

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 89 Building Construction

**SPONSOR(S):** Commerce Committee, Regulatory Reform & Economic Development Subcommittee, Maggard

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Larkin	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Burgess	Darden
3) Commerce Committee	17 Y, 0 N, As CS	Larkin	Hamon

### SUMMARY ANALYSIS

Class A air-conditioning contractors and mechanical contractors, licensed by the Construction Industry Licensing Board, are allowed to work on central air-conditioning, refrigeration, heating, and ventilating systems. These services include installing, disconnecting, or reconnecting power wiring on the **load side** of the dedicated existing electrical disconnect switch. Currently, an electrical contractor license is required to work on the **line side**.

The bill:

- Allows class A air-conditioning contractors and mechanical contractors to work on power wiring, breakers, or fuses on the **line side** of the dedicated existing electrical disconnect switch.

The Florida Building Code is administered and enforced by local governments through the issuance of permits and completion of inspections by local building officials. Permits are generally issued prior to starting construction projects, but after plans are reviewed by local building officials. A local enforcing agency must identify the specific plan features that do not comply with the Building Code **whenever a permit is denied**. Currently, there is no similar requirement for fire safety officials related to the Fire Prevention Code.

Current law is not clear on whether local governments must notify permit holders about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code if they make or require substantive changes to building plans **after the permit is issued**.

The bill:

- Prohibits a local government from making substantive changes to plans **after a permit has been issued** unless such changes are required under the Building Code, or Fire Prevention Code.
- Requires any changes a local government makes to plans **after a permit has been issued** to identify the specific parts of the plan that do not conform to the applicable code in writing.
- Requires a building official or inspector who asks another person or employee other than a building official, plans examiner, or inspector to review the building plans to notify the local government if such person or employee determines the plans do not comply with the Building Code.
- Requires a local fire official to notify the permit applicant of specific reasons why plans do not comply with the Fire Prevention Code.
- Allows a plans examiner, inspector, building official, or fire safety inspector to have their certificate disciplined for failure to notify the appropriate person of the reasons for making substantive changes to building plans.

The bill does not appear to have a significant fiscal impact on local or state governments.

The bill provides an effective date of July 1, 2023.

### FULL ANALYSIS

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

STORAGE NAME: h0089e.COM

DATE: 3/27/2023

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Class A Air-Conditioning Contractors and Mechanical Contractors – Current Situation**

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida, including construction contractors. Construction contractors are certified or registered and regulated by the Construction Industry Licensing Board (CILB).<sup>1</sup>

Certified contractors are allowed to practice their specific license category in any jurisdiction in the state.<sup>2</sup> Two of the HVAC<sup>3</sup> license categories are Class A air-conditioning contractors and mechanical contractors.

To be eligible for licensure as a Class A air-conditioning or mechanical contractor, an applicant must complete the license application,<sup>4</sup> pass the certification examination, and meet certain combinations of education and experience, which consists of 4 to 5 years of college-level courses and/or HVAC work experience.<sup>5</sup>

Class A air-conditioning contractors<sup>6</sup> and mechanical contractors may install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems.<sup>7</sup> These services include **replacing, disconnecting, or reconnecting power wiring** on the **load** side of the dedicated existing electrical disconnect switch.<sup>8</sup> Mechanical contractors may also work on completing the piping and duct work in connection with the complete HVAC and gas system, but may not work on potable water lines.<sup>9</sup>

Generally, before working on the HVAC unit, an HVAC contractor is required to obtain a building permit.<sup>10</sup> After the work on the HVAC unit is finished, the HVAC contractor is required notify the building official that the work is ready for inspection to close the permit. This process ensures that the HVAC unit is properly installed in accordance with the Florida Building Code (Building Code).<sup>11</sup>

#### *HVAC Electrical Disconnect Switch Installation Requirements*

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<sup>1</sup> S. 20.165, F.S, creates the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

<sup>2</sup> S. 489.105, F.S.

<sup>3</sup> Heating, ventilation, and air conditioning.

