

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1232

INTRODUCER: Health Policy Committee and Senator Simpson

SUBJECT: Building Codes

DATE: April 7, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

- CS/SB 1232 amends various sections of the Florida Statutes related to building codes. The bill:
- Reduces the experience and training requirements to take the exam for certification as a building code inspector, plans examiner, or building code administrator;
  - Requires the Florida Building Code Administrators and Inspectors Board to provide for appropriate levels of provisional certificates;
  - Allows liquid petroleum gas installers to replace and service liquid petroleum gas water heaters without being certified as a plumbing contractor;
  - Applies the requirements of the Florida Homeowner's Recovery Fund to Division II contractors and caps payments from the fund for injuries caused by Division II contractors to \$15,000 per claim and \$150,000 per transaction;
  - Exempts landscapers from being certified as an electrical contractor when installing pre-wired low-voltage landscape lighting;
  - Requires the Florida Building Code Compliance Mitigation Fund to fund, up to \$30,000, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to \$15,000, for Florida Fire Code informal interpretations managed by the State Fire Marshal;
  - Allows local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board;
  - Restricts appeals of decisions made by local fire officials to decisions regarding application, interpretation, or enforcement of the Florida Fire Prevention Code and decisions made by

local building officials to decisions regarding application, interpretation, or enforcement of the Florida Building Code;

- Requires newly installed or replacement water heaters to have leak detection devices in buildings other than one- and two-family detached single-family dwellings;
- Restricts the Florida Building Code from requiring more than one access elevator in buildings that are Occupancy Group R-2;<sup>1</sup>
- Allows building officials to issue phased permits for the construction of parts of a building project;
- Requires the Department of Health (DOH) to inspect public swimming pools for their compliance with the Florida Building Code as well as authorizes the DOH to deny an operating certificate, impose fines, or close a public pool for code violations;
- Specifies the duties of local enforcement agencies in permitting and inspecting certain public swimming pool repairs;
- Removes provisions regarding the development of advanced courses related to the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code and instead authorizes the development of code-related training;
- Adds Underwriters Laboratories, LLC, an independent safety consulting and certification company, to the list of entities that are authorized to produce information on which product approvals are based;
- Requires the local enforcement agencies to accept certain duct and air infiltration tests when inspecting for thermal efficiency standards; and
- Amends provisions related to fire prevention and control to:
  - Add a definition for “change of occupancy” and remove the definition of “use;”
  - Clarify who may require the State Fire Marshal to issue a declaratory statement relating to the Florida Fire Prevention Code and clarify that such statements are not intended to be an appeal of a decision made by a local fire official or local board;
  - Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by 2022 and existing apartment buildings must comply by 2025;
  - Require areas of refuge to be provided when required by the Florida Building Code-Accessibility and restricts dead-end corridors to a maximum length of 50 feet in apartment buildings protected by automatic sprinklers; and
  - Require fire prevention plan reviewers to be certified at a minimum as a Fire Inspector I or as the State Fire Marshal determines by rule.
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on standards for grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools. The report is due to the Governor, President, and Speaker by October 1, 2015, and the task force dissolves by December 31, 2015.

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<sup>1</sup> Residential buildings containing sleeping units (such as hotels and motels) or more than two dwelling units (such as apartment house and dormitories). See 2010 Florida Building Code, available at [http://www.ecodes.biz/ecodes\\_support/free\\_resources/2010Florida/Building/PDFs/Chapter%203%20-%20Use%20and%20Occupancy%20Classification.pdf](http://www.ecodes.biz/ecodes_support/free_resources/2010Florida/Building/PDFs/Chapter%203%20-%20Use%20and%20Occupancy%20Classification.pdf), p. 3.12-3.13 (last visited Apr. 1, 2015).

## II. Present Situation:

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

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

In order to take the examination for building code inspector or plans examiner certification, s. 468.609(2), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

- Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
- Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review.
- Demonstrates a combination of technical education in the field of construction or a related field 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 holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (FBCAIB), or a fire safety inspector license issued pursuant to ch. 633, F.S., has a minimum of 5 years' verifiable full-time experience in inspection or plan review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The FBCAIB shall establish by rule criteria for the development and implementation of the training programs.
- Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program of not less than 300 hours which is approved by the FBCAIB in the chosen category of building code inspection or plan review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder.

