

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** CS/CS/CS/SB 1372

**INTRODUCER:** Appropriations Committee; Community Affairs Committee; Regulated Industries Committee; and Senator Perry

**SUBJECT:** Building-related Contracting

**DATE:** May 3, 2017

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1372 authorizes certified electrical contractors and alarm system contractors (certified contractors) to:

- Act as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor’s license; or
- Subcontract to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor’s license.

The bill is similar to Part I of ch. 489, F.S., which authorizes prime contracting and subcontracting by construction contractors.

The bill amends ch. 468, F.S., to address the shortage of building code inspectors and plans examiners. The bill revises the terms “building code administrator,” “building official,” and “building code inspector” to include persons contracted with a municipal or county government. Current law states that these positions had to be employees of a municipality or county.

The bill authorizes certain persons contracting with a municipality or county to perform plan review or inspection as certified building officials under an interagency service agreement with a jurisdiction of population 50,000 or less.

In addition, the bill creates an internship path for certification as a building code inspector or plans examiner. The bill also requires the Florida Building Code Administrators and Inspectors Board to issue a provisional certificate to any building code inspector or plans examiner who meets certain eligibility requirements. Furthermore, a person may perform the duties of a plan examiner or building code inspector for 120 days if he or she submits a provisional certificate application and is under the direct supervision of a certified building code administrator. Under current law, the provisional certificate and the authorization to perform plan examiner and building code inspector duties may be issued only to newly employed or promoted building code inspectors and plans examiners.

The bill prohibits the Florida Building Commission (commission) from adopting national energy conservation standards related to automatic lights and provisions requiring self-closing doors between garages and residences.

The bill also changes the process by which revisions are made to the Florida Building Code.

Current law requires the commission to revise the Florida Building Code every three years to automatically adopt the most recent versions of the International Code Council I-Codes (I-Codes) and the International Energy Conservation Code (IECC) into the foundation of the Florida Building Code. Additionally, under current law, amendments and modifications to the Florida Building Code only remain in effect until the effective date of a new edition of the Florida Building Code.

Under the new process, the commission must use the I-Codes, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission must adopt an updated Florida Building Code every three years through reviews of the I-Codes, 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.

However, the commission must 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 and maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction. If amendments or modifications are made to the Florida Building Code, those amendments and modifications will be carried forward until the next edition of the Florida Building Code. The Florida Building Code updating process will remain on a three-year cycle.

In addition, the bill 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 also requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present. Furthermore, a technical advisory committee may favorably recommend a proposal to the commission with a two-thirds vote of the members present.

The bill has an insignificant fiscal impact to the Department of Business and Professional Regulation (DBPR), which can be handled with existing resources. *See* Section V. Fiscal Impact Statement.

## II. Present Situation:

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

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (FBCAIB) within the Department of Business and Professional Regulation (DBPR). The DBPR licenses and regulates businesses and professionals in Florida. The DBPR is structured to include separate divisions and various professional boards responsible for carrying out the DBPR's mission to license efficiently and regulate fairly. The FBCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.<sup>1</sup>

A building code administrator, otherwise known as a building official, is a local government employee who supervises building code activities, including plans review, enforcement, and inspection.<sup>2</sup>

A building code inspector (inspector) is a local government employee who inspects construction that requires permits to determine compliance with building codes and state accessibility laws. Building code inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories the inspector has been certified. The inspector categories are:

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- One and two family dwelling inspector; and
- Electrical inspector.<sup>3</sup>

County or municipal governments, school boards, community college boards, state universities, or state agencies are not prohibited by the statutes governing building inspectors from entering into a contract with any person for building code inspections.<sup>4</sup>

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<sup>1</sup> Section 468.605, F.S.

<sup>2</sup> Section 468.603(1), F.S.

<sup>3</sup> *See* s. 468.603(6), F.S.

<sup>4</sup> *See* s. 468.617(3), F.S.

