

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1333 Building Construction Procedures

SPONSOR(S): Payne

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	14 Y, 0 N	Brackett	Anstead
2) Government Operations & Technology Appropriations Subcommittee	10 Y, 0 N	Keith	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

The bill:

- Revises the process by which the Florida Building Code is updated by allowing the Florida Building Commission to triennially adopt amendments to the Florida Building Code without individually determining the amendments are needed to accommodate the specific needs of the state.
- Provides that provisional building official, building inspector, and plans examiner licenses are valid for two years instead of one.
- Requires the Building Code Administrators and Inspectors Board to create the following:
 - An internship program for one and two family dwelling building inspectors and plans examiners;
 - An internship program for a roofing plans examiner;
 - A plans examiner license for the following categories of plans examiners:
 - Residential building;
 - Residential plumbing;
 - Residential mechanical;
 - Residential gas; and
 - Residential electrical.
- Provides that if a person wants to be licensed as a one and two family dwelling building inspector they must complete the one and two family dwelling building inspector program and the one and two family dwelling plans examiner internship program (8 years total).
- Amends how the Department of Business and Professional Regulation (DBPR) certifies providers of the home inspector exam.
- Caps the amount DBPR may charge an applicant for a home inspector license if DBPR chooses to purchase and administer the home inspector exam.
- Requires construction contractors who take over as the qualifier for a construction business to file a change of contractor in every jurisdiction where the previous qualifier had a permit within 60 days.
- Requires project owners to serve notice to a construction business, and file a change of contractor along with a written statement and a hold harmless affidavit to a jurisdiction when a new contractor takes over qualifying a construction business.
- Provides that a new contractor who qualifies a business is not liable for any work done by the previous contractor who qualified the business.
- Provides that a contractor who qualifies a construction business may not allow active permits to expire.
- Allows building officials to limit the number of construction permits a contractor who qualifies a construction business may obtain if the contractor has open or expired permits.

The bill may have an insignificant fiscal impact on state government. The bill is not expected to have a fiscal impact on local government.

The bill provides for an effective date of July 1, 2019.

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

STORAGE NAME: h1333c.GOT

DATE: 4/9/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. 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 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code, and that first edition replaced all local codes on March 1, 2002.²

In 2004, for the second edition of the Code, the state adopted the International Code Council's I-Codes. 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

All subsequent Codes have been adopted utilizing the I-Codes as the base code. The current edition of the Florida Building Code (building code) is the sixth edition, which is referred to as the 2017 Florida Building Code.⁴ In 2017, the Legislature passed and the Governor signed into law the current method for updating and adopting the building code.⁵ In October 2017, the commission initiated the development of the 7th edition (2020) of the Florida Building Code.

The Florida Building Commission

The Florida Building Commission (commission) was statutorily created to implement the building code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the building code. The commission must adopt the building code, and any amendments, by a two-thirds vote of the members present.⁶

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 Jan. 3, 2019).

² *Id.* & DBPR, *Overview of the Florida Building Code*, <http://webcache.googleusercontent.com/search?q=cache:udG1X8b7K60J:www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab4.pdf+&cd=1&hl=en&ct=clnk&gl=us> (last visited on Jan. 3, 2019).

³ International Code Council, *About the ICC*, <http://www.iccsafe.org/about-icc/overview/about-international-code-council/> (last visited on Mar. 23, 2017).

⁴ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 3, 2019).

⁵ See House Analysis of 2017 House Bill 1021 (May 8, 2017).

⁶ Ss. 553.74, & 553.76(1), F.S.

The commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC. TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.⁷

Procedures for Adopting the Florida Building Code

Prior to 2017, the commission adopted the building code every three years by adopting the most recent version of the I-Code and the National Electric Code made up of:

- The National Electric Code (NEC); and
- The following I-codes of the ICC:
 - International Building Code;
 - International Fuel Gas Code;
 - International Mechanical Code;
 - International Plumbing Code;
 - International Existing Building Code;
 - International Energy Conservation Code;
 - International Residential Code; and
 - International Electrical Code.⁸

The commission could modify any of the adopted codes as needed to accommodate the specific needs of the state. The commission and local jurisdictions could also make technical and administrative amendments to the building code. A technical amendment to the building code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the building code.⁹

In 2017, the Legislature amended the commission's process to adopt the building code. The commission is no longer required to adopt the most recent version of the I-Codes and the NEC as the foundation for the new code. Instead, the updated process requires the commission to review the I-Codes and the NEC and then decide which provisions are needed to accommodate the specific needs of this state. Because of this 2017 change, the 6th edition (2017) of the building code will basically serve as the base code for future updates.¹⁰

The commission must still adopt any provisions from the I-codes and NEC that are necessary to maintain eligibility for federal funding and discounts from the:

- National Flood Insurance Program;
- Federal Emergency Management Agency; and
- United States Department of Housing and Urban Development.¹¹

Technical Amendments

The commission may adopt any section of the reviewed I-codes and NEC as technical amendments as needed to accommodate the specific needs of the state. Technical amendments needed to accommodate the specific needs of this state include but are not limited to amendments that provide for the following.¹²

⁷ DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited on Mar. 16, 2019), & Rule 61G20-2.001 F.A.C.

⁸ S. 553.73(7), F.S. (2017).

⁹ s. 553.73, F.S. & Rule 61G20-2.002 F.A.C.

¹⁰ S. 553.73, F.S.

¹¹ *Id.*

¹² *Id.*; Rule 61G20-2.002, F.A.C.

In order to adopt a technical amendment to the building code the commission must meet the following requirements:

- The proposed amendment has been published on the commission’s website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration and recommendation by a TAC;
- In order for a TAC to make a favorable recommendation, the proposed amendment must receive a two-thirds vote of the members present at the TAC meeting and at least half of the TAC members must be present in order to conduct the meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposed amendment must be published on the commission’s website for at least 45 days before any consideration by the commission; and
- A proposed amendment may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with ch. 120.¹³

These amendments can also be adopted by the commission once a year if they are for statewide or regional application if they find that the amendment is needed in order to accommodate the specific needs of the state.¹⁴

In the fall of 2017, the commission began the process to amend Rule 61G20-2.002 of the Florida Administrative Code, for the purpose of implementing the provisions of the 2017 legislation regarding processes for developing the building code. The rule became effective March 27, 2018. Among the revisions were providing the purposes for which the commission may amend the building code and the publication timelines for consideration of proposed amendments by TACs and the Commission.

In addition, pursuant to the rule, “amendment” was defined to mean an alteration to the adopted provisions of the building code. “Technical amendment” was defined to mean an alteration to the prescriptive requirements or reference standards for construction adopted by the code. Technical amendments needed to accommodate the specific needs of this state include, but are not limited to, amendments to the building code that provide for the following:

- Establish minimum life safety construction requirements to protect buildings and their occupants from fire, wind, flood, and storm surge using the latest technical research and engineering standards for buildings and materials products.
- Provide for flood protection provisions that are consistent with the latest flood protection requirements of the National Flood Insurance Program.
- Maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.
- Provide for energy efficiency standards for buildings that meet or exceed the national energy standards as mandated by Title III of the Energy Conservation and Protection Act.
- Maintain coordination with the Florida Fire Prevention Code.
- Provide for the latest industry standards and design.¹⁵

Division of Administrative Hearings Rule Challenge

In December of 2017, the Florida Association of American Institute of Architects, Inc. (FAAIA) filed a rule challenge to the Commission’s adoption of rule 61G20-2.002 of the Florida Administrative Code. The FAAIA challenged the rule as invalid based on their belief that the rule is an invalid exercise of the Commission’s delegated authority regarding implementation of the update process for the Florida Building Code. In February of 2018, the Division of Administrative Hearings ruled that the challenged

¹³ S. 553.73(3), F.S.

