

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1312

INTRODUCER: Appropriations Committee; Community Affairs Committee; and Senator Perry

SUBJECT: Construction

DATE: May 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Present	Yeatman	CA	Fav/CS
3.	Davis	Hansen	AP	Fav/CS
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1312 amends various provisions of the Florida Statutes relating to construction and the Florida Building Code. Specifically, the bill:

- Requires the Department of Business and Professional Regulation (DBPR) to use \$150,000 from the surcharge assessed on building permits to fund, for the 2017-2018 fiscal year, the University of Florida School of Construction Management continuation of the Construction Industry Workforce Taskforce (CIWT);
- Provides that a professional engineer may certify solar energy systems in lieu of the Florida Solar Energy Center;
- Prohibits a county with a population greater than 1.3 million, or any municipality within such county from adopting or enforcing ordinances or building permit requirements that conflict with corporate trademarks, service marks, logos, color patterns or other corporate branding on real property in connection with business activities related to the sale of liquid fuels or other franchises; providing for preemption of certain local laws and regulations; exempts requirements for design and construction in the Florida Building code and property located in a designated historic district; and providing for retroactive applicability;
- Requires the Florida Building Commission (commission) to:
 - Amend the Florida Building Code-Energy Conservation to eliminate duplicative commissioning reporting requirements for HVAC and electrical systems;
 - Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and

- Adopt certain standards relating to the substitution of components for residential exterior doors;
- Prohibits the commission from adopting national energy conservation standards related to automatic lights;
- Prohibits special or independent districts from requiring the payment of additional fees, charges, or expenses related to providing proof of licensure and insurance coverage;
- Prohibits a county, municipality, special taxing district, public utility, or private utility from:
 - Requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system; or
 - Except under specified circumstances, charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter.
- Prohibits a local government from requiring an owner of a residence to obtain a permit to paint the residence, regardless of whether the residence is owned by a limited liability company;
- Includes municipal gas utilities in the exemption from construction contracting licensure requirements for public utilities;
- Provides that the Florida Department of Education and the Florida Department of Economic Opportunity must develop a plan to implement the recommendations of the CIWT report, and submit the plan to the Taskforce by July 31, 2017;
- Provides that CareerSource Florida, Inc., must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce using existing federal funds and the Florida ReBuilds implementation model, and submit the plan to the Taskforce by July 31, 2017;
- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the International Code Council I-Codes (I-Codes), the National Electric Code, or other nationally adopted model codes and standards for updates to the Florida Building Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;
- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances;
- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present; and
- Requires the commission to amend the Florida Building Code-Residential relating to door components that comply with ANSI/WMA 100 or be evaluated by an approved evaluation

entity, certification agency, testing laboratory, or engineer and may be interchangeable in exterior door assemblies if certain conditions are met.

The bill has a negative fiscal impact on state revenues and expenditures. The impact on local governments is indeterminate, but most likely insignificant. The bill also appropriates \$150,000 in nonrecurring funds from the Professional Regulation Trust Fund for Fiscal Year 2017-2018 to the DBPR for transfer to the University of Florida, M.E. Rinker, Sr., School of Construction Management for the continuation of the CIWT. *See* Section V. Fiscal Impact Statement.

II. Present Situation:

The Florida Building Code and the Florida Building Commission

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

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

The commission was statutorily created to implement the Florida Building Code. The commission, which is housed within the DBPR, is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission 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 Florida Building Code.⁴

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Apr. 18, 2017).

² The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.

³ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Apr. 18, 2017).

⁴ Section 553.74, F.S.

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

According to the commission:

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

Building Code Cycle

Under s. 553.73(7)(a), F.S., the commission must update the Florida Building Code every three years. When updating the Florida Building Code, the commission 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 I-Codes form the foundation codes of the updated Florida Building Code.

Any amendments or modifications to the foundation codes found within the Florida Building Code remain in effect only until the effective date of a new edition of the Florida Building Code, every three years.⁶ At that point, the amendments or modifications to the foundation codes are removed, 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 Florida Building Code.

When a provision of the current Florida Building Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the commission during the Florida Building Code adoption process in order to be considered for the next edition of the Florida Building Code.⁷

Amendments between Cycles

Section 553.73(8), F.S., authorizes the commission to approve amendments pursuant to the rule adoptions procedure in ch. 120, F.S., which are needed to address:

- Conflicts within the updated Florida Building Code;

⁵ Florida Building Commission, Florida Building Commission Consensus-Building Process, available at http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm (last visited Apr. 18, 2017).