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

In order to take the examination for building code administrator certification, s. 468.609(3), F.S., provides that a person must be at least 18, be of good moral character, and meet eligibility requirements of one of the following criteria:

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

## **Water Heaters**

### ***Liquid Petroleum Gas Water Heater Installation***

Currently, a person licensed as a liquid petroleum gas Installer C by the Department of Agriculture and Consumer Services (DACS) is authorized to install, service, alter, or modify appliances, equipment, piping, or tubing to convey liquefied petroleum gas to appliances or equipment.<sup>2</sup> A person with such a license is authorized to service or replace a liquid petroleum gas water heater and to hook up the water heater to the source of the gas, however, he or she may not hook the water heater to the home's plumbing without being certified as a plumbing contractor.<sup>3</sup> Currently, public and private natural gas utilities are exempt from the requirement to be certified as a plumbing contractor when servicing or replacing a water heater.

### ***Water Heater Leak Detection Devices***

Currently water heaters are not required to have leak detection devices with audible alarms attached to the drain pan area.

## **Florida Homeowner's Construction Recovery Fund**

The Florida Homeowner's Construction Recovery Fund (fund) was created by the Legislature in 1993 after Hurricane Andrew. The fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor, financially responsible officer, or business organization licensed under ch. 489, F.S. A claimant must be a homeowner and the damage must have been caused by a Division I contractor.<sup>4</sup> Claims are filed with DACS, which reviews them for completeness and statutory eligibility. The DACS then presents the claim to the Construction Industry Licensing Board (CILB) for review. The CILB makes the determination for an award.

### ***Contractors***

Division I contractors are described under s. 489.105, F.S., as general contractors, building contractors and residential contractors. Division II contractors are described under s. 489.105, F.S., as sheet metal contractors, roofing 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, pollutant storage systems contractors, and specialty contractors.

### ***Construction Industry Licensing Board***

The CILB, within the Department of Business and Professional Regulation (DBPR), is responsible for licensing and regulating the construction industry in this state.<sup>5</sup> The CILB meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct

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<sup>2</sup> Rule 5J-20.012, F.A.C.,

<sup>3</sup> Section 489.105, F.S.

<sup>4</sup> Section 489.1402, F.S.

<sup>5</sup> Section 489.107, F.S.

informal hearings related to licensure and discipline.<sup>6</sup> The CILB engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.<sup>7</sup>

The CILB is divided into Division I and Division II members based on the definitions of Division I and Division II contractors. The jurisdiction falls to each division relative to their scope,<sup>8</sup> and five members constitute a quorum for each division.

Section 489.129, F.S., grants the CILB the authority to take actions against any certificate holder or registrant if the contractor, financially responsible officer or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of specific acts, including the acts that may qualify a claim to the fund, which is discussed below. These acts are described under s. 489.129(1)(g), (j), and (k), F.S.

### *Violations Creating a Valid Claim*

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or
- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project. Abandonment is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or

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<sup>6</sup> Florida Department of Business and Professional Regulation, *Construction Industry Licensing Board*, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (last visited Apr. 1, 2015).

<sup>7</sup> Section 489.108, F.S., grants rulemaking authority.

<sup>8</sup> See *supra* note 5 and see s. 489.107(4), F.S.

- Falsely indicating that workers' compensation and public liability insurance are provided.

Section 489.129, F.S., allows the CILB to take the following actions given the circumstances above:

- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of ch. 489, F.S.;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

### ***Duty of Contractor to give Notice of Fund***

Section 489.1425, F.S., provides that any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed \$2,500. The written statement must be substantially in the form provided for by this statute.

### ***Requirements to Collect***

The claimant must have obtained a final judgment, arbitration award, or CILB issued restitution order against the contractor for damages that are a direct result of a compensable violation. The statute of limitations to make a claim is 1 year after the conclusion of an action or award in arbitration that is based on the misconduct.<sup>9</sup>

Completed claim forms must be submitted with:<sup>10</sup>

- A copy of the complaint that initiated action against the contractor;
- A certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;<sup>11</sup>
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance; and
- Certified copies of levy and execution documents, and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the CILB to determine causation of injury or specific actual damages.

No claimant eligible for, or receiving, restitution shall be eligible to recover from the fund until two or more payments have been missed.<sup>12</sup> Prior to receiving any payments, such a claimant

<sup>9</sup> Section 61G4-21.003(5), F.A.C.

