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.<sup>16</sup> 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.<sup>17</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>18</sup> It engages in rulemaking to implement the provisions set forth in the statutes and conducts other general business, as necessary.<sup>19</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>20</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 s. 489.143, F.S. Action by the Board shall be considered final agency action.”<sup>21</sup>

<sup>12</sup> s. 468.631(1), F.S.

<sup>13</sup> *Id.*

<sup>14</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 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>15</sup> s. 489.1402(1)(c), (d), and (f), F.S.

<sup>16</sup> s. 489.107, F.S.

<sup>17</sup> s. 489.107(4)(c), F.S.

<sup>18</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 Nov. 23, 2015).

<sup>19</sup> s. 489.108, F.S.

<sup>20</sup> s. 489.142(1), F.S.

<sup>21</sup> Rule 61G4-21.004(7), F.A.C.



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 recovery fund. Specifically, the acts that may qualify a claim to the recovery fund are financial misconduct, abandonment of the project, or fraudulent statement of the contractor<sup>22</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>23</sup>

### *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.<sup>24</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 recovery fund claims are limited to \$25,000 per claim with a total life time aggregate limit of \$250,000 per licensee.<sup>25</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>26</sup> Claims are paid in the order that they are filed.<sup>27</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;
- 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>28</sup>

The recovery 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*

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<sup>22</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2014 Senate Bill 1098 (Mar. 11, 2014).

<sup>23</sup> Rule 61G4-21.003(3), F.A.C.

<sup>24</sup> Rule 61G4-21.003(5), F.A.C.

<sup>25</sup> s. 489.143(2) and (5), F.S.

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

<sup>27</sup> s. 489.143(6), F.S.

<sup>28</sup> Rule 61G4-21.004(3), F.A.C.

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>29</sup>

### 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, 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 recovery fund are up to a limited amount.

### **Low-Voltage Landscape Lighting**

#### 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>30</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**

#### 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.<sup>31</sup>

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<sup>29</sup> s. 489.1425, F.S.

<sup>30</sup> s. 489.501, F.S.

<sup>31</sup> Ch. 2012-184, Laws of Fla.

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.<sup>32</sup>

### 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 educational program sponsored or provided by a county school district and a portable pool used in conjunction with a sanctioned national or international swimming or diving competition event, that does not exceed 30 consecutive days of use, and provides that these pools shall not be regulated as public pools.

## **Residential Swimming Pool Safety**

### Present Situation

Section 515.27, F.S., provides that in order to pass final inspection and receive a certificate of completion, a residential swimming pool must meet at least one of the following requirements relating to pool safety features:

- The pool must be isolated from access to a home by an enclosure that meets the pool barrier requirements of s. 515.29;<sup>33</sup>
- The pool must be equipped with an approved safety pool cover;
- All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm that has a minimum sound pressure rating of 85 dB A at 10 feet; or
- All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.

### Effects of Proposed Changes

The bill provides the following fifth option to the list of requirements related to pool safety features that may be met in order to pass final inspection and receive a certificate of completion of a residential swimming pool:

- Swimming pool alarms that, when placed in pools, will sound upon detection of accidental or unauthorized entrance into the water. These pool alarms shall meet and be independently certified to the ASTM Standard F 2208 "Standards Specification for Residential Pool Alarms" which includes surface motion, pressure, sonar, laser, and infrared type alarms.<sup>34</sup>

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<sup>32</sup> March 24, 2015, email on file with the Government Operations Appropriations Subcommittee.

<sup>33</sup> s. 515.29, F.S., provides:

(1) A residential swimming pool barrier must have all of the following characteristics:

(a) The barrier must be at least 4 feet high on the outside.

(b) The barrier may not have any gaps, openings, indentations, protrusions, or structural components that could allow a young child to crawl under, squeeze through, or climb over the barrier.

(c) The barrier must be placed around the perimeter of the pool and must be separate from any fence, wall, or other enclosure surrounding the yard unless the fence, wall, or other enclosure or portion thereof is situated on the perimeter of the pool, is being used as part of the barrier, and meets the barrier requirements of this section.

(d) The barrier must be placed sufficiently away from the water's edge to prevent a young child or medically frail elderly person who may have managed to penetrate the barrier from immediately falling into the water.