¹⁴ *Id.*

¹⁵ Rule 61G20-2.002, F.A.C.

provisions of Rule 61G20-2.002 (2) are a valid exercise of delegated authority and the petition was dismissed.¹⁶

Florida Building Code, 7th Edition (2020) Update Timeline

The commission completed its review of changes to the I-Codes and NEC for possible inclusion in the Florida Building Code 7th Edition (2020) in October of 2018. The period for the public to propose modifications to the Florida Building Code 6th Edition (2017) occurred from November 2018 through mid-February 2019. Proposed modifications were reviewed by the commission's TACs in meetings from March 14 - 26, 2019.

The TACs' recommendations regarding proposed modifications will subsequently be posted to the commission's website for a minimum of 45 days and the public will be provided an opportunity to comment on the TACs' recommendations during this time-frame. The TACs will meet for a second time during the week of July 8-12, 2019 to review the public comments and provide TAC feedback on the public comments to the commission. The commission plans to consider the TACs' recommendations concurrent with the August, 2019 commission meeting, conduct rule development workshops on February 4, 2020 and April 7, 2020, and conduct a rule adoption hearing on the final version of the Florida Building Code 7th Edition (2020) on June 8, 2020.¹⁷

The Florida Building Code – Effect of the Bill

The bill allows the commission, upon the required review of certain international model codes, to approve triennial amendments to the building code without a finding that the amendments are needed to meet the specific needs of the state. However, the bill provides the commission the discretion to require such finding if it so chooses.

Building Code Administrators and Inspectors and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.¹⁸

A building code administrator, otherwise known as a building official, is a person who supervises building code activities, including plans review, enforcement, and inspection.¹⁹

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

The inspector categories are:

- Building inspector
- Coastal construction inspector
- Commercial electrical inspector
- Residential electrical inspector
- Mechanical inspector

¹⁶ Florida Association of American Institute of Architects, Inc. v. Florida Building Commission, Case No. 17-6578RP (Fla. DOAH 2018).

¹⁷ Florida Department of Business and Professional Regulation: Florida Building Code Information System, 2020 Code Update Process – 7th Edition, Florida Building Code (2020), available at http://www.floridabuilding.org/fbc/thecode/2020_Code_Development/2020_Code_Development_Process.htm (last visited Mar. 23, 2019)

¹⁸ s. 468.605, F.S.

¹⁹ s. 468.603(1), F.S.

- Plumbing inspector
- One and two family dwelling inspector
- Electrical inspector²⁰

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plan's examiner's ability to practice is limited to the category or categories the plans examiner has been licensed. The plans examiner categories are:

- Building plans examiner
- Plumbing plans examiner
- Mechanical plans examiner
- Electrical plans examiner²¹

The BCAIB may also create voluntary certificates that licensed inspectors and plans examiners may obtain. A voluntary certificate is a limited certificate that allows a licensed inspector or plans examiner to inspect or examine plans for additional categories. Voluntary certificates are not available to people who are not licensed as an inspector, plans examiner, or construction contractor. The BCAIB has created the following voluntary certificates:

- Residential pool inspector;
- Commercial pool inspector;
- Roofing inspector;
- Modular inspector;
- Modular plans examiner; and
- One and two family dwelling plans examiner.²²

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

- Demonstrate 5 years' combined experience in construction, building code inspection, or plans review corresponding to the license category sought;
- Demonstrate a combination of postsecondary education in construction and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;
- Demonstrate a combination of technical education in construction and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;
- Currently hold a license issued by the BCAIB or a fire-safety inspector license issued by the State Fire Marshal, have a minimum of 3 years' verifiable full-time experience in inspection or plan review, and completed an inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the license category sought;
- Currently hold a license issued by the BCAIB or a fire-safety inspector license issued by the State Fire Marshal, have a minimum of 5 years' verifiable full-time experience in inspection or plans review, and complete a building code inspector or plans examiner training program of not less than 200 hours in the license category sought; or
- Demonstrate a combination of the completion of an approved training program of not less than 300 hours approved by the BCAIB in building code inspection or plans review and a minimum of 2 years' experience in building code inspection; plans review; fire code inspections and fire plans review of new buildings; or construction.²³

²⁰ See s. 468.603(6), F.S.

²¹ See s. 468.603(7), F.S.

²² S. 468.609(10), F.S.; Rule 61G19-6.016, F.A.C.