⁶ Section 553.73(7)(g), F.S.

⁷ Section 553.73(7)(g), F.S.

- Conflicts between the updated Florida Building Code and the Florida Fire Prevention Code adopted pursuant to ch. 633, F.S.;
- Unintended results from the integration of the previously adopted Florida-specific amendments;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law; or
- Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

However, the commission may not approve amendments that would weaken the construction requirements relating to wind resistance or the prevention of water intrusion.

The commission may also approve technical amendments to the Florida Building Code once a year for statewide or regional application if the amendment:⁸

- Is needed in order to accommodate the specific needs of Florida;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the Florida Building Code.

The 6th Edition of the Florida Building Code

The commission is currently conducting its rule development process for the 6th Edition of the Florida Building Code. Under s. 553.73(7)(e), F.S., a rule updating the Florida Building Code does not take effect until six months after the publication of the updated Florida Building Code. The 6th Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.⁹

The 6th Edition of the Florida Building Code will incorporate the latest version of the I-Codes (2015). The next edition of the I-Codes will be the 2018 I-Codes.

Voting Processes for the Technical Advisory Committees and the Commission

Under s. 553.73(3)(b), F.S., in order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the meeting, and at least half of the regular members must be present in order to conduct the meeting.

⁸ Section 553.73(9), F.S.

⁹ 6th Edition (2017) FBC Code Update Development Tasks, *available at*

http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf (Last visited Apr. 18, 2017).

The Florida Administrative Code, under 61G20-2.002(7), F.A.C., provides a similar requirement for votes taken by the commission. Specifically, the provision provides that “the decision of the commission to approve a proposed amendment shall be by 75 percent vote. Those proposals failing to meet the vote requirement shall not be adopted.”

Solar Energy Systems

Florida Solar Energy Center

The Florida Statutes require that all solar energy systems¹⁰ manufactured or sold in the state must meet standards established by the Florida Solar Energy Center (FSEC or center).¹¹ To accomplish this, the Florida Statutes require the FSEC to:

- Identify the most reliable designs and types of solar energy systems by consulting with people in research centers who are engaged in researching and experimenting with solar energy systems;
- Develop and promulgate standards for solar energy systems;
- Establish criteria for testing the performance of solar energy systems; and
- Maintain the necessary capability for testing or evaluating performance of solar energy systems.¹²

The FSEC may accept test results from other persons or entities if the tests are conducted according to the criteria established by the center and if the testing entity does not have a vested interest in the manufacture, distribution, or sale of solar energy systems.¹³

The FSEC also accepts standards and certifications for solar thermal products from the Solar Rating and Certification Program (SRCC) and the International Association of Plumbing and Mechanical Officials (IAPMO).¹⁴

In 2009, the Office of Program Policy Analysis & Government Accountability (OPPAGA) reported that FSEC had a two-year backlog for testing and certifying solar energy systems, adversely affecting both manufacturers and citizens.¹⁵ However, in 2011, OPPAGA reported that

¹⁰ The term “solar energy systems” means equipment that collects and uses incident solar energy for water heating, space heating or cooling, or other applications which normally require a conventional source of energy such as petroleum products, natural gas, or electricity, and which performs primarily with solar energy. If solar energy is used in a supplemental way, only those components that collect and transfer solar energy are included. Section 377.705(3)(b), F.S.

¹¹ Section 377.705(4), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Florida Solar Energy Center, *Testing and Certification*, <http://www.fsec.ucf.edu/En/certification-testing/index.htm>. SRCC produces solar thermal standards and certifications that are used globally. Solar Rating & Certification Corporation, *About Us – General*, <http://www.solar-rating.org/about/general.html>. IAPMO certifies solar thermal products for use in North America. International Association of Plumbing and Mechanical Officials, *Solar Product Certification*, <http://www.iapmort.org/Pages/SolarCertification.aspx> (last visited April 18, 2017).