<sup>34</sup> "Swimming pool alarms" does not include swimming protection alarm devices designed for individual use, such as an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water.

# Florida Accessibility Code for Building Construction

## 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.<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup>

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

With regard to the Accessibility Advisory Council, 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

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<sup>35</sup> Preface to the 2010 Florida Building Code, Accessibility.

<sup>36</sup> Section 101.1, of the 2012 Florida Accessibility Code for Building Construction.

<sup>37</sup> 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).<sup>38</sup>

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**

### 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>39</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>40</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 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.

#### *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 FBC.<sup>41</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>42</sup>

#### *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.<sup>43</sup>

#### *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-

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<sup>38</sup> Email correspondence from staff of Representative Clay Ingram, Apr. 16, 2015.

<sup>39</sup> s. 553.841(2), F.S.

<sup>40</sup> s. 553.841(3), F.S.

<sup>41</sup> The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S.

<sup>42</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>43</sup> Jeff A. Blair, *Building Code System Uniform Implementation Evaluation Workgroup Report to the Florida Building Commission*, p. 19 (Apr. 8, 2013).

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.<sup>44</sup>

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.<sup>45, 46</sup>

### Effects of Proposed Changes

#### *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.

### **Florida Building Code and the Florida Fire Prevention Code**

#### 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.<sup>47</sup>

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

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<sup>44</sup> s. 633.212(1), F.S.

<sup>45</sup> s. 633.212(3), F.S.

<sup>46</sup> The Division of State Fire Marshal may charge a fee, not to exceed \$150, for each request for a review or nonbinding interpretation.

<sup>47</sup> s. 553.73(11)(b), F.S.

alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.<sup>48</sup>

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.<sup>49</sup>

#### *Fire Service Access Elevators*

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.<sup>50</sup>

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).<sup>51</sup>

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.<sup>52</sup>

#### Effects of Proposed Changes

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.

#### *Fire Service Access Elevators*

The bill requires the Code to require two fire service access elevators for buildings over 120 feet from elevation of street level. Requires a 1-hour fire-rated service elevator lobby with direct access to the elevator where a transient residential occupancy occurs over 420 feet above the level of fire service access.

#### *Sprinklers in Restaurants*

The bill provides that, notwithstanding any law, rule, or regulation, a restaurant, cafeteria, or similar dining facility is required to have sprinklers, only if it has a fire area occupancy load of 200 patrons or more.

### **Local Permitting**

#### Present Situation

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<sup>48</sup> *Id.*

<sup>49</sup> s. 553.73(11)(c), F.S.

<sup>50</sup> Section 403.6.1 of the 2010 Florida Building Code, Building.

<sup>51</sup> Section 403.6.1 of the 2014 Florida Building Code, Building.

<sup>52</sup> See 2015 SB 2502-A (Implementing Bill for General Appropriations Act).

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.<sup>53</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 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.<sup>54</sup>

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.

The bill provides that if a local enforcing agency fails to provide the reasons, based on compliance with the Code or local ordinance, for the denial, revocation, or modification request, the plans review or building code administrator shall be subject to disciplinary action.

## **Alarm System Registration**

### Present Situation

Uniform state law controls the installation and permitting of low-voltage alarm system projects, for which a permit is required by a local enforcement agency, including home-automation equipment, thermostats, and video cameras. A local government agency may not adopt an ordinance or rule regarding a low-voltage alarm system that conflicts with state law.<sup>55</sup>

State law does not address alarm system registration. Local enforcement agencies in Florida have varied registration requirements that typically include contact information for the homeowner or occupant registering the alarm system, the alarm contractor, and an emergency contact. Failure to register an alarm system may result in a fine on the property owner, alarm system contractor, or both.

### Effects of Proposed Changes

The bill requires home and business owners to register an alarm system if the owner's local governmental entity requires alarm registration and preempts local ordinances or rules regarding alarm system registration that are inconsistent with the bill.

The bill requires a contractor or alarm system monitoring company that install monitored alarm systems to provide written notice to the home or business owner that an obligation to register the alarm system

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<sup>53</sup> s. 553.79(1), F.S.

<sup>54</sup> s. 553.79(6), F.S.

<sup>55</sup> s. 553.79(9), F.S.



may exist and requires an alarm system monitoring company that activates a self-installed alarm system to provide verbal notice to the home or business owner that an obligation to register the alarm system may exist.