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. A plans examiner's ability to practice is limited to the category or categories the plans examiner is certified in. The plans examiner categories are:

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.<sup>5</sup>

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

In order to take the examination for building code inspector or plans examiner certification, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Option 1: Demonstrate five years of 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: Demonstrate four years of a combination of postsecondary education in the field of construction or a related field and experience, with at least one year of experience in construction, building code inspection, or plans review.
- Option 3: Demonstrate four years of a combination of technical education in the field of construction or a related field and experience, with at least one year of experience in construction, building code inspection, or plans review.
- Option 4: Currently hold a standard certificate as issued by the FBCAIB, or a fire safety inspector license issued pursuant to ch. 633, F.S.; have a minimum of three years of verifiable full-time experience in inspection or plan review; and satisfactorily complete an approved building code inspector or plans examiner training program of at least 100 hours but not more than 200 hours in the certification category sought.
- Option 5: Demonstrate a minimum of two years combined experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction; and the completion of an approved training program in the field of building code inspection or plan review of at least 200 hours but not more than 300 hours in the certification category sought, with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.
- Option 6: Currently hold a standard certificate issued by the FBCAIB or a firesafety inspector license if the person also:
  - Has at least five years of verifiable full-time experience as a building code inspector, plans examiner, or licensed firesafety inspector; and
  - Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides between 200 and 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide between 500 and 800 hours of training as prescribed by the FBCAIB.<sup>6</sup>

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<sup>5</sup> See s. 468.603(7), F.S.

<sup>6</sup> Section 468.609(2), F.S.

The FBCAIB must accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program.<sup>7</sup>

Under s. 468.609(7), F.S., the FBCAIB is required to provide for the issuance of provisional one-year certificate for certain newly employed or promoted building code inspectors or plans examiners; and to provide appropriate levels of such provisional certificates.

Additionally, a newly employed or hired person may perform the duties of the plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted and the newly employed or hired person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found the person qualified for a provisional certificate.<sup>8</sup>

### ***Building Code Administrator***

In order to take the examination for building code administrator certification, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- **Option 1:** Demonstrate 10 years of combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of experience in supervisory positions; or
- **Option 2:** Demonstrate 10 years of a combination of experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of supervisory experience, and postsecondary education in the field of construction or related field, of which no more than five years may be applied. The individual must have also completed between 20 and 30 hours training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.<sup>9</sup>

### ***Private Providers***

Section 553.791(1)(i), F.S., defines “private provider” as a licensed engineer or a licensed architect who performs inspections on residential buildings in certain circumstances and, for additions and alterations under 1,000 square feet, the term also applies to individuals who hold a standard license under part XII of Chapter 468, F.S.

Private providers are authorized to contract with property owners and local building departments to conduct plans review and building code inspections.<sup>10</sup>

### **Construction Industry Workforce Task Force**

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

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<sup>7</sup> *Id.*

<sup>8</sup> Section 468.609(7)(d), F.S.

<sup>9</sup> Section 468.609(3), F.S.

<sup>10</sup> DBPR, Legislative Bill Analysis for SB 860, pp. 2-3, (March 9, 2017)

out in 2009. New construction has increased in recent years, but there are anecdotal reports that contractors are having a hard time finding skilled labor.

Because of the skilled labor shortage, the Legislature created the Construction Industry Workforce Task Force within the University of Florida M.E. Rinker, Sr., School of Construction Management in 2016.<sup>11</sup> The goals of the task force were to:

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

The task force consisted of 23 members, representing various construction industries and the Legislature. The task force elected a chair from among its members. The University of Florida M.E. Rinker, Sr., School of Construction Management was required to provide assistance to the task force in carrying out its responsibilities.

The task force submitted a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives in January 2017, which states that the construction and building profession is attracting fewer construction related workers.<sup>12</sup> Florida requires five years of construction trade experience in order to obtain an inspector license.<sup>13</sup> Given the stringent educational requirements, contractors often prefer working in the construction trades rather than becoming inspectors.

In its final report, the taskforce recommended the development of the following initiatives:

- Creating an Alternative Internship Certification Program to the current standard qualifications;
- Adding residential inspector and plan examiner categories for all trades;
- Expanding the provisional and 120-day periods beyond newly hired or promoted staff;
- Authorizing interagency service agreement inspections and plan examination for standard certified building officials across jurisdictions with populations 50,000 or fewer;
- Having the FBCAIB streamline the application for certification process by providing for an electronic application process and combining the examination registration with the provisional application;
- Providing high school education guidance material for construction related careers;
- Supporting higher education code curriculum in engineering, architecture, and construction management degrees; and

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<sup>11</sup> Chapter 2016-129, s. 31, Laws of Fla.

<sup>12</sup> Florida Workforce Taskforce Report, prepared by the University of Florida, p. 12, available at <http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf> (Taskforce Report)(last visited Mar. 24, 2017).