¹⁵ OPPAGA, Report No. 09-17, Florida Solar Energy Center Conducts Research and Development; Legislature Could Direct Fee Increases and Drop Certification Requirement, p. 1 (March 2009), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0917rpt.pdf>.

the FSEC had eliminated the backlog and testing times were down to 129 days due to streamlined testing procedures.¹⁶

Construction Industry Workforce Taskforce Recommendations

In 2016, the Legislature created the Construction Industry Workforce Taskforce (CIWT) to address the construction industry labor force shortage in the state.¹⁷ The CIWT proposed a list of recommendations to remediate the shortage of construction industry workers, including recommending that the Legislature:

- Expand the definition of a Local Educational Agency (LEA), as used in apprenticeship programs in Florida, to include institutions other than public schools, such as private training organization (for profit and nonprofit), labor unions, industry trade associations, or other community based organizations;
- Create a legislative study to consider the appropriateness of moving apprenticeship programs from the Department of Education (DOE) to the Department of Economic Opportunity (DEO), and to address and clarify how current apprenticeships are funded from the state to the LEAs and what options the LEAs have in how they spend apprenticeship funding;
- Require the DOE to recognize the National Center for Construction Education and Research curriculum, or other comparable national curriculum, as eligible for high school credits, college credits, and state supported scholarships (e.g., Bright Futures Scholarship Program);
- Provide additional state Career and Technical Education (CTE) support to be directed towards K-12 programs so that “shop” or other construction related programs are added back into CTE programs;
- Extend for four additional years the “sunset” timeframe for CIWT and provide funding of \$100,000 per year and a mechanism to obtain matching funds to continue to coordinate CIWT. Funding will be used to continue data collection and analysis, ongoing economic impact studies, and subsequent strategies, implementation planning, and follow up;
- Direct CareerSource Florida, Inc., (CSF) to set aside existing federal training dollars for construction training programs using the previous state-wide Florida reBuilds Initiative (FRI) as an implementation model;
- Provide funding from the existing DBPR “Building Permit Surcharge” trust fund that is dedicated to better code compliance through the recruitment and training of a qualified workforce;
- Allow for an alternative instructor certification process through the DOE that does not require certification through an LEA;
- Create a joint legislative audit committee to review compliance regarding use of building permit fees beyond the scope of supporting the building department activities; and
- Support the Building Officials Association of America, Inc., in the development of initiatives to further opportunities for potential building code enforcement professionals.¹⁸

¹⁶ OPPAGA, Report No. 11-19, The Florida Solar Energy Center Eliminated the Backlog for Testing and Certification and Reduced its Reliance on State Funds, p. 1 (September 2011), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1119rpt.pdf>.

¹⁷ Chapter 2016-129, Laws of Fla.

¹⁸ University of Florida, Florida Construction Workforce Taskforce 9-10 (January 27, 2017), <http://www.cce.ufl.edu/projects/current-projects/construction-workforce-taskforce/reports/>.

CareerSource Florida, Inc.

CSF is a not-for-profit corporation administratively housed within the DEO and is the principal workforce policy organization for the state. CSF designs and implements strategies that help Floridians enter, remain in, and advance in the workplace. CSF procures and disburses funds for workforce development.¹⁹

Florida reBuilds Initiative

The FRI was a program formed in 2005 to counter the growing shortage of construction workers. The former Florida Agency for Workforce Innovation (AWI) performed a survey of 50,000 employers, which identified 13,712 construction job vacancies. In order to tackle the issue, AWI sought to provide individuals with short-term, entry-level training to enable them to enter into the construction trades.²⁰

The FRI targeted areas for training programs were:

- Air Conditioning, Refrigeration, and Heating Technology (maximum of 240 class hours);
- Carpentry (maximum of 120 class hours);
- Dry wall (maximum of 120 class hours);
- Electricity (maximum of 240 class hours);
- Masonry (maximum of 80 class hours);
- Plumbing (maximum of 180 class hours); and
- Roofing (maximum of 120 class hours).

Participants were eligible for the FRI programs if they were 18 years of age, a United States citizen, and willing to commit to attend the full program. If an eligible participant registered for the program, they were entered into a database run by a regional workforce made available to educational providers. Once the educational provider recruited enough eligible participants and was authorized by AWI to begin the program, the participants were enrolled in classes lasting up to eight weeks.

The educational providers were reimbursed \$9 per class hour, up to the maximum hours identified per program area. Regional workforce boards were paid \$25 per participant in an approved program and \$250 per participant who was placed on a job site within 90 days of the program completion.²¹

DBPR Building Permit Surcharge Trust Fund

Section 553.721, F.S., requires all local building departments assess and collect a 1.5 percent surcharge on any building permit issued by their agency for the purpose of enforcing the Florida Building Code. The surcharge assessment is paid directly by the individual or construction professional pulling the permit and is generally passed on to consumers through increased costs

¹⁹ Section 445.004, F.S.