<sup>4</sup> *Certified Class A Air Conditioning Contractor Application Requirements*, Florida Department of Business & Professional Regulation, [https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=0601&XACT\\_DEFN\\_ID=2940](https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=0601&XACT_DEFN_ID=2940) (last visited March 3, 2023).

<sup>5</sup> *Application for Certified Class-A Air Conditioning Contractor as an Individual*, p. 7, Florida Department of Business & Professional Regulation, <https://www.myfloridalicense.com/datamart/loginFLDBPR.do> (last visited March 3, 2023); *Application for Certified Mechanical Contractor as an Individual*, Florida Department of Business & Professional Regulation, [https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=0606&XACT\\_DEFN\\_ID=3104](https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=0606&XACT_DEFN_ID=3104) (last visited March 8, 2023)

<sup>6</sup> Class B and Class C air-conditioning contractors are HVAC contractors with a limited scope.

<sup>7</sup> S. 489.105(3)(f), F.S.

<sup>8</sup> S. 489.105(3)(f), F.S.

<sup>9</sup> S. 489.105(i), F.S.

<sup>10</sup> S. 105.1 of the Seventh edition of the Florida Building Code (Building); *see also*, s. 489.126(1), F.S.

<sup>11</sup> S. 110.1 of the Seventh edition of the Florida Building Code (Building).

HVAC equipment or air-conditioning units are required to be installed in accordance with manufacturer specifications, which include the electrical needs of such equipment as indicated on either the equipment or in the manual. The Building Code requires that listed or labeled equipment be installed and used in accordance with any instructions included in the listing or labeling, which includes rated-load in amperes or rated-load current for the motor-compressor.<sup>12</sup> This ensures the safety of both the contractor and the premises. The manufacturer establishes values for a given load, rated voltage, and rated frequency of the equipment it serves to ensure that the air conditioner disconnecting means (usually a switch) and controller have proper interrupting capacities.<sup>13</sup>

The Building Code specifically requires compliance with the manufacturer's nameplate markings.<sup>14</sup> This information is used to determine the rating or ampacity of the disconnecting means, the branch-circuit conductors, the controller, branch circuit short-circuit and ground-fault protection, and the separate motor overload protection. If the nameplate specifies fuses only, substitution of a listed circuit breaker is a violation of the Building Code and the manufacturer's warranties.

A disconnecting means is required to be located "within sight from and readily accessible" from the air-conditioning equipment<sup>15</sup>, which is usually located on a concrete pad outside the dwelling or structure, under the building in a crawl space, or mounted on a rooftop.<sup>16</sup> This disconnecting means can be installed on or within the air-conditioning equipment itself.<sup>17</sup>

Sufficient working space in the direction of access to the equipment, or the part of the equipment, that is likely to be worked on while there are live, exposed parts, must be provided in accordance with the Building Code to access the disconnecting means for purposes of examination, adjustment, servicing, or maintenance while energized. The purpose is to provide a ready and visible means of disconnection for the person who will service or repair the equipment. Safe access must also be provided to the control equipment within the unit at the time the equipment is being installed or serviced. **It is common for service persons to examine or test HVAC equipment while it is energized.**<sup>18</sup>

#### *HVAC Electrical Disconnect Switch Components*

The **line side** consists of upstream components and wires coming from the main power source that supply power. **It always carries current when there is power supply from the power source.** The **load side** consists of downstream components and wires that take the electrical current and supply it to other electric devices. **It only carries current when the switch is turned on**, signaling a closed circuit that allows current to flow through.<sup>19</sup>

Below is an illustration of the "load" and "line" sides of an HVAC breaker:<sup>20</sup>

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<sup>12</sup> S. 301.10 of the Seventh edition of the Florida Building Code, Mechanical (Building) ("Electrical wiring, controls and connections to equipment and appliances regulated by this code shall be in accordance with National Fire Protection Association (NFPA) 70"); see also, 440.4 of NFPA 70 (2023 ed.).