<sup>13</sup> Section 468.609(2)(c)1., F.S.

- Comprehensively studying the compensation for building code compliance personnel.<sup>14</sup>

### **Construction Contracting**

Chapter 489, F.S., dealing with construction contracting, provides for the regulation of contractors based on the type of contracting engaged in by the contractor. Part I of ch. 489, F.S., relating to construction contracting, addresses regulation of the construction industry.<sup>15</sup> Part II of ch. 489, F.S., deals with the licensing of electrical and alarm system contractors.<sup>16</sup>

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state.<sup>17</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.<sup>18</sup>
- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.<sup>19</sup>

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.<sup>20</sup>

The CILB is authorized to:

- Reprimand or place licensees on probation;
- Revoke, suspend, or deny the issuance or renewal of a certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.<sup>21</sup>

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<sup>14</sup> See the Taskforce Report, *supra* note 17 at page 14.

<sup>15</sup> See ss. 489.101-489.146, F.S.

<sup>16</sup> See ss. 489.501-489.538, F.S. Part III, dealing with registration of septic tank contractors is not relevant to SB 1372; see ss. 489.551-489.558, F.S.

<sup>17</sup> See s. 489.107, F.S.

<sup>18</sup> See s. 489.107(4)(a), F.S.

<sup>19</sup> See s. 489.107(4)(b), F.S.

<sup>20</sup> See, for example, Fla. Admin. Code R. 61G4-15.032 (2016), dealing with the various types of pool/spa contractors.

<sup>21</sup> See s. 489.129(1)(a) - (q), F.S., for the acts that may result in the imposition of discipline by the CILB.

## Electrical and Alarm System Contracting

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade and have been tested on technical and business matters.<sup>22</sup> The Electrical Contractors' Licensing Board (ECLB) in the DBPR implements part II of ch. 489, F.S.<sup>23</sup>

An alarm system is “any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.”<sup>24</sup> An alarm system includes home-automation equipment, thermostats, and video cameras.<sup>25</sup>

Electrical contractors and alarm system contractors are certified or registered under the ECLB. Certified contractors are those who can practice statewide and are licensed and regulated by the ECLB. Registered contractors are those licensed and regulated by a local jurisdiction and who may practice within that locality.<sup>26</sup>

Generally, an “electrical contractor” is a person who has the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits that generate, transmit, transform, or utilize electrical energy in any form.<sup>27</sup> The scope of an electrical contractor’s license includes alarm system work.<sup>28</sup>

Generally, an “alarm system contractor” is a person who is able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems.<sup>29</sup> An “alarm system” is defined as “any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.”<sup>30</sup>

In order to become a certified electrical contractor or alarm system contractor, a person at least 18 years of age must submit an application to the DBPR and meet the following criteria:

- Be of good moral character;
- Pass the certification examination, achieving a passing grade as established by the ECLB rule; and
- Meet eligibility requirements according to one of the following criteria:
  - Three years of management experience or education equivalent thereto, not more than half of which may be an educational equivalent, within the last six years;
  - Four years of supervisory experience within the last eight years;
  - Six years of training, education, or supervisory experience within the last 12 years;
  - any combination of qualifications under the three previous options totaling six years within the last 12 years; or

<sup>22</sup> See s. 489.501, F.S.

<sup>23</sup> See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the ECLB.

<sup>24</sup> See s. 489.505(1), F.S.

<sup>25</sup> See s. 553.793(1)(b), F.S.

<sup>26</sup> See generally s. 489.505, F.S.

<sup>27</sup> See s. 489.505(12), F.S.

<sup>28</sup> See s. 489.537(7), F.S.

<sup>29</sup> See s. 489.505(2), F.S.

<sup>30</sup> See s. 489.505(1), F.S.



- Three years as a professional electrical engineer within the last 12 years.<sup>31</sup>

Electrical contractors and alarm system contractors are only permitted to perform contracting within their scope of practice. Contracting includes the attempted sale of contracting services and the negotiation or bid for a contract on these services.<sup>32</sup>

Electrical contractors are specifically permitted to contract for certain work outside the scope of licensure, limited to excavation, paving, related incidental work, and the work of specialty electrical contractors, provided the electrical contractor properly subcontracts all work outside the scope of her or his licensure.<sup>33</sup> There are no similar statutory provisions for alarm system contractors.