The bill limits the liability of a contractor and alarm system monitoring company for failure to register an alarm system, dispatch to an unregistered user, or excessive false alarms not attributed to alarm system monitoring company error or improper installation by the contractor or alarm system monitoring company.

## **Local Government Fees**

### 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.”<sup>56</sup> 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.<sup>57</sup>

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,<sup>58</sup> 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.<sup>59</sup>

### 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**

### 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.<sup>60</sup> 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

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<sup>56</sup> s. 489.101, F.S.

<sup>57</sup> s. 489.117(1), F.S.

<sup>58</sup> s. 553.80(1), F.S.

<sup>59</sup> 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>.

<sup>60</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2016 SB 704 (Nov. 19, 2015).

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.<sup>61</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.

### Effects of Proposed Changes

The bill adds Underwriters Laboratories, LLC (commonly known as “UL”), an independent safety consulting and certification company,<sup>62</sup> and Intertek Testing Services NA, Inc. to the list of entities that are authorized to produce information on which product approvals are based.

### **Windstorm Loss Mitigation**

#### 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.<sup>63</sup>

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, 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).<sup>64</sup>

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.<sup>65</sup>

### 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.

The bill exempts “work associated with the prevention of degradation of the residence” from requiring a building permit and opening protections for a building that is located in wind-borne debris regions.

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<sup>61</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>62</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 Nov. 23, 2015).

<sup>63</sup> Section 1609 of the 2014 Florida Building Code, Building.

<sup>64</sup> Florida Department of Business and Professional Regulation, *available at* [http://www.floridabuilding.org/fbc/thecode/FBC\\_2009\\_lcode\\_Supplement.htm](http://www.floridabuilding.org/fbc/thecode/FBC_2009_lcode_Supplement.htm) (last visited Dec. 8, 2015).

<sup>65</sup> The most recent Code is the 2014 code, which was effective June 30, 2015.

## Smoke Alarms in One-Family and Two-Family Homes

### 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.”<sup>66</sup>

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 permits homeowners to replace an existing smoke alarm with a smoke alarm that is not powered by a 10-year nonremovable, nonreplaceable battery if it is a system that uses a low-power, radio frequency wireless communication signal; or a system that contains multiple sensors, such as a smoke alarm combined with a carbon monoxide alarm or other multi-sensor devices, and is approved and listed by a Nationally Recognized Testing Laboratory.

## Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices

### Present Situation

#### *Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices*

Building contractors install certain features to intentionally a home. For example, exhaust fans in the bathroom and above the stove. Unintentional air leakage can occur because of the construction techniques used and/or lack of attention to proper air sealing during construction, and air leakage can cause homes to be less energy efficient.<sup>67</sup>

To identify and measure the cracks and holes present in a building’s envelope, a “blower door test” or an air infiltration test can be used to measure 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.<sup>68</sup>

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.

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<sup>66</sup> Section R314.3.1 of the 2010 Florida Building Code, Residential.

<sup>67</sup> 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).

<sup>68</sup> *Id.*

The 2014 Code also required installation of a mechanical ventilation device designed to filter outside air through an HVAC system under certain circumstances.

### Effects of Proposed Changes

The bill delays the effective date to July 1, 2017, for mandatory blower door testing and increased the amount of maximum tested air leakage allowed per hour in residential dwellings. The bill increases air change numbers from “not exceeding 5 air changes per hour” to “not exceeding 7 air changes per hour” and decreases the air filtration rate from “less than 5” per hour to “less than 3” per hour. The bill provides names of entities that are authorized to establish the evaluation methods for energy ratings.

## **Florida Fire Prevention Code**

### 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.<sup>69</sup> 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.<sup>70</sup>

### 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.
- 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 fire official may consider the Fire Safety Evaluation System<sup>71</sup> 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.

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<sup>69</sup> s. 633.104, F.S.

<sup>70</sup> s. 633.202, F.S.

<sup>71</sup> This system is in NFPA 101A, Alternative Solutions to Life Safety, current edition, adopted by the State Fire Marshal.

- 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**

### 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.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup>

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.<sup>75</sup> 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."<sup>76</sup>

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 building inspector's report found that the pool pump was not properly grounded.<sup>77</sup> 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.<sup>78</sup>

### Effects of Proposed Changes

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<sup>72</sup> Rule 64E-9.005, F.A.C.

