

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 Community Affairs

BILL: CS/CS/SB 1372

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

SUBJECT: Electrical and Alarm System Contracting

DATE: April 18, 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> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 mirrors current law in part I of ch. 489, F.S., which authorizes prime contracting and subcontracting by construction contractors.

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

Current law requires the Florida Building Commission (commission) to revise the Florida Building Code every 3 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 3 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 3-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.

II. Present Situation:

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.¹ Part II of ch. 489, F.S., deals with the licensing of electrical and alarm system contractors.²

Construction Contracting

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state.³ 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.⁴

¹ See ss. 489.101-489.146, F.S.

² 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.

³ See s. 489.107, F.S.

⁴ See s. 489.107(4)(a), F.S.

- 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.⁵

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.⁶

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.⁷

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.⁸ The Electrical Contractors' Licensing Board (ECLB) in the DBPR implements part II of ch. 489, F.S.⁹ 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."¹⁰ An alarm system includes home-automation equipment, thermostats, and video cameras.¹¹

Section 489.505, F.S., specifies the types of contractors who may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace or service alarm systems. An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.¹² The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that

⁵ See s. 489.107(4)(b), F.S.

⁶ See, for example, Fla. Admin. Code R. 61G4-15.032 (2016), dealing with the various types of pool/spa contractors.

⁷ See s. 489.129(1)(a) - (q), F.S., for the acts that may result in the imposition of discipline by the CILB.

⁸ See s. 489.501, F.S.

⁹ See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the ECLB.

¹⁰ See s. 489.505(1), F.S.

¹¹ See s. 553.793(1)(b), F.S.

¹² See s. 489.505(2), F.S.

undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.¹³ An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an “alarm system contractor I;” the practice area of an “alarm system contractor II” is identical except that it does not include fire alarm systems.¹⁴

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).¹⁵ The scope of certification is limited to specific alarm circuits and equipment.¹⁶ No mandatory licensure requirement is created by the availability of a certification.¹⁷

Authority to Act as Prime Contractor, or to Subcontract Work

Pursuant to 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 contractor¹⁸ 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.

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.¹⁹

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

¹³ *Id.*

¹⁴ *See* s. 489.505(2)(a) and (b), F.S.

¹⁵ *See* ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

¹⁶ 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).

¹⁷ *Id.*

¹⁸ 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).

¹⁹ 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 Jan. 18, 2017).

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 I-Codes.²⁰ All subsequent Florida Building Codes have been adopted utilizing the I-Codes as the base code. The most recent Florida Building Code is the fifth edition, which is referred to as the 2014 Florida Building Code. The 2014 Florida Building Code went into effect June 30, 2015.²¹

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.²²

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.²³

Building Code Cycle

Pursuant to s. 553.73(7)(a), F.S., the commission must update the Florida Building Code every 3 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,

²⁰ 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.

²¹ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 18, 2017).

²² Section 553.74, F.S.

²³ 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 Jan. 18, 2017).

every 3 years.²⁴ 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.²⁵

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.

The commission may also approve technical amendments to the Florida Building Code once a year for statewide or regional application if the amendment:²⁶

- 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.

²⁴ Section 553.73(7)(g), F.S.

²⁵ Section 553.73(7)(g), F.S.

²⁶ Section 553.73(9), F.S.

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 6 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, 2017.²⁷

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.

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% vote. Those proposals failing to meet the vote requirement shall not be adopted.”

III. Effect of Proposed Changes:

Section 1 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.

The bill mirrors s. 489.113(9)(a), F.S., under part I of ch. 489, F.S., which is expressly limited to construction contracting under part I of ch. 489, F.S. The DBPR and the 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.²⁸

Section 2 amends s. 553.73, F.S., to require the 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 shall adopt an updated Florida Building Code every 3 years through reviews of the International Building Code, the

²⁷ 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 Jan. 18, 2017).

²⁸ 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.

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 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 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 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.

Section 3 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 4 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 provides clear statutory authority for electrical and alarm system contractors to act as prime contractors and to subcontract work, as currently permitted in accordance with the administrative interpretation by the DBPR and the CILB of the applicability of s. 489.113(9)(a), F.S., to such contractors. The authorization benefits affected electrical and alarm system contractors if they were burdened with higher insurance rates due to the uncertainty created by the administrative interpretation by the DBPR and the CILB.

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.

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.²⁹

The commission will have to review each change to the I-Codes and the 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.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.516, 553.73, and 553.76.

²⁹ *Id.* at page 3.

³⁰ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SPB 7000, dated January 23, 2017 at page 5.

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 Community Affairs Committee 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 Committee 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.