<sup>13</sup> S. 440.11 of NFPA 70 (2023 ed.) ("Disconnecting means shall be capable of disconnecting air-conditioning and refrigerating equipment, including motor-compressors and controllers, from the circuit conductors. If the disconnecting means is readily accessible to unqualified persons, any enclosure door or hinged cover of a disconnecting means enclosure that exposes energized parts when open shall require a tool to open or be capable of being locked."); see also, Keith Lofland, International Association of Electrical Inspectors Magazine, *Air-Conditioning Equipment Installations*, <https://iaeimagazine.org/2017/julyaugust-2017/air-conditioning-equipment-installations/> (last visited March 3, 2023).

<sup>14</sup> *Id.*

<sup>15</sup> S. 440.14 of NFPA 70 (2023 ed.).

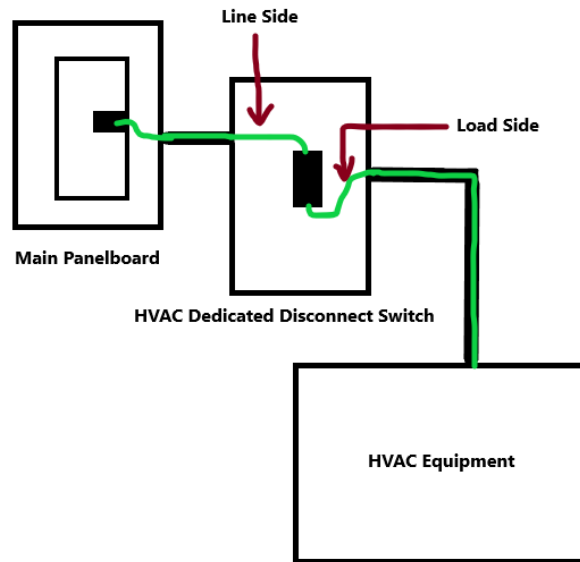
<sup>16</sup> Typically, a locking type of disconnecting means located out of sight from the unit is not acceptable. *Id.*

<sup>17</sup> Keith Lofland, International Association of Electrical Inspectors Magazine, *Air-Conditioning Equipment Installations*, <https://iaeimagazine.org/2017/julyaugust-2017/air-conditioning-equipment-installations/> (last visited March 3, 2023).

<sup>18</sup> *Id.*

<sup>19</sup> Alex Klein, *How to Identify Line and Load Wires*, Electro University (Aug. 16, 2022), <https://electrouniversity.com/how-to-identify-line-and-load-wires/>, (last visited Feb. 14, 2023).

<sup>20</sup> See Assured Electrical, *Just Answer*, [https://ww2-secure.justanswer.com/uploads/AssuredElectrical/2012-05-29\\_153354\\_240acdisconnect.gif](https://ww2-secure.justanswer.com/uploads/AssuredElectrical/2012-05-29_153354_240acdisconnect.gif). (last visited Feb. 27, 2023).



**A dedicated circuit** has its own circuit breaker and only supports one outlet, which means **only one electrically powered device can draw voltage from that circuit at any given time**.<sup>21</sup> A **disconnect switch** is used to isolate electrical circuits by **interrupting the flow of electrical current**. By quickly stopping the flow of power, disconnect switches allow for emergency shutdowns, switching to alternate power sources, and maintenance.<sup>22</sup>

There are several circuit breakers in the main electrical panel, also known as a breaker box or main panelboard. **One of those circuit breakers goes to the outside air-conditioning unit and then runs to a dedicated existing electrical disconnect switch for the unit.**<sup>23</sup>

A circuit breaker and a fuse are both designed to interrupt the flow of electricity, but they operate through different mechanisms. The fuse works as a piece of metal that melts down when overheated, and a circuit breaker works by operating a switching mechanism when an overflow of electricity is detected. Circuit breakers generally have a higher breaking capacity than fuses.<sup>24</sup>

### *Differences Between Voltage and Amperage*

<sup>21</sup> Harrison Electric, Inc. *Dedicated Circuits: What They Are & How to Determine If You Need Them*, Aug. 16, 2021, <https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them> (last visited Mar. 3, 2023)

<sup>22</sup> Bisco Industries, *What is a Disconnect Switch?*, <https://press.biscoind.com/2016/08/18/what-is-a-disconnect-switch/> (last visited Mar. 3, 2023).