²⁰ Florida Division of Emergency Management, *Lt. Governor Jennings Unveils Florida Rebuilds Initiative to Assist with Labor Shortage and Hurricane Recovery* (December 13, 2005), available at http://www.floridadisaster.org/eoc/eoc_Activations/Wilma05/Reports/FLRebuilds.pdf/.

²¹ Florida Agency for Workforce Innovation, *Florida Rebuilds Program Operations*, available at http://floridajobs.org/pdg/Memos/FIReBuildsProgOp_Atchmnt_121305.pdf/.

for construction. The local jurisdictions collect the assessment and remit the surcharge fees to the DBPR to fund the activities of the Florida Building Commission and the DBPR's Office of Codes and Standards. Local building departments are permitted to retain 10 percent of the surcharge amount they collect to fund participation of their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.

Building Commissioning Reporting Requirements, Automatic Lights and Door Components

Building Commissioning Reports

The Florida Building Code defines “building commissioning” to mean that selected building systems have been designed, installed, and function according to the owner’s project requirements, construction documents, and the minimum requirements of the Florida Building Code.²² Commissioning reports are performed by registered design professionals. A registered design professional is anyone licensed in Florida as an architect, landscape architect, professional engineer, or a land surveyor and mapper.²³

Section C408 of the fifth edition of the Florida Building Code (Energy Conservation) requires a commercial building to receive a commissioning report prior to receiving a passing mechanical final inspection. Heating, ventilation, air conditioning, and the lighting systems are tested in the report. The commissioning report includes:

- A commission plan which includes:
 - A description of the activities to accomplish in the report including the personnel intended to accomplish the activities;
 - A listing of the equipment, appliances, or systems to be tested, and a description of the tests to be performed;
 - The functions to be tested;
 - Conditions under which the test will be performed; and
 - Measurable criteria for performance.
- A preliminary report of tests and results which must identify:
 - Deficiencies found during testing that have not been corrected; and
 - Tests that cannot be performed because of climate conditions and the conditions required to perform the tests.
- A final report which includes:
 - Test results;
 - Disposition of deficiencies found during testing; and
 - A test procedure used for repeatable testing outcomes.²⁴

Door components

Door components are the items such as the hinge, lockset, weatherstrip, trim, and rails that make up a door.

²² Section C202 of the 5th edition of the Florida Building Code (Energy Conservation).

²³ Section 725.08(4), F.S.

²⁴ Section C408 of the 5th edition of the Florida Building Code (Energy Conservation).

Section R612.9 of the fifth edition of the Florida Building Code (Residential) provides that residential door components may be substituted or interchanged in exterior door assemblies if the components have been approved by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices.²⁵

American National Standards Institute and World Millwork Alliance

The American National Standards Institute (ANSI) is a non-profit organization that aims to strengthen the U.S. market place, protect the environment, and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines.²⁶

The World Millwork Alliance (WMA) is a wholesale distribution association dedicated to the progression and prosperity of the millwork industry.²⁷ The WMA also develops standards and is accredited by ANSI. In 2009, the WMA developed the WMA 100, a voluntary performance standard for side-hinged exterior doors. The WMA 100:

- Is approved by ANSI;
- Uses the ASTM E330 test method to obtain a full system design pressure rating;
- Defines methods for qualifying door system components for substitution in the rated system; and
- Outlines slab stiffness testing procedures for use in determining component substitution.²⁸

The ASTM E330 test is designed by the American Society for Testing and Materials International, and is a standard for determining the effects of a wind load on exterior building surface elements.²⁹ The fifth edition of the Florida Building Code (Residential) requires exterior doors with side hinges to either conform to the AAMA/WDMA/CSA 101/I.S.2/A440 or the ASTM E330.³⁰

American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard

The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) is a society founded in 1894 that focuses on improving building systems, energy efficiency, indoor air quality, and refrigeration through research publishing, continuing education, and standards.³¹

The ASHRAE energy conservation standard for buildings that are not low-rise residential buildings is Standard 90.1-2016 (Standard 90). Section 9.4.1.1(g) of Standard 90 provides that

²⁵ Section R612.9 of the 5th edition of the Florida Building Code (Residential).

²⁶ ANSI, *About ANSI*, https://www.ansi.org/about_ansi/overview/overview?menuid=1 (last visited on Apr. 18, 2017).