²³ s. 468.609(2), F.S.

Internship Programs

In 2017, the Legislature passed and the Governor signed into law an additional way to obtain a plans examiner or inspector's license. A person may obtain licensure as an inspector or plans examiner in all categories if the person is at least 18 years of age, is of good moral character, and completes an internship program. The requirements of the internship program are:

- Completing a 4-year internship as an inspector or plans examiner while employed full-time by a local government, under the direct supervision of a building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year;
- Passing an ICC administered examination in the license category sought;
- Passing the principles and practice examination before completing the internship program;
- Passing a BCAIB-approved 40-hour code training course in the license category sought before completing the internship; and
- Obtaining a favorable recommendation from the supervising building official after completion of the internship.²⁴

The Legislature and the Governor also enacted an internship program for a licensed inspector or plans examiner to obtain licensure in a different category. The requirements of the internship program are:

- Passing the ICC technical exam in the category sought prior to entering the internship program;
- Completing a 1 year internship of no less than 200 hours of on the job training in the license category sought under the supervision of an inspector or plans examiner licensed in the category sought; and
- Completing a 40-hour BCAIB approved training course in the license category sought.²⁵

In order to sit for the examination for licensure as a building official an applicant must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Demonstrate 10 years' combined experience as an architect, engineer, plans examiner, inspector, registered or certified contractor, or construction superintendent, with at least 5 years of such experience in supervisory positions; or
- Demonstrates a combination of postsecondary education in construction or related field, no more than 5 years of which may be applied, and experience as an architect, engineer, plans examiner, inspector, contractor, or construction superintendent, which totals 10 years, with at least 5 years of such total being experience in supervisory positions.²⁶

The ICC also offers national and state specific certification for building inspectors and plans examiners. The certifications are voluntary and the ICC does not guarantee that a jurisdiction will accept or recognize the certifications. The purpose of the certification program is to provide a mechanism for:

- Individuals to demonstrate their knowledge of construction codes, standards and practices in specific states; and
- Jurisdictions to partially evaluate individuals for knowledge of various construction codes, standards, and practices.²⁷

²⁴ See House Analysis of 2017 House Bill 1021 (May 8, 2017); S. 468.609, F.S.

²⁵ *Id.*; Rule 61G19-7.0016, F.A.C.

²⁶ s. 468.609(3), F.S.

²⁷ International Code Council, *Legacy and State Certification Program*, <https://www.iccsafe.org/certificationexams/certification-exam-categories/state-certification-exams/> (last visited Mar. 19, 2019).

Provisional Licenses

A person who is qualified to sit for the building official, plans examiner, or inspector exam but has not taken the exam may be granted a provisional license by the BCAIB. A provisional license allows a person to engage in the duties of a building official, inspector, or plans examiner. Provisional licenses are valid for one year, but may be renewed by the BCAIB for just cause. A provisional license is not valid for more than three years. However, an applicant who is obtaining licensure as an inspector or plans examiner through an internship may apply to the BCAIB for a provisional license that is valid for the duration of the internship.²⁸

Building Code Administrators and Inspectors and Plans Examiners – Effect of the Bill

The bill provides that provisional licenses are valid for two years instead of one.

The bill requires the BCAIB to create an additional internship program for licensure as a one and two-family dwelling inspector. The requirements of the internship are:

- For applicants who are not licensed inspectors:
 - Obtaining an ICC certification as a residential or commercial inspector in building, electrical, plumbing or mechanical prior to entering the internship; and
 - Completing a 4-year internship with 1 year on-the-job training in building, electrical, plumbing, and mechanical categories under the supervision of a licensed inspector.
 - The 4-year internship program may be reduced to no less than 2 years using verifiable experience or education with at least 6 months of on-the-job training under the supervision of a licensed inspector.
- For applicants who are already licensed as an inspector:
 - Completing a 40-hour one and two-family dwelling inspector training course; and
 - Completing an internship program of not less than 6 months on-job-training in each of the following categories of inspectors in which the applicant is not licensed:
 - Building;
 - Electrical;
 - Plumbing;
 - Mechanical; and
 - Residential.