<sup>23</sup> Russell E. Smith, "Installation of Heating, Cooling, and Refrigeration Systems." *Electricity for Refrigeration, Heating, and Air Conditioning*, 10th ed., Cengage Learning, Boston, MA, 2018, p. 18 (explaining a disconnect switch allows a contractor to disconnect the power source to the heating, cooling, and refrigeration equipment being worked on). The Florida Building Code requires that a 125-volt, 15- and 20-ampere receptacle for servicing air-conditioning and refrigeration equipment is to be located not less than 7.5 m (25 ft) from, and on the same level as, the equipment itself. The receptacle must be in a readily accessible location from the equipment and must be GFCI-protected as applicable to outdoor receptacles at dwelling occupancies.)

<sup>24</sup> Hi-Lite Electric, Inc., *What's the Difference Between Fuses and Circuit Breakers?*, Aug. 26, 2019, <https://hi-liteelectricinc.ca/about-us/blog/power-surges/whats-difference-fuses-circuit-breakers/> (last visited Mar. 4, 2023).

Although voltage and amperage are both measurements of electricity, they measure different aspects of electricity. Amperage is the flow of the electric current. Voltage is the pressure of the electric current. These are both needed to generate power.<sup>25</sup>

$$\text{Power} = \text{Amperage (Flow)} \times \text{Voltage (Pressure)}$$

For example, an air conditioner requires approximately 15 to 60 amps.<sup>26</sup> In regard to danger to people, the amperage, not voltage, is the most determinant factor in causing injury or fatality.<sup>27</sup> The amount of time that a person is exposed to the electric current is also a factor.<sup>28</sup>

### *Line Side Work in Florida*

While Class A air-conditioning contractors and mechanical contractors may work on the **load** side, they cannot install, disconnect, or reconnect power wiring on the **line side**<sup>29</sup> of the dedicated existing electrical disconnect switch.<sup>30</sup> Only a licensed electrical contractor can work on the line side.<sup>31</sup> Therefore, Class A air-conditioning contractors and mechanical contractors have to refer work on the line side to an electrical contractor, which causes Class A air-conditioning contractors and mechanical contractors to stop their work until an electrical contractor completes this portion.

### *Line Work and Contractor Certification in Other States*

HVAC licensing requirements and specialty categories differ from state to state.<sup>32</sup> Most states limit HVAC contractors to work on the load side.<sup>33</sup>

For example, in North Carolina, licensed HVAC contractors may work on the load side, but not on the line side,<sup>34</sup> and all licensed HVAC contractors are required to perform a room-by-room load calculation for all newly installed residential structures prior to installing heating systems, air conditioning systems, or both.<sup>35</sup> In Hawaii, an HVAC contractor is allowed to put together and install HVAC units including, but not limited to, piping, and controls, but are not allowed to work on the electrical controls.<sup>36</sup> Some other states specifically require licensing as an electrical contractor to work on HVAC systems, such as Washington state.<sup>37</sup>

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<sup>25</sup> *Electricity Explained Simple: The Difference between Voltage, Amperage and Power*, YouTube, Solar Solution, (Apr. 9, 2021), <https://www.youtube.com/watch?v=CA1Y9PkHkr0> (last visited March 5, 2023).

<sup>26</sup> Edwin Jones, *How Many AMPS Does an Air Conditioner Use?*, Galvin Power (Mar. 1, 2023), <https://www.galvinpower.org/how-many-amps-does-an-air-conditioner-use/> (last visited March 5, 2023).

<sup>27</sup> "While any amount of current over 0.01 amp is capable of producing painful to severe shock, currents between 0.1 to 0.2 amp are lethal." *The Fatal Current*, The Ohio State University College of Arts and Sciences, [https://www.asc.ohio-state.edu/physics/p616/safety/fatal\\_current.html](https://www.asc.ohio-state.edu/physics/p616/safety/fatal_current.html) (last visited March 5, 2023).