<sup>73</sup> Rule 64E-9.006(2)(c)3, F.A.C.

<sup>74</sup> Rule 64E-9.006(2)(d), F.A.C.

<sup>75</sup> 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).

<sup>76</sup> *Id.*

<sup>77</sup> 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).

<sup>78</sup> 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).

The bill establishes within the FBC the Calder Sloan Swimming Pool Electrical-Safety Task Force (Swimming Pool 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 Swimming Pool 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 Swimming Pool Task Force in carrying out its responsibilities.

The Swimming Pool 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. Its members are to serve without compensation.

The Swimming Pool 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 Swimming Pool Task Force expires on December 31, 2016.

## **Construction Industry Workforce Task Force**

### 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 indicate difficulty finding skilled labor.

### Effects of Proposed Changes

The bill creates the Construction Industry Workforce Task Force (Construction Workforce Task Force) within the University of Florida M.E. Rinker, Sr., School of Construction Management. The goals of the Construction Workforce 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 Construction Workforce Task Force consists of 22 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.
- 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 Building Construction Trades Council within 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
- A member representing the Florida Carpenters Regional Council; and
- A member representing the Florida Chapter of the National Electrical Contractor Association
- A member representing the Florida Electrical Workers Association.
- The chair of the Florida Building Commission.

The Construction Workforce Task Force is to elect a chair from among its members. The University of Florida M.E. Rinker, Sr., School of Construction Management will provide assistance to the Construction Workforce Task Force in carrying out its responsibilities. The Construction Workforce 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 Construction Workforce Task Force must submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2017. DBPR will provide \$50,000 from funds available for the Florida Building Code Compliance and Mitigation Program to the University of Florida M.E. Rinker, Sr., School of Construction Management. The Construction Workforce Task Force expires July 1, 2017.

## **Fire Separation Distance and Roof Overhang Projections**

### 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.<sup>79</sup> 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.<sup>80</sup>

### *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

<sup>79</sup> s. 553.73(7)(g), F.S.

<sup>80</sup> s. 553.73(7)(g), F.S.

the outside.”<sup>81</sup> 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:<sup>82</sup>

- 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.<sup>83</sup>

### 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 the industry. 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 <a href="#">ASTM E 119</a> or <a href="#">UL 263</a> 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.<sup>84</sup>

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 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.<sup>85</sup>

<sup>81</sup> 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.

<sup>82</sup> Section R202 of the 2010 Florida Building Code, Residential.

<sup>83</sup> The distance must be measured at right angles from the face of the wall.

<sup>84</sup> Table R302.1, Exterior Walls, of the 2010 Florida Building Code, Residential.

<sup>85</sup> Section R302.1 of the 2010 Florida Building Code, Residential.



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.

The bill further directs the FBC to insert, within the 2014 Code, a provision that provides that the minimum fire separation distance for non-fire resistant rated exterior walls shall be 3 feet or greater than non-fire resistant rated projections shall have a minimum fire separation distance of 3 feet or greater. The provision shall provide that projections within 2 feet and less than 3 feet shall include a 1-hour fire-resistance rating on the underside, and that projections less than 2 feet are not permitted. Penetrations of the exterior wall within less than 3 feet are required to comply with Dwelling Unit Rated Penetration. Penetrations 3 feet or greater are not required to have a fire-resistance rating, and openings in walls shall be unlimited with a fire separation distance of 3 feet or greater.

#### *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**

#### 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.

### **Shower Linings**

#### Present Situation

With regard to shower lining, when constructing an enclosed shower, the adjoining walls and floor framing enclosing on-site built-up shower receptors must be lined in:

- Sheet lead;
- Sheet copper;
- Plastic liner material that complies with ASTM D 4068 or ASTM D 4551;

- Hot mopping in accordance with Section P2709.2.3; or
- Sheet-applied load-bearing, bonded waterproof membranes that comply with ANSI A118.10.<sup>86</sup>

The lining material shall extend not less than 3 inches (76 mm) beyond or around the rough jambs and not less than 3 inches (76 mm) above finished thresholds. Sheet-applied load bearing, bonded waterproof membranes shall be applied in accordance with the manufacturer's installation instructions.