²⁷ WMA, *About*, <http://worldmillworkalliance.com/about/> (last visited on Apr. 18, 2017).

²⁸ WMA, *ANSI/WMA 100*, <http://worldmillworkalliance.com/codes-and-standards/wma-100/> (last visited on Apr. 18, 2017).

²⁹ ASTM International, *Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights, and Curtain Walls by Uniform Static Air Pressure Difference*, <https://www.astm.org/Standards/E330.htm> (last visited on Apr. 18, 2017).

³⁰ Section R612.3 and R612.5 of the 5th edition of the Florida Building Code (Residential).

³¹ ASHRAE, <https://www.ashrae.org/about-ashrae> (last visited on Apr. 18, 2017).

the general lighting power in an enclosed area of a building must automatically reduce by 50 percent within 20 minutes of all occupants leaving the area.³²

The most current version of the Florida Building Code adopted the 2010 version of Standard 90.³³ However, the 2010 version of Standard 90 does not include Section 9.4.1.1(g).³⁴ The draft of the 6th edition of the Florida Building Code (2017) does contain provisions that adopt this requirement.³⁵

Local Ordinances, Building Permits and Sign Requirements

Florida has adopted a uniform building code in accordance with s. 553.72, F.S. Section 553.79, F.S., as part of the Florida Building Codes Act, has provisions relating to permits, applications, issuance, and inspections pertaining to the Florida Building Code. Local jurisdictions ensure compliance with the Florida Building Code.

Local jurisdictions may set requirements for signs, and sign placement for local businesses by local ordinance.

The Florida Department of Agriculture and Consumer Services regulates gasoline service stations in accordance with ch. 526, F.S. There are approximately 9,000 gasoline stations within Florida.

Federal franchise laws give prospective purchasers of franchises material information needed to weigh risks and benefits of such investments. The Federal Trade Commission's regulations, 16 C.F.R. ss. 436.1, et. seq., require franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. The Florida Franchise Act, s. 817.416, F.S., provides a private right of action to a civil litigant when a person makes certain misrepresentations related to franchises. Florida does not currently regulate private rights to contract related to franchising. Florida limits franchise regulation to antifraud, unfair trade practices, and creating rights for violations of federal franchise disclosure laws.

Local Government Fees

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, 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

³² ASHRAE, *Standard 90.1-2016: Energy Standards for Buildings Except Low-Rise Residential Buildings*, [https://ashrae.iwrapper.com/ViewOnline/Standard_90.1-2016_\(IP\)](https://ashrae.iwrapper.com/ViewOnline/Standard_90.1-2016_(IP)), (last visited Apr. 18, 2017).

³³ Section C405.7 of the 5th edition of the Florida Building Code (Energy Conservation).

³⁴ ASHRAE, *Standard 90.1-2010: Energy Standards for Buildings Except Low-Rise Residential Buildings*, http://www.usailighting.com/stuff/contentmgr/files/1/b90ce247855d0f17438484c003877338/misc/ashrae_90_1_2010.pdf, (last visited April 18, 2017).

³⁵ Department of Business and Professional Regulation, Bill Analysis for HB 1021, (Similar to SB 1312), dated March 28, 2017.

government responsibilities in enforcing the Florida Building 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 re-permitting fees, time extension fees, re-inspection fees, and licensing fees.

Local governments may not require additional fees for:

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued; and
- Providing, recording, or filing evidence of workers' compensation insurance coverage required by ch. 440, F.S.³⁶

Fire Prevention and Control

Florida's fire prevention and control law, ch. 633, F.S., designates the Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.³⁷

One of the duties of the State Fire Marshal is to adopt by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.³⁸

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.³⁹

Construction Contracting Exemption for Public Utilities

Construction contractors are licensed and regulated under Part I of ch. 489, F.S., which provides that it is "necessary in the interest of the public health, safety, and welfare to regulate the construction industry." Construction contracting essentially means building or altering a structure for compensation.

³⁶ Section 553.80(7), F.S.

³⁷ Section 633.104, F.S.

³⁸ Section 633.202, F.S.

³⁹ Sections 633.108, 633.208, and 633.214(4), F.S.