<sup>28</sup> Akash Peshin, *How Much Current Can the Human Body Withstand?*, Science ABC (Nov. 12, 2021), <https://www.scienceabc.com/humans/how-many-volts-amps-kill-you-human.html> (last visited March 5, 2023).

<sup>29</sup> Klein, *supra* note 19.

<sup>30</sup> S. 489.105(3)(f), F.S.

<sup>31</sup> S. 489.505(12), F.S.

<sup>32</sup> Hans Howk, *What Licenses Does an HVAC Contractor Need?*, Wolters Kluwer (July 1, 2021), <https://www.wolterskluwer.com/en/expert-insights/hvac-contractor-licenses> (last visited March 5, 2023).

<sup>33</sup> There are several states, such as Illinois, Indiana, Kansas, Massachusetts, Maine, Missouri, Montana, Minnesota, Colorado, and New York, that license air conditioning contractors at the local level. *Id.*

<sup>34</sup> N.C.G.S.A. § 87-2121 (a)(4) and N.C. Admin. Code 50.0505(e).

<sup>35</sup> N.C. Admin. Code 50.0505(e).

<sup>36</sup> "Electrical work" means the installation, alteration, reconstruction, or repair of electrical wiring. Haw. Code R. § 16-80-3; see also, "Any person who performs electrical work in the State is required to have a journey worker electrician's license." Haw. Code R. § 16-80-4.

<sup>37</sup> Wash. Admin. Code 296-200A-016(28) and 296-46B-901(c)(B); "There is no official HVAC license in Washington. However, HVAC contractors are required to have an electrical license to perform HVAC duties such as inspecting, repairing, installing, and altering heating, ventilation, air conditioning, and refrigeration units." *How to Get an HVAC License in Washington: A Complete Guide*, General Contractor License Guide (Aug. 23, 2022), <https://generalcontractorlicenseguide.com/washington-hvac-license/> (last visited March 6, 2023).

However, there are a few states that allow HVAC contractors to work on the line side in limited ways. These states have set specific parameters for such work.

For example, in Georgia, HVAC contractors may perform limited work on the line side. Specifically, they may perform service to or installation of the electrical circuit from the main electrical panel to the air-conditioner equipment where the electrical service to the building or site is a single-phase electrical circuit not exceeding 200 amperes.<sup>38</sup> In Alaska, HVAC contractors<sup>39</sup> are required to be licensed as a Mechanical Administrator, and such contractors may install control wiring that alters the electrical characteristics of the mechanical system if they are supervised by a licensed electrical administrator.<sup>40</sup>

### **Class A Air-Conditioning Contractors and Mechanical Contractors – Effect of Bill**

The bill expands the scope of service that a class A air-conditioning contractor and mechanical contractor may provide. The bill allows class A air-conditioning contractors and mechanical contractors to:

- Replace, disconnect, or reconnect power wiring, **breakers, or fuses** on the **line** side of the dedicated existing electrical **circuit** disconnect switch; and
- Replace, disconnect, or reconnect air-conditioning **disconnect switches and boxes**.

### **Building Plans Requirements- Current Situation**

#### *Florida Building Code*

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the 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 Building Code, and that first edition replaced all local codes on March 1, 2002.<sup>41</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>42</sup>

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>43</sup>

The Florida Building Commission (Building Commission) implements the Building Code. The Building Commission, which is housed within DBPR, reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.<sup>44</sup>

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.<sup>45</sup>

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<sup>38</sup> Ga. Code Ann., § 43-14-2(3)

<sup>39</sup> In Alaska, a mechanical contractor is required to obtain a mechanical license as well as a mechanical administrators license to work on a HVAC unit.

<sup>40</sup> Alaska Admin. Code tit. 12, § 39.232(c).

<sup>41</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, [http://www.floridabuilding.org/fbc/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf) (last visited Feb. 13, 2023).