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).<sup>34</sup> The scope of certification is limited to specific alarm circuits and equipment.<sup>35</sup> No mandatory licensure requirement is created by the availability of a certification.<sup>36</sup>

### **Authority to Act as Prime Contractor or to Subcontract Work**

Under s. 489.113(9)(a), F.S., no provision in part I of ch. 489, F.S., prevents any contractor from acting as a prime contractor<sup>37</sup> where the majority of the work to be performed under the contract is within the scope of his or her license or from subcontracting to other licensed contractors work that is part of the project. Currently, the ECLB and DBPR read Florida law regulating the CILB contractors and the ECLB contractors in conjunction with each other.<sup>38</sup> As such, authority granted to “contractors” to act as prime contractor has been interpreted to also apply to electrical contractors and alarm system contractors.<sup>39</sup>

<sup>31</sup> See s. 489.511(1)(a) and (b), F.S.

<sup>32</sup> See generally s. 489.505, F.S.

<sup>33</sup> See s. 489.537(2)(a), F.S.

<sup>34</sup> See ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

<sup>35</sup> Section 489.505(7), F.S., describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for “root mean square,” a statistical term defined as the square root of mean square. See <http://www.practicalphysics.org/explaining-rms-voltage-and-current.html> (last visited Apr. 11, 2017).

<sup>36</sup> *Id.*

<sup>37</sup> A “prime contractor” is a contractor who has contracted with an owner of a project and has full responsibility for its completion; a prime contractor agrees to perform a complete contract, and may employ (and manage) one or more subcontractors to carry out specific parts of the contract. See <http://www.businessdictionary.com/definition/prime-contractor.html> (last visited Apr. 11, 2017).

<sup>38</sup> “The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature’s intent.” *Fla. Dep’t of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005).

<sup>39</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 227 (identical to SB 1372), dated Feb. 15, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

## 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>40</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, 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).<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup>

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

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<sup>40</sup> 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](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Jan. 18, 2017).

<sup>41</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 50 states have adopted the I-Codes.

<sup>42</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 18, 2017).

<sup>43</sup> Section 553.74, F.S.

require at least 75 percent favorable vote of all members present and voting.<sup>44</sup>

### **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.<sup>45</sup> 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.<sup>46</sup>

### **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;
- 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.

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<sup>44</sup> 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](http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm) (last visited Jan. 18, 2017).

<sup>45</sup> Section 553.73(7)(g), F.S.

<sup>46</sup> Section 553.73(7)(g), F.S.

The commission may also approve technical amendments to the Florida Building Code once a year for statewide or regional application if the amendment:<sup>47</sup>

- 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.
- Does not degrade the effectiveness of the Florida Building Code.

### **The 6<sup>th</sup> Edition of the Florida Building Code**

The commission is currently conducting its rule development process for the 6<sup>th</sup> 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 6<sup>th</sup> Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.<sup>48</sup>

The 6<sup>th</sup> 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.

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.”

### **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

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<sup>47</sup> Section 553.73(9), F.S.

<sup>48</sup> 6<sup>th</sup> Edition (2017) FBC Code Update Development Tasks, *available at*

[http://www.floridabuilding.org/fbc/thecode/2017\\_Code\\_Development/Timelines/FBC\\_WorkplanOption1-2015.pdf](http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf) (Last visited Jan. 18, 2017).

Code.<sup>49</sup> 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.<sup>50</sup>

Section C408 of the 5th 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 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.<sup>51</sup>

### ***Door components***

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

Section R612.9 of the 5th 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.<sup>52</sup>

### ***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.<sup>53</sup>

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<sup>49</sup> Section C202 of the 5<sup>th</sup> edition of the Florida Building Code (Energy Conservation).

<sup>50</sup> Section 725.08(4), F.S.

<sup>51</sup> Section C408 of the 5<sup>th</sup> edition of the Florida Building Code (Energy Conservation).

<sup>52</sup> Section R612.9 of the 5<sup>th</sup> edition of the Florida Building Code (Residential).

<sup>53</sup> See <https://www.ashrae.org/about-ashrae> (last visited on May 1, 2017).