During the adoption process of the 2014 Code, the industry failed to request that the exceptions to the required shower linings 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

The bill directs the FBC to reinsert, within the 2014 Code, the exceptions to the Shower Lining Requirements to include:

- Floor surfaces under showerheads provided for rinsing laid directly on the ground.
- Shower compartments where the finished shower drain is depressed a minimum of 2 inches (51 mm) below the surrounding finished floor on the first floor level and the shower recess is poured integrally with the adjoining floor.

### 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. 489.103, F.S., relating to exemptions from contracting requirements.

**Section 3.** Amends s. 489.105, F.S., relating to plumbing contractors.

**Section 4.** Amends s. 489.1401, F.S., relating to the Florida Homeowners' Construction Recovery Fund.

**Section 5.** Amends s. 489.1402, F.S., amending definitions relating to the Florida Homeowners' Construction Recovery Fund.

**Section 6.** Amends s. 489.141, F.S., relating to claims against the Florida Homeowners' Construction Recovery Fund.

**Section 7.** Amends s. 489.1425, F.S., relating to notification provided by contractors regarding the recovery fund.

**Section 8.** Amends s. 489.143, F.S., relating to payments from the Florida Homeowners' Construction Recovery Fund.

**Section 9.** Amends s. 489.503, F.S., relating to an exemption for certain types of low-voltage landscape lighting.

**Section 10.** Amends s. 514.011, F.S., relating to a definition of "private pool."

**Section 11.** Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation of public swimming pools and public bathing facilities.

**Section 12.** Amends s. 514.031, F.S., relating to permits necessary to operate public swimming pool.

<sup>86</sup> Section R2709.2 of the 2014 Florida Building Code, Residential.  
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- Section 13.** Amends s. 515.27, F.S., revising the minimum requirements for a residential swimming pool to pass final inspection and receive a certificate of completion to include specified swimming pool alarms.
- Section 14.** Amends s. 553.512, F.S., relating to the Accessibility Advisory Council.
- Section 15.** Amends s. 553.721, F.S., relating to the Florida Building Code Compliance and Mitigation Program.
- Section 16.** Amends s. 553.73, F.S., relating to the Florida Building Code.
- Section 17.** Amends s. 553.775, F.S., relating to interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction.
- Section 18.** Amends s. 553.79, F.S., relating to phased permitting for construction.
- Section 19.** Amends s. 553.7931, F.S., relating to the registration of an alarm system under certain circumstances.
- Section 20.** Amends s. 553.80, F.S., relating to local enforcement agencies and additional fees.
- Section 21.** Amends s. 553.842, F.S., relating to Florida Building Code-related product evaluation and approval.
- Section 22.** Revives, readopts, and amends s. 553.844, F.S., relating to windstorm loss mitigation.
- Section 23.** Amends s. 553.883, F.S., relating to smoke alarms in one- and two-family dwellings and townhomes.
- Section 24.** Amends s. 553.908, F.S., relating to blower door and air infiltration tests and mechanical ventilation devices.
- Section 25.** Amends s. 553.993, F.S., relating to the oversight and evaluation methods of building energy-efficiency rating systems.
- Section 26.** Amends s. 633.202, F.S., relating to the Florida Fire Prevention Code.
- Section 27.** Amends s. 633.208, F.S., relating to minimum firesafety standards.
- Section 28.** Amends s. 633.336, F.S., relating to fire protection contracting.
- Section 29.** Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force.
- Section 30.** Creates the Construction Industry Workforce Task Force.
- Section 31.** Directs the Florida Building Commission to amend the Florida Building Code to define “fire separation distance.”
- Section 32.** Directs the Florida Building Commission to amend the Florida Building Code to specify openings and roof overhang projection requirements.
- Section 33.** Directs the Florida Building Commission to adopt a specific energy rating index as an option for compliance with the Florida Building Code.
- Section 34.** Directs the Florida Building Commission to amend the Florida Building Code to provide exceptions to certain shower lining requirements.

**Section 35.** Directs the Florida Building Commission to amend the Florida Building Code to provide minimum fire separation distances.

**Section 36.** Provides that a restaurant, cafeteria, or similar dining facility is required to have sprinklers only under specified circumstances.