<sup>42</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx><https://floridabuilding.org/c/default.aspx> (last visited Feb. 13, 2023).

<sup>43</sup> See s. 553.72(1), F.S.

<sup>44</sup> Ss. 553.73, and 553.74, F.S.

<sup>45</sup> S. 553.71(5), F.S.

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

Building code administrators, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR.<sup>46</sup>

A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.<sup>47</sup>

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 the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:<sup>48</sup>

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with the Building Code. A plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:<sup>49</sup>

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

The BCAIB may discipline building code administrators, plans examiners, and inspectors for violations of the practice act, such as violating BCAIB or DBPR rules, and failing to properly enforce applicable building codes or permit requirements.<sup>50</sup> Types of discipline includes:<sup>51</sup>

- Denial of an application for certification;
- Permanent revocation;
- Suspension of a certificate;
- Fines; and
- Probation.

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<sup>46</sup> See Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.

<sup>47</sup> S. 468.603(2), F.S.

<sup>48</sup> S. 468.603(4) and (5), F.S.

<sup>49</sup> S. 468.603(8), F.S.

<sup>50</sup> Ss. 468.601, 486.621, and 468.633, F.S.; see also R. 61G19-5.003, F.A.C.

<sup>51</sup> S. 486.621, F.S.

## Florida Fire Prevention Code

Florida law designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, within the Department of Financial Services (DFS), is charged with enforcing laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.<sup>52</sup>

The State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Fire Prevention Code, which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.<sup>53</sup>

The State Fire Marshal adopts a new edition of the Fire Prevention Code every three years.<sup>54</sup> When adopting the Fire Prevention Code, the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA), including the:<sup>55</sup>

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.<sup>56</sup> The most recent Fire Prevention Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Prevention Code took effect on December 31, 2020.<sup>57</sup>

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code.<sup>58</sup> These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements, but may not enact fire safety ordinances that conflict with other state law.<sup>59</sup>

### Fire Safety Inspectors

Each county, municipality, and special district with fire safety enforcement responsibilities is required to employ or contract with a fire safety inspector to conduct all fire safety inspections required by law.<sup>60</sup> A fire safety inspector is a person who is officially assigned the duties of conducting fire safety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities. Fire safety inspectors are certified and regulated by the State Fire Marshal and are separate from building code administrators, inspectors, and plans examiners who are regulated by the BCAIB.<sup>61</sup>

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<sup>52</sup> S. 633.104, F.S.

<sup>53</sup> ch. 69A-60, F.A.C.

<sup>54</sup> S. 633.202, F.S.

<sup>55</sup> S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on Feb. 13, 2023).

<sup>56</sup> *Id.*

<sup>57</sup> Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, <https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code> (last visited Feb. 13, 2023).

<sup>58</sup> Ss. 633.108 and 633.208, F.S.

<sup>59</sup> Ss. 633.208 and 633.214(4), F.S.

<sup>60</sup> S. 633.216(1), F.S.

<sup>61</sup> Ss. 633.102(12) and 633.216, F.S.



The State Fire Marshal may discipline fire safety inspectors by denying, refusing to renew, suspending, or revoking their certificate if the State Fire Marshal finds that the fire safety inspector has violated the practice act, including:<sup>62</sup>

- Violating Fire Prevention laws or any rule or order of the State Fire Marshal, and
- Failing to properly enforce applicable fire codes or permit requirements within this state which the certificate holder knows are applicable by “committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property.”