In order to perform construction contracting a person must be licensed as a contractor, an employee of a contractor, or fall under one of the exemptions to licensure. Employees of a public utility are exempt from licensure. Public utilities include special gas districts, telecommunications companies, and natural gas transmission companies, “performing construction, maintenance, or development work, which includes, but is not limited to, work on bridges, roads, streets, highways, railroads, or work incidental to their business.” Current law requires the DBPR to create a rule to define “work incidental to their business.”⁴⁰

The DBPR defined by rule “incidental to their business” to mean work performed exclusively on the supply side of the end use metering device, and excludes all work on the commercial side, house side, or customer side of the end use metering device except for inspections for leaks and the repair thereof, testing of water quality, ignition of pilot lights, and termination of or activation of natural gas flow.⁴¹

A municipal gas utility is a natural gas utility owned and/or operated by a municipality engaged in serving residential, commercial, and/or industrial customers, usually within the boundaries of the municipality. There are currently 25 municipal gas districts in Florida.⁴²

III. Effect of Proposed Changes:

Section 1 amends s. 377.705, F.S., to authorize solar systems manufactured or sold in the state to be approved by the Florida Solar Energy Center or by an engineer licensed pursuant to ch. 471, F.S., using the standards contained in the most recent version of the Florida Building Code.

Section 2 amends s. 489.103, F.S., to exempt employees of municipal gas utilities performing construction, maintenance, or development work from the contractor licensing requirements of Part I of ch. 489, F.S. The bill also removes the requirement that work done by public utility employees must be “incidental to their business” in order to qualify for the licensure exemption and removes the Department of Business and Professional Regulation’s (DBPR) rulemaking authority to define the term “incidental to their business.”

Section 3 amends s. 553.721, F.S., related to the surcharge assessed on building permits at the rate of 1.5 percent of the permit fees. The surcharge is for the DBPR’s use in administering and enforcing the Florida Building Code. The bill requires the DBPR to provide \$150,000 in the 2017-2018 fiscal year to the University of Florida, M.E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force (CIWT).

Section 4 appropriates \$150,000 in nonrecurring funds from the Professional Regulation Trust Fund to the DBPR in the 2017-2018 fiscal year for the transfer to the University of Florida, M.E. Rinker, Sr., School of Construction Management for the continuation of the CIWT.

Section 5 amends s. 553.73, F.S., to require the Florida Building Commission (commission) to use the International Code Council, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission

⁴⁰ Section 489.103(5), F.S.

⁴¹ Rule 61G4-12.011(10), F.A.C.

⁴² *Id.*

shall adopt an updated Florida Building Code every three years through reviews of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission must adopt any provision from the International Code Council I-codes (I-Codes), the National Electric Code, or any other code that is necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission shall also review and adopt updates based substantially on the International Energy Conservation Code; however, the commission must maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction pursuant to s. 553.901, F.S. The commission shall adopt updated codes by rule.

Amendments and modifications, other than local amendments under s. 553.73(4), F.S., to the Florida Building Code, will now remain effective when a new edition of the Florida Building Code is published.

In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. Current law requires a three-fourths vote of the members present at the meeting.

The bill also provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621, F.S. However, any such technical amendment carried forward into the next edition of the Florida Building Code is subject to review or modification.

The bill removes references to Florida-specific amendments because the entire building code will now be Florida-specific. The bill also makes other conforming and clarifying changes in terminology.

The bill prohibits the commission from adopting the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard (ASHRAE) Standard 9.4.1.1(g) or any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device.

Section 6 amends s. 553.76, F.S., to require the commission to adopt the Florida Building Code, and amendments thereto, by a two-thirds vote of the members present.

Section 7 amends s. 553.79, F.S., to prohibit any county of the state with a population greater than 1.3 million (currently includes Broward, Hillsborough, Miami-Dade, and Palm Beach counties) from adopting or enforcing ordinances, or imposing building permits or other development order requirements that:

- Contain any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design

scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under ch. 526, F.S., related to the sale of liquid fuels, or in carrying out business franchise activities, as defined by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. seq.; or

- Impose requirements related to the design, construction or location of signage that advertises the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121, F.S., which prevents the signage from being clearly visible and legible to drivers of approaching motor vehicles.

The bill specifies s. 553.79(20), F.S., does not affect design and construction requirements contained in the Florida Building Code. Additionally, the bill specifies all local ordinances and requirements prohibited by s. 553.79(20), F.S., are preempted and superseded and s. 553.79(20), F.S., shall apply retroactively. Finally, the bill specifies s. 553.79(20), F.S., does not apply to property located in a designated historic district.