**Section 37.** 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.<sup>87</sup>

### 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:

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 (recovery fund) for claims related to Division II licensees. There are currently 41,954 Division I licenses and 28,320 licenses.<sup>88</sup> The amount of yearly recovery fund payments is limited by the amount of funding

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<sup>87</sup> Florida Department of Business and Professional Regulation, Agency Analysis of HB 535 (November 30, 2015)

<sup>88</sup> Email from Department of Business and Professional Regulation staff on December 29, 2015.

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 DBPR 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 DBPR.

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.

### **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, 2016, the Government Operations Appropriations Subcommittee 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 M.E. Rinker, Sr., School of Construction Management.

On February 25, 2016, the Regulatory Affairs Committee adopted a strike-all amendment and five amendments to the strike-all, and reported the bill favorably as a committee substitute. The amendment, as amended, does the following:

- **Code-Related Training:** Removes sections 2-5, 8, 15, and 25 from bill, reverting to statutory authority for DBPR to approve advanced code training modules.
- **Portable Pools:** Adds portable pools that hold national or international diving competitions not lasting for more than 30 consecutive days to definition of portable pools.
- **Swimming Pool Safety Features:** Adds to the list of residential swimming pool safety feature options for passing final inspection and receiving a certificate of completion, “swimming pool alarms that, when placed in pools, will sound upon detection of accidental or unauthorized entrance into the water.”
- **Second Fire Service Access Elevator:** Requires second access elevators for buildings over 120 feet from elevation of street level. Requires a 1-hour fire-rated service elevator lobby with direct access to the elevator where a transient residential occupancy occurs over 420 feet above the level of fire service access.
- **Sprinklers:** Provides that a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, shall be required to have sprinklers only if it has a fire area occupancy load of 200 patrons or more.
- **Local Permit Denial:** If a local enforcing agency fails to provide the reasons based on compliance with the Code or local ordinance, for the denial, revocation, or modification request, the plans review or building code administrator shall be subject to disciplinary action.
- **Technical Amendment:** Technical amendment correcting a chapter reference.
- **Entities authorized to produce information on which product approvals are based:** Adds Intertek Testing Services, NA, Inc. to list of entities.
- **Reroofing:** Exempts “work associated with the prevention of degradation of the residence” from requiring a building permit and opening protections for a building that is located in wind-borne debris regions.
- **Smoke Alarms:** Permits homeowners to replace an existing smoke alarm with a smoke alarm that is not powered by a 10-year nonremovable, nonreplaceable battery or by the dwellings electrical system and replaces the State Fire Marshal with a “Nationally Recognized Testing Laboratory” as the entity that may approve smoke alarms that are combined with carbon monoxide alarm or other devices approved.
- **Assisted Living Facilities:** Deletes the provision that permits 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.
- **Construction Industry Workforce Task Force:** Adds the following members to the Construction Industry Workforce Task Force:
  - A representative of the Florida Carpenters Regional Council; and
  - A representative of the Florida Chapter of the National Electrical Contractor Association
  - A representative of the Florida Electrical Workers Association.

Also corrects AFL-CIO representative council name and name of school under which the Task Force will be housed.

- **Fire Separation Distance/Zero Lot Line:** Provides a third option for fire separation distance on a zero lot line.
- **Alternative Performance Path Methodology Energy Rating Index:** Modifies the Alternative Performance Path Methodology Energy Rating Index for Climate Zones 1 and 2 from 65 to 58.
- **Shower Lining:** Requires the Florida Building Commission to place 2010 Code shower lining requirements in the 2014 Code.
- **Apartment Maintenance:** Provides exemption if locals want to adopt ordinances, etc., to require license or certifications. Changes \$500 threshold to \$1000.
- **Blower Door Testing and Air Changes:** Makes test mandatory and effective as of July 1, 2017. Provides air change numbers.
- **Alarm System Registration:** Does the following:
  - Requires home and business owners to register an alarm system if the owner's local governmental entity requires alarm registration;
  - Requires a contractor or alarm system monitoring company that install monitored alarm systems to provide written notice to the home or business owner that an obligation to register the alarm system may exist;
  - Requires an alarm system monitoring company that activates a self-installed alarm system to provide verbal notice to the home or business owner that an obligation to register the alarm system may exist;
  - Limits liability of contractor and alarm system monitoring company;
  - Prohibits local governmental entities from requiring notarization of an alarm system registration form; and
  - Preempts local ordinances or rules regarding alarm system registration.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.