### *Conflicting Requirements in The Building Code and the Fire Prevention Code*

The Building Code and the Fire Prevention Code work together, but are independent of each other. The Building Commission must reference the Fire Prevention Code in the Building Code. However, the Building Commission may not adopt a fire prevention or life safety code, and nothing in the Building Code may affect the statutory powers, duties, and responsibilities of any local fire safety official or DFS.<sup>63</sup>

Conflicting requirements between the Building Code and the Fire Prevention Code must be resolved by agreement between the Building Commission and the State Fire Marshal, or the question must be referred to a mediator to resolve the conflict.<sup>64</sup>

### *Building Permits*

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public’s health, safety, and welfare.<sup>65</sup> Every local government must enforce the Building Code and issue building permits.<sup>66</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>67</sup> Any construction work that requires a building permit also requires plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.<sup>68</sup>

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>69</sup> A building permit is not valid until the fees for the permit have been paid.<sup>70</sup>

### *Building Plans*

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.<sup>71</sup>

An application for a permit must include building plans. Building plans are plans for construction, erection, alteration, modification, repair, or demolition of any building or structure and must comply with

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<sup>62</sup> S. 633.216(5)(a)-(g), F.S.; *see also*, s. 633.106, F.S.

<sup>63</sup> S. 553.73(1), F.S.; Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).

<sup>64</sup> *Id.*

<sup>65</sup> S. 553.72, F.S.

<sup>66</sup> Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>67</sup> S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).

<sup>68</sup> Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).

<sup>69</sup> *See* ss. 125.56(4)(a) and 553.79(1), F.S.

<sup>70</sup> S. 109.1 of the Seventh edition of the Florida Building Code (Building).

<sup>71</sup> Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.

the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes in the Building Code.<sup>72</sup>

A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.<sup>73</sup>

When the building official issues the permit, the building official must approve the plans by writing or stamping, "Reviewed for Code Compliance" on the plans. The local building official must keep one set of plans and another set must be returned to the applicant, who must keep the set at the work site.<sup>74</sup>

#### *Fire Prevention Code Plans Review*

With respect to fire inspections and review, building officials or plans examiner do not review building plans to determine if they comply with the Fire Prevention Code. If the building or structure is subject to the Fire Prevention Code, the local fire safety official must also review the building plans.<sup>75</sup> A local enforcing agency may not issue the permit until the local fire safety official has approved the plans. However, if the building or structure is not subject to the Fire Prevention Code, the local enforcing agency may not require the local fire safety inspector to review the plans.<sup>76</sup>

#### *Changes to the Building Permit or Plans*

Construction work must be in accordance with the approved plans, and any changes made during construction that are not in compliance with the approved plans must be resubmitted for approval as an amended set of construction documents.<sup>77</sup>

If the local building official or plans examiner finds that building plans do not comply with the Building Code, the local building official or inspector **must identify** the specific plan features that do not comply with the **Building Code**, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information **to the permit applicant**.<sup>78</sup>

Whenever a permit is denied or revoked because plans are found to not comply with the Building Code, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information **to the permit applicant**.<sup>79</sup> A plans examiner or building official who is responsible for issuing a denial, revocation, or modification request but fails to provide to the permit applicant a reason for denying, revoking, or requesting a modification, based on compliance with the Building Code, is subject to licensure disciplinary action.<sup>80</sup>

There is no similar requirement for fire safety officials or inspectors when they deny, revoke, or modify plans based on the Fire Prevention Code.

Current law is not clear on whether local governments must notify **permitholders** about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code, if they make or require **substantive changes to building plans after the permit is issued**.

According to construction industry representatives, there have been industry reports that building inspectors and local fire officials are making substantive changes to building plans after the building

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<sup>72</sup> Ss. 468.603(8), and 553.79(2), F.S.

<sup>73</sup> S. 553.79(2), F.S.

<sup>74</sup> S. 107.3.1 of the Seventh edition of the Florida Building Code (Building).

<sup>75</sup> *Id.*

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

<sup>77</sup> S. 107.4 of the Seventh edition of the Florida Building Code (Building).

<sup>78</sup> S. 553.79(2), F.S.

<sup>79</sup> S. 553.79(2), F.S.

<sup>80</sup> S. 553.79(1), F.S.

permit has been issued, which deviate from the Building Code or Fire Prevention Code. These changes can lead to delays in construction and can also increase the costs of construction.<sup>81</sup>

### **Building Plans Requirements– Effect of the Bill**

The bill provides that after a local enforcement agency or local government issues a building permit, the local government may not make or require any substantive changes to the building plans unless the changes are required for compliance with the Building Code, the Fire Prevention Code, or local amendments thereto.