Section 8 amends s. 553.791, F.S., to provide that it is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans reviews and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.

Section 9 amends s. 553.80, F.S., related to local government fees. In addition to local enforcement agencies, independent districts and special districts are prohibited from requiring at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued pursuant to ch. 553, F.S.; or
- Providing, recording, or filing evidence of workers' compensation insurance coverage as required by ch. 440, F.S.

Section 10 creates s. 553.9081, F.S., to require the Florida Building Commission to amend the Florida Building Code-Energy Conservation to:

- Eliminate duplicative commissioning reporting requirements for HVAC and electrical systems;
- Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and
- Prohibit the adoption of ASHRAE Standard 9.4.1.1(g).

Section 11 amends s. 633.208, F.S., on minimum firesafety standards. The bill prohibits a county, municipality, special taxing district, public utility, or private utility from:

- Requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system; and
- Charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to

a one-family and two-family dwelling with a base meter. However, if the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.

Section 12 prohibits a local government from requiring an owner of a residence to obtain a permit to paint a residence, regardless of whether the residence is owned by a limited liability company.

Section 13 requires the Department of Education, in conjunction with the Department of Economic Opportunity, to develop a plan to implement the recommendations of the Construction Industry Workforce Task Force Report dated January 20, 2017. The Department of Education must provide the plan to the Construction Industry Workforce Task Force on or before July 31, 2017.

Section 14 requires CareerSource Florida, Inc., to develop and submit a plan to the Construction Industry Workforce Task Force on the potential opportunities for training programs to implement the recommendations of the Construction Industry Workforce Task Force Report, using existing federal funds awarded to the corporation and using the previous State Florida ReBuilds program as an implementation model for such programs. CareerSource Florida, Inc., must provide the plan to the Construction Industry Workforce Task Force on or before July 31, 2017.

Section 15 requires the commission to adopt an amendment to the Florida Building Code-Residential, relating to door components, to provide that, relating to substitution of door components, the components must either be:

- Compliant with ANSI/WMA 100; or
- Evaluated by an approved product evaluation entity, certification agency, testing laboratory, or engineer and may be interchangeable in exterior door assemblies if the components provide equal or greater structural performance as demonstrated by accepted engineering practices.

Section 16 provides that the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The bill may decrease local jurisdictions ability to collect additional fees associated with applying for building permits.

B. Private Sector Impact:

Builders and building code officials may benefit from the increased continuity of the Florida Building Code and increased transparency of the updated code adoption process.

Homeowners may pay less for water meters, and there may be an increase in the purchase of fire sprinkler systems for residential dwellings.

C. Government Sector Impact:

The bill appropriates \$150,000 in nonrecurring funds from the Professional Regulation Trust Fund to the Department of Business and Professional Regulation (DBPR) in the 2017-2018 fiscal year for transfer to the University of Florida, M.E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force (CIWT).

The DBPR indicates that the amount of additional fees collected by local jurisdictions associated with applying for building permits maybe be reduced.⁴³ However, any reduction in fees is indeterminate and likely insignificant.

The Florida Building Commission (commission) will have to review each change to the International Code Council I-Codes (I-Codes) and the International Energy Conservation Code (IECC) individually rather than approving wholesale changes to the Florida Building Code. However, the DBPR stated the changes in the bill relating to the revised Florida Building Code adoption process could be accomplished with current resources.⁴⁴

The Department of Education, in conjunction with the Department of Economic Opportunity, is directed to develop a plan to implement the recommendations of the CIWT. It is anticipated the plan can be completed within existing resources.

The bill requires CareerSource Florida, Inc., to develop and submit a plan to the CIWT for training programs to implement the recommendations of the Task Force, using existing federal funds awarded to the corporation.

CareerSource Florida receives \$3 million annually in federal training dollars through the Incumbent Worker Training Program. However, CareerSource Florida's federal funds are

⁴³ Department of Business and Professional Regulation, Bill Analysis for HB1021, (Similar to SB 1312), at p. 6, dated March 28, 2017.