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 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.<sup>54</sup>

The most current version of the Florida Building Code adopted the 2010 version of Standard 90.<sup>55</sup> However, the 2010 version of Standard 90 does not include Section 9.4.1.1(g).<sup>56</sup> The draft of the 6th edition of the Florida Building Code (2017) does contain provisions that adopt this requirement.<sup>57</sup>

### III. Effect of Proposed Changes:

**Section 1** reorders and amends s. 468.603, F.S., to revise the terms “building code administrator” or “building official” to include any person contracted with a municipal or county government with specified building construction regulation responsibilities. One person employed or contracted by each municipal or county government as a certified building code administrator or building official may be authorized to perform any plan review or inspection, including performing any plan review or inspection as a currently designated standard certified building official under an interagency service agreement with a jurisdiction having a population of 50,000 or less.

The term “building code inspector” is revised to include any person contracted with a local government or state agency with specified building construction responsibilities.

The term “plans examiner” is revised to include a residential plans examiner who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes.

**Section 2** amends s. 468.609, F.S., to provide an additional internship path for persons to become eligible to take the examination for certification as a building code inspector or plans examiner.

A person may take the examination for certification as a building code inspector or plans examiner if the person:

- Has completed a four-year internship as a building code inspector or plans examiner while employed full-time by a city, county, or other governmental jurisdiction, under the direct supervision of a building official. Proof of graduation with a related vocational or college degree or verified work experience may be exchanged for the internship experience

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<sup>54</sup> See 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 May 1, 2017).

<sup>55</sup> Section C405.7 of the 5<sup>th</sup> edition of the Florida Building Code (Energy Conservation).

<sup>56</sup> See ASHRAE *Standard 90.1-2010: Energy Standards for Buildings Except Low-Rise Residential Buildings*, [http://www.usalighting.com/stuff/contentmgr/files/1/b90ce247855d0f17438484c003877338/misc/ashrae\\_90\\_1\\_2010.pdf](http://www.usalighting.com/stuff/contentmgr/files/1/b90ce247855d0f17438484c003877338/misc/ashrae_90_1_2010.pdf), (last visited May 1, 2017).

<sup>57</sup> Department of Business and Professional Regulation, Bill Analysis for HB 1021, (Similar to SB 1312), dated March 28, 2017, at page 3.

requirement year-for-year. However, the internship experience requirement may not be reduced by less than one year;

- Has passed an examination administered by the International Code Council (ICC) in the license category sought before beginning the internship;
- Has passed the principles and practice examination before completing the internship program;
- Has passed a Florida Building Code Administrators and Inspectors Board (FBCAIB)-approved 40-hour code training course in the license category sought before completing the internship program; and
- Has obtained a favorable recommendation from the supervising building official after completion of the internship program.

The bill provides that provisional certificates and the 120-day application period are not limited to newly hired or promoted inspectors or plans examiners.

The bill provides that the FBCAIB shall establish by rule:

- Reciprocity of certification with any other state that requires an examination administered by the ICC;
- That an applicant for certification as an inspector or plans examiner may apply for a provisional certificate that is valid for the duration of the internship;
- That partial completion of the internship program may be transferred between jurisdictions;
- That an applicant may apply for a standard certificate on a form prescribed by the Board upon successful completion of an internship program;
- That an applicant may apply for a standard certificate at least 30 days and no more than 60 days before completing the internship program; and
- That an inspector or plans examiner who has a standard certification may seek an additional certification in another category by completing an additional non-concurrent one-year internship program in the category sought, and passing an exam administered by the ICC, and a FBCAIB-approved 40-hour code training course.

**Section 3** amends s. 468.617, F.S., to provide that a county or municipal government, school board, community college board, state university, or state agency is not prohibited from entering into a contract with any person or entity for the provision of building code administrator or building code official services. Under current law, such local governments were authorized to enter into a contract for building code inspection services only.

**Section 4** amends s. 553.791, F.S., to expand the definition of the term “private provider” to include a person licensed as a building code administrator under part XII of ch. 468, F.S. As a result, building code administrators are now authorized to contract with property owners and local building departments to conduct plans review and building code inspections.

**Sections 5 and 6** amend ss. 471.045 and 481.222, F.S., respectively, to conform cross-references.

**Section 7** amends s. 489.516, F.S., to provide that no provision in part II, ch. 489, dealing with electrical contracting and alarm system contracting, may prevent certified electrical contractors and alarm system contractors (certified contractors) from:

- Acting as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor's license; or
- Subcontracting to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor's license.

This provision does not apply to registered electrical and alarm system contractors.