If changes are needed after the permit has been issued, the local enforcement agency must identify specific parts of the plan that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit holder in writing.

The bill provides that if the building code administrator, plans examiner, or inspector requests another local enforcing agency employee or person contracted by the local enforcing agency to review the plans and such person identifies specific plan features that do not comply with the Building Code, the building code administrator, plans examiner, or inspector, must provide this information to the local enforcing agency.

The bill provides that a plans examiner or inspector who fails to provide the building code administrator with the reasons for making or requiring substantive changes to building plans is subject to discipline against their license.

The bill provides that a building code administrator who fails to provide a permit applicant or permit holder with the reasons for making or requiring substantive changes to building plans is subject to discipline against his or her license.

The bill provides that if a county, municipality, or special district concludes that the building plans for a building permit application do not comply with the Florida Fire Prevention Code or Life Safety Code or local amendments thereto, the local fire official must identify the specific parts of the plan that do not comply with the applicable codes, identify the specific chapters and sections upon which the determination is based, and provide the information to the permit applicant.

If the local fire official requires changes to a permit that has already been issued, and fails to cite specific parts in the plans that need changes to comply with the applicable codes and does not provide the information to the permit applicant, the local fire official is subject to disciplinary action against his or her license.

The bill provides an effective date of July 1, 2023.

#### **B. SECTION DIRECTORY:**

- Section 1. Amends s. 489.105, F.S., relating to definitions.
- Section 2. Amends s. 553.79, F.S., relating to permit application and issuance.
- Section 3. Amends s. 633.208, F.S., relating to minimum fire safety standards.
- Section 4. Provides an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>81</sup> Testimony from Representative Randall Scott Maggard, *1/12/2022 House Regulatory Reform Subcommittee*, <https://thefloridachannel.org/videos/1-12-22-house-regulatory-reform-subcommittee/> (last visited Feb. 13, 2023); Email from Edward Briggs, Vice President of Government Relations & Community Affairs for RSA Consulting Group, LLC, Florida Refrigeration and Air Conditioning Contractors Association, RE: HB 89 Back Up HVA Training (Jan. 10, 2023).  
**STORAGE NAME:** h0089e.COM  
**DATE:** 3/27/2023

1. Revenues:  
None.

2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
The impact on revenues is unknown.

2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

There would be a positive economic impact for class A air-conditioning contractors and homeowners as they would be able to complete more tasks without needing to refer homeowners to an electrical contractor.

There may be a negative economic impact for electrical contractors who work on the line side of HVAC systems.

The bill may have a positive impact on construction industry professionals and companies due to increased information on completing a permit application timely.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

According to DBPR, the BCAIB may need to engage in rulemaking to develop penalty guidelines for the new violations established by the bill.<sup>82</sup> In addition, the Florida Building Commission will need to engage in rulemaking to add the new permit requirements to the Florida Building Code.<sup>83</sup>

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

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<sup>82</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2023 House Bill 89, p. 3 (January 11, 2023); See generally, Rule 61G19-5.002, F.A.C.

<sup>83</sup> *Id.*; See generally, Rule 61G20-1.001, F.A.C.

DBPR states it may not have enough time for any necessary rulemaking by the Building Code Administrators and Inspectors Board and the Florida Building Commission to be completed by July 1, 2023.<sup>84</sup>

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Allows mechanical contractors to perform the same limited work on the line side as Class A air-conditioning contractors.
- Clarifies when Class A air-conditioning and mechanical contractors may work on the line side, specifying that they may work on the line side of the switch, but not the breaker.
- Clarifies that if a person contracted by the local enforcing agency or local enforcing agency employee other than a building official, plans examiner, or inspector identifies a specific issue with building plans, the information must be given to the permit applicant.
- Requires a written notice to be given to the permit applicant when the plans do not meet the Building Code.

On March 27, 2023, the Commerce Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute corrected a cross-reference.

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

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<sup>84</sup> *Id.* at 6.