⁴⁴ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SPB 7000, dated January 23, 2017 at page 5.

currently directed to meet shortfalls in career fields other than construction. Redirecting the federal funds for construction training purposes could leave Florida's current need for training programs in other career fields with deficiencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation (DBPR) noted that its staff was unable to find any duplicative commissioning requirements in the current Florida Building Code, 5th edition (2014), or the draft Florida Building Code, 6th Edition 2017.⁴⁵ Additionally, the DBPR noted the reference in section 11 of the bill to American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) s. 9.4.1.1(g) should more properly be ASHRAE Standard 90.1-2013 s. 9.4.1.1(g).⁴⁶ Finally, the DBPR noted that Title III of the Energy Conservation and Protection Act requires that all state building codes meet certain energy conservation requirements.⁴⁷ Last year, the Florida Building Commission (commission) received certification by the Department of Energy that the commercial provisions of the draft 6th Edition, Florida Building Code (2017), Energy Conservation, met those requirements.⁴⁸ The draft Florida Building Code, 6th Edition (2017), Energy Conservation, may lose federal certification if the provisions incorporating ASHRAE 90.1, Section 9.4.1.1(g), are removed.⁴⁹ If the federal certification is lost, the effective date of the Florida Building Code, 6th Edition (2017), could be delayed by six months or more.⁵⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 377.705, 489.103, 553.721, 553.73, 553.76, 553.79, 553.791, 553.80, and 633.208.

The bill creates section 553.9081 of the Florida Statutes and several undesignated sections of law.

⁴⁵ Department of Business and Professional Regulation, Bill Analysis for HB1021, (Similar to SB 1312), at p. 6, dated March 28, 2017.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on May 1, 2017:

The committee substitute:

- Removes a provision relating to disciplinary proceedings when a professional engineer fails to disclose to a customer whether they have professional liability insurance.
- Removes a provision that authorized a pool/spa contractor to do specified load side electrical work.
- Adds an appropriation for the directive for the Department of Business and Professional Regulation (DBPR) to provide \$150,000 to the Rinker School of Construction Management.
- Provides that the prohibition against a county of this state with a population greater than 1.3 million (currently includes Broward, Hillsborough, Miami-Dade, and Palm Beach counties) adopting or enforcing any ordinance or impose any building permit or other development order requirement that has specified effects does not apply to property located in a designated historical district.
- Changes the date by which the Department of Education is required to provide a plan to implement the recommendations of the Construction Industry Workforce Task Force Report from on or before July 1, 2018, to on or before July 31, 2017.
- Changes the date by which Florida, Inc., is required to develop and submit a plan on the potential opportunities for training programs to implement the recommendations of the Construction Industry Workforce Task Force Report from on or before July 1, 2018, to on or before July 31, 2017.

CS by Community Affairs on April 18, 2017:

- Provides that a professional engineer may certify solar energy systems in lieu of the Florida Solar Energy Center;
- Provides that a professional engineer's license may be disciplined for failing to disclose whether the engineer maintains professional liability insurance and policy limits;
- Modifies the construction contracting exemption for public utilities by providing that employees of public utilities, including municipal gas utilities, are exempt from construction contracting licensure requirements;
- Provides that a pool/spa contractor is not required to subcontract electrical work relating to the installation, replacement, disconnection or reconnection of power wiring of the load side of the dedicated existing electrical disconnecting means, but is required to subcontract certain work related to the circuit breaker;
- Prohibits the Florida Building Commission from adopting the 2016 of the ASHRAE Standard 9.4.1.1(g) relating to energy saving with lights that shut off automatically after 20 minutes; and adopting any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device;
- Prohibits a political subdivision from adopting or enforcing ordinances or building permit requirements that conflict with corporate trademarks, service marks, logos,

color patterns or other corporate branding on real property in connection with business activities related to the sale of liquid fuels or other franchises; providing for preemption of certain local laws and regulations; and providing for retroactive applicability;

- Clarifies that it is the Legislature's intent that owners and contractors should not be required to pay twice for building plans and inspections when hiring private providers. Local jurisdictions must calculate the cost savings and reduce fees accordingly;
- Prohibits special or independent districts from requiring payment, at any time, of additional fees, charges, or expenses, related to providing proof of licensure and insurance coverage;
- Provides that the Florida Department of Education and the Florida Department of Economic Opportunity must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce report, and submit the plan to the Taskforce by July 1, 2018;
- Provides that CareerSource Florida, Inc., must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce using existing federal funds and the Florida ReBuilds implementation model, and submit the plan to the Taskforce by July 1, 2018;
- Provides that residential door components may be substituted in exterior door assemblies if the components are provided by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices or comply with the ANSI/WMA 100;
- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the I-Codes, the National Electric Code, or other nationally adopted model codes and standards for updates to the Florida Building Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;
- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances; and
- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