The bill also requires the BCAIB to create a one and two-family dwelling plans examiner internship program. The requirements of the internship are:

- Obtaining an ICC certification as a one and two family dwelling plans examiner prior to entering the internship;
- Completing a 4-year internship program under the supervision of a licensed plans examiner, which must include 2 years of verifiable experience or education approved by the BCAIB; and
- Completing a 40-hour one and two-family plans examiner code training course.

Currently there is no license for a one and two family building plans examiner other than the voluntary certificate, which is not available to an unlicensed person. However, there are currently several ways to qualify for licensure as a plans examiner for any of the categories of plans examiners. The bill requires the BCAIB to create a plans examiner license that may only be obtained one way.

The bill provides that a person may not be eligible for licensure as a one and two family dwelling inspector unless the person completes the one and two family inspector internship program and the one and two family plans examiner internship program. Requiring that a person complete two internship programs will double the requirements to become a licensed one and two family building inspector. This will require a person to complete two 4-year internship programs (8 years) to become a one and two

²⁸ S. 468.609, F.S.

family building inspector, instead of current law which only requires a person to complete one 4-year internship program.

The bill may also reduce the ways to become a one and two family dwelling inspector. Currently, the internship program is one of several ways to become licensed as a one and two family dwelling inspector. The bill could have the effect of providing that the only way to obtain licensure as a one and two family dwelling inspector is by completing the one and two family inspector internship program and the one and two family plans examiner internship program.

The bill requires the BCAIB to create a roofing inspector internship program. The requirements of the internship program are:

- Obtaining an ICC certification as a Florida roofing inspector prior to entering the internship program, and completing a 1-year internship program with on-the-job training as a roofing inspector under the supervision of a licensed commercial building inspector or roofing inspector; or
- Obtaining a residential building inspector license, completing a 40-hour roofing inspector training course, and completing an internship of at least 200 hours under the supervision of a licensed commercial building inspector or roof inspector

Currently there is no license for a roofing inspector other than the voluntary certificate, which is not available to an unlicensed person. However, there are currently several ways to qualify for licensure as a plans examiner for any of the categories of plans examiners. The bill requires the BCAIB to create a plans examiner license that may only be obtained one way.

The bill also requires the BCAIB to create the following categories of plans examiners:

- Residential building;
- Residential plumbing;
- Residential mechanical;
- Residential gas; and
- Residential electrical.

Construction Contractors

Construction contractors are certified or registered by the Construction Industry Licensing Board (CILB) housed within the DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. Certified construction contractors are licensed and regulated by the CILB and can practice statewide. Registered contractors are those registered with DBPR, but are licensed and regulated by a local jurisdiction and may only practice within that locality.²⁹

Section 489.119, F.S., provides that a licensed contractor may perform contracting in their own name or through a business organization by qualifying the business as a qualifying agent. In order to qualify a business, a contractor must apply to the CILB. An application to qualify a business must include:

- An affidavit attesting that the contractor has final approval authority for all construction work performed by the business and final approval authority on all business matters, including contracts, specifications, and payments made by the business, except where a financially responsible officer is approved; and
- The name of the partnership its partners; the name of the corporation and of its officers and directors; the name of the business trust and its trustees; or the name of such other legal entity and its members; and must state the fictitious name, if any, under which the business organization is doing business.

If a contractor stops qualifying a business the contractor must notify DBPR in writing. If no other contractors are affiliated with the business then the business must also notify DBPR. The business has

²⁹ Ss. 489.105, & 489.107, F.S.
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60 days from the date the qualifying agent leaves to find another contractor to qualify the business. During this time the business may not engage in the practice of contracting unless DBPR or the CILB issues the business a temporary contracting license. The temporary license is not renewable.³⁰

Construction Contractors – Effect of the Bill

The bill provides that a qualifying agent may not allow active permits to expire without properly closing them. This would subject a contractor to discipline by the CILB for failing to properly close a permit. The bill also allows a building official to limit the number of new permits a qualifying agent with open and expired permits may obtain.