Section 489.113(9)(a), F.S., under part I of ch. 489, F.S., includes a similar provision that applies to all construction contractors, whether certified or registered. The Department of Business and Professional Regulation (DBPR) and the Construction Industry Licensing Board (CILB) have applied s. 489.113(9)(a), F.S., to electrical and alarm system licensees regulated under part II of ch. 489, F.S.<sup>58</sup>

**Section 8** 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 must 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 must also review and adopted 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

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<sup>58</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 227 (identical to SB 1372), dated Feb. 15, 2017 (on file with Senate Committee on Regulated Industries) at page 2.



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 Florida Building Commission from adopting:

- The 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 90.1, s. 9.4.1.1(g), relating to lighting in certain building areas to automatically reduce by 50 percent within 20 minutes after all occupants leave; and
- Any requirement for a door located between a garage and a residence to include a self-closing device.

**Section 9** 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 10** provides for an effective date of 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:

None.

B. Private Sector Impact:

The bill has an indeterminate fiscal impact. The bill specifically permits certified electrical and alarm system contractors to act as prime contractors and to subcontract work when the majority of the work is in the scope of their license. This codifies the current administrative interpretation by the Department of Business and Professional Regulation (DBPR) and the Construction Industry Licensing Board (CILB) and the Electrical Contractors' Licensing Board (ECLB) of the applicability of s. 489.113(9)(a),

F.S., to such certified contractors. This authorization may benefit affected certified electrical and alarm system contractors burdened with higher insurance rates due to the uncertainty created by the administrative interpretation by the DBPR and the CILB and the ECLB.

In addition, the bill will prevent registered electrical and alarm contractors to act as a prime contractor, which had been allowed under the current administrative interpretation by the DBPR, the CILB and the ECLB. According to the DBPR, this change will prevent registered electrical and alarm contractors from bidding on jobs that include some work outside the scope of their licenses.<sup>59</sup> Also, this could lead to more complaints/disciplinary actions against these registered contractors for contracting outside the scope of their license.<sup>60</sup>

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.

The bill may result in more people being able to obtain a certification as a plans examiner and building examiner.

### C. Government Sector Impact:

The DBPR notes that the portions of the bill relating to certified electrical contractors and certified alarm system contractors have no fiscal impact on state government.<sup>61</sup>

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.<sup>62</sup>

The DBPR notes that Title III of the Energy Conservation and Protection Act requires that all state building codes meet certain energy conservation requirements. Last year, the Florida Building 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. The draft Florida Building Code, 6th Edition (2017), Energy Conservation, may lose its federal certification if the provisions incorporating ASHRAE 90.1, Section 9.4.1.1(g), are removed. 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.<sup>63</sup>

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<sup>59</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for CS/HB 2), dated Mar. 7, 2017 (on file with Senate Appropriations Subcommittee on General Government) at page 5.

<sup>60</sup> *Id.* at page 5.

<sup>61</sup> *Id.* at page 3.

<sup>62</sup> See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SPB 7000, dated January 23, 2017 at page 5.

<sup>63</sup> *Id.* at page 6.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.603, 468.609, 468.617, 471.045, 481.222, 489.516, 553.73, 553.76, and 553.791.

**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/CS by Appropriations on May 1, 2017:**

The committee substitute:

- Revises the terms “building code administrator,” “building official,” and “building code inspector” to include persons under contract with a municipal or county government. Current law states that these positions had to be employees of a municipality or county.
- Authorizes certain persons under contract with a municipality or county to perform plan review or inspection as a certified building official under an interagency service agreement with a jurisdiction of population 50,000 or less.
- Revises the term “plans examiner” to include a residential plans examiner qualified to determine that construction plans submitted for building and other permits comply with all construction codes.
- Requires the Florida Building Code Administrators and Inspectors Board to establish minimum standards for, and a procedure to determine the eligibility of, internships for specified candidates.
- Prohibits the Florida Building Commission from adopting:
  - The 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 90.1, s. 9.4.1.1(g), relating to lighting in certain building areas to automatically reduce by 50 percent within 20 minutes after all occupants leave; and
  - Any requirement for a door located between a garage and a residence to include a self-closing device.
- Conforms cross-references.

**CS/CS by Community Affairs on April 17, 2017:**

- 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 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.

**CS by Regulated Industries on April 4, 2017:**

- Authorizes electrical and alarm systems contractors to act as prime contractors and subcontractors, consistent with a similar provision in part I of ch. 489, F.S., authorizing such activities by construction contractors.

**B. Amendments:**

None.