The bill provides that a contractor who takes over as the qualifying agent for a construction business must submit a change of contractor order in each jurisdiction in which the previous qualifying agent held an active permit, within 60 days. The bill provides that the previous qualifying agent may sign a change of contractor order provided by the jurisdiction. If the qualifying agent fails to do so then a “project owner” shall serve notice to the qualifying agent’s corporate address. The “project owner” must also submit a change of contractor, a written statement, and a hold harmless affidavit to the jurisdiction where the project is located. A jurisdiction that receives a change of contractor shall process the change of contractor upon receipt of the written statement and affidavit.

The bill provides that “if a permit expires and remains open, a project owner may submit a change of contractor and a hold harmless affidavit without any further notification to the previous qualifying agent.”

The bill provides that a new qualifying agent for a construction business is not liable for any work done by the previous qualifying agent. A new qualifying agent for a construction business is responsible for new or corrective work.

Home Inspector Exam

A home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually obvious problems with the home and reports any problems to the buyer who may consider having them corrected by the seller before closing the sale. Home inspectors are regulated by DBPR.³¹

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity through the permitting process for the purpose of determining whether a structure complies with the building code. By contrast, a home inspection is a discretionary endeavor.

In order to obtain licensure as a home inspector a person must:

- Have good moral character;
- Complete a course study of at least 120 hours; and
- Pass the required examination.³²

DBPR may review and approve home inspector exams that are provided by a nationally recognized entity. In order for a home inspector exam provider to become a nationally recognized entity it must offer programs or set standards that ensure competence as a home inspector. The standards for approval of an examination are:

- The examination is proctored; and

³⁰ S. 489.119, F.S.

³¹ S. 468.8314, F.S.

³² S. 468.8313, F.S.

- The examination covers the following components of a home: structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure.³³

Exams provided by nationally recognized entities are different than exams certified by DBPR as meeting the requirements of national examinations and generally accepted testing standards. The current standards for an exam to receive certification as meeting the requirements of national examinations and generally accepted testing standards are:

- The practice of the profession at the national level is defined through an occupational analysis with a representative sample of all practitioners and professional practices;
- The organization providing the exam must:
 - Be recognized by practitioners across the nation in the form of representatives from state boards; or
 - Have membership representing a substantial number of the nation's or states' practitioners who have been licensed through the national examination.
- The organization providing the exam must be responsible for overseeing the development and scoring of the national examination;
- The organization providing the exam provides security guidelines for the development and grading of the national examination and oversees the enforcement of these guidelines.
- The exam assesses entry-level standards of practice that is common to all practitioners; and
- The exam assesses the scope of practice and the entry skills defined by the national occupational analysis.³⁴

Current law caps the initial home inspector application and examination fee at \$125, plus DBPR's cost to purchase the exam, if DBPR chooses to do so. Currently, DBPR does not purchase and administer the home inspector exam or collect any fee for such exams. The exam provider sets and collects the exam fee. Additionally, DBPR does not anticipate purchasing and administering the home inspector exam.³⁵

Home Inspector Exam – Effect of the Bill

The bill provides that DBPR may approve home inspector examinations for licensure if the exams meet the standards of a national examination and generally accepted testing standards as defined by rule and certified by DBPR. According to DBPR, the requirements to have an exam certified as meeting the requirements of national examinations and generally accepted testing standards are more stringent than being recognized as a nationally recognized entity. DBPR also stated that the bill will not apply to home inspector exam providers who have already been approved to provide the home inspector exam.³⁶

The bill also provides that if DBPR chose to purchase an examination, the cost shall be capped at \$200. Section 468.8312, F.S., provides that the initial application and examination fee shall not exceed \$125, plus the actual per applicant cost to the department to purchase an examination, if the department chooses to purchase and administer the examination.³⁷ Currently, home inspector examinations are administered by a third party examination provider. Applicants pay the provider directly for these examinations. The department indicates that it has no plans to acquire and administer the home inspector examination.³⁸

³³ *Id.*; Rule 61-30.103, F.A.C.

³⁴ Rule 61-11.015, F.A.C.

³⁵ S. 468.8312, F.S.; Rule 61-30.103; Florida Department of Business and Professional Regulation, Agency Analysis of 2019 House Bill 1333, p. 6 (Mar. 19, 2019).

³⁶ *Id.* at 7.

³⁷ *Id.* at 35.

³⁸ *Id.* at 35

B. SECTION DIRECTORY:

- Section 1.** Amends s. 468.609, F.S., extending the length of provisional certificates and creating building inspector and plans examiner categories.
- Section 2.** Amends s. 468.8312, F.S., capping certain fees.
- Section 3.** Amends s. 468.8313, F.S., amending the requirements to be a home inspector exam provider.
- Section 4.** Amends s. 489.1195, F.S., adding certain requirements for contractors who qualify a business.
- Section 5.** Amends s. 553.73, F.S., amending how the building code is adopted.
- Section 6.** Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill imposes a \$200 cap on fees that DBPR could charge if the department chose to purchase and administer the home inspector examination. However, home inspector examinations are currently administered by an exam provider. Applicants pay the provider directly for examinations. The department indicates that it has no plans to acquire and administer the home inspector exam.³⁹ No additional revenues are anticipated with the implementation of HB 1333.

2. Expenditures:

DBPR indicates that there may be increased costs associated with assessing national exam standards for home inspection examinations. Additionally, DBPR indicates the need for modifications to several IT systems relating to the creation of new licensure categories in the bill. However, any additional costs related to national exam standards and updates to IT systems will be absorbed within existing resources.⁴⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. A contractor may have to pick and choose projects if a building official limits the amount of a permits the contractor may obtain. Prohibiting contractors from allowing active permits to expire may require contractors to continue working on a job even if they have been terminated or are not receiving payment. It may also subject more contractors to discipline.

³⁹ Florida Department of Business and Professional Regulation, Agency Analysis of 2019 House Bill 1333, p. 6 (Mar. 19, 2019).

⁴⁰ *Id.* at pp. 6-7

The bill's changes to the requirements to obtain licensure as a one and two family dwelling inspector would substantially increase the time it takes to obtain licensure as a one and two family dwelling inspector by doubling the length of the current internship program, and removing the other ways to obtain licensure as a one and two family building inspector. The changes may also reduce the number of people who may be able to obtain licensure as a one and two family building inspector since there may be people who would qualify under one of the other ways to obtain licensure as a one and two family building inspector but are not able to complete the required internship programs.

It will become harder to provide the home inspector exam in Florida and could prevent some providers from being able to administer the exam in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Yes. The bill provides the BCAIB with the authority to develop the creation of the one and two family dwelling inspector, one and two family dwelling plans examiner, and roofing inspector internship programs. The bill also provides DBPR the authority to develop rules regarding home inspector examinations and fees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides certain requirements for "project owners" when a new contractor takes over as qualifier for a business. However, the term "project owner" is not used in the construction contractor practice act, and the bill does not define the term.

The bill requires the BCAIB to create a roofing inspector internship program. One of the requirements of the internship program are completing a one year internship under the supervision of commercial building inspector or roofing inspector, or being licensed as a residential building inspector and completing an internship with a commercial building inspector or roofing inspector. However, there are categories of commercial or residential building inspectors under current law, and the bill does not create those categories of inspectors.

The bill also states that to be eligible for a one and two-family dwelling inspector certification, an applicant must complete the one and two-family dwelling inspector internship program and the one and two family plans examiner program. This provision may limit the way to obtain licensure as a one and two family dwelling inspector to only the internship program. However, the provision is not clear. Additional language may be needed to clarify if the internship program is one of several ways to obtain licensure as a one and two family dwelling inspector or is the only way to obtain licensure.

According to DBPR, the bill will require applicants for a one and two family dwelling inspector license will have to complete the one and two family dwelling inspector internship and the one and two family

dwelling plans examiner internship. The bill's language appears to conflict with the regulation and licensing responsibilities of an inspector versus a plans examiner.⁴¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁴¹ Florida Department of Business and Professional Regulation *supra* note 35 at 8.
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