<sup>10</sup> Rule 61G4-21.003(2), F.A.C.

<sup>11</sup> Pursuant to Rule 61G4-21.003(3), F.A.C., if it is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those sections.

<sup>12</sup> Section 61G4-21.005(3), F.A.C.

shall provide the CILB with a written statement indicating any amount received to date under such an order or plan, the date and amount of the last payment, and how much is still due and owing under such an order or plan.<sup>13</sup>

### ***Limits***

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum.<sup>14</sup> For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000 per claimant with a total lifetime aggregate limit of \$250,000 per licensee.<sup>15</sup> For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total lifetime aggregate of \$500,000 per licensee.<sup>16</sup> The fund does not require a minimum contract amount for eligible claims.<sup>17</sup>

The fund is not permitted to compensate consumers who contracted with Division II contractors for types of work set forth in s. 489.105(3)(d)-(p), F.S., or to compensate consumers who have suffered damages as a result of payments made in violation of Florida Construction Lien Law under part I, ch. 713, F.S.

### ***Funding and Payouts***

The fund is financed by a 1.5 percent surcharge on all building permits issued for the enforcement of the Florida Building Code.<sup>18</sup> The proceeds from the surcharge are allocated equally to fund the Florida Homeowner's Construction Recovery Fund and the operations of the Building Code Administrators and Inspectors Board. The DBPR may transfer excess cash to the Florida Homeowner's Construction Recovery Fund if it is determined that the excess cash is not needed to fund the operation of the Building Code Administrators and Inspectors Board. However, the DBPR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.<sup>19</sup>

### ***Low-Voltage Landscape Lighting***

Part II of ch. 489, F.S., regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.<sup>20</sup>

Section 489.503, F.S., provides exemptions to part II for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire

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<sup>13</sup> Id.

<sup>14</sup> Department of Business and Professional Regulation *Senate Bill Analysis 1098*, (March 11, 2014).

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Section 438.631, F.S.

<sup>20</sup> Section 489.501, F.S.

protection system contractor, an employee monitoring an alarm system of a business, a lightning rod or related systems installer, etc.

## **Swimming Pools**

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. Sanitation and safety standards for public pools have been adopted by rule under Rule 64E-9 of the Florida Administrative Code.

### ***Swimming Pool Inspections***

In 2012, the Legislature determined that local building entities would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the DOH would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.<sup>21</sup>

A “public swimming pool” or “public pool” is defined as:

A watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. This term includes a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.<sup>22</sup>

A “public bathing place” is defined as:

A body of water, natural or modified by humans, for swimming, diving, and recreational bathing, together with adjacent shoreline or land area, buildings, equipment, and appurtenances pertaining thereto, used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.<sup>23</sup>

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<sup>21</sup> Chapter 2012-184, s. 104, Laws of Fla.

<sup>22</sup> Section 514.011(2), F.S.

<sup>23</sup> Section 514.011(4), F.S.



Due to the 2012 changes to ch. 514, F.S., DOH does not have authority to cite violations of the Florida Building Code during its routine inspections of public swimming pools and public bathing places. These routine inspections are done to ensure the pools and bathing places continue to be operated and maintained in compliance with their original approval to protect public health and safety. The DOH notes that, from September 2013 through September 2014, DOH conducted 75,478 inspections of the 37,600 public pools in the state and found 127,413 code violations.<sup>24</sup> Local building officials do not perform routine inspections of public swimming pools but can respond to complaints received.

### ***Swimming Pool Electrical Equipment***

Current construction rules for public pools require that written approval must be received from the DOH before construction can begin.<sup>25</sup> Plans are required that show the pool layout, tile markings, size of the pool ladder, gutter heights and if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3 of the Florida Administrative Code, which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.<sup>26</sup>

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule as those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. Finally, as part of the plan approval, the electrical contractor or electrical inspector must certify as to a pool's compliance, on the form designated by the DOH.<sup>27</sup>

The United States Consumer Product Union issued a Safety Alert in August 2012 recommending the installation of ground-fault circuit interrupter (GFCI) protections for pools, spas, and hot tubs for protection against electrocution hazards involving electrical circuits and underwater lighting circuits in and around pools, spas, and hot tubs.<sup>28</sup>

The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection as the NEC provisions for spas only became effective in 1981. Underwater pool lighting electrical incidents happened more frequently than any other consumer product used in or around pools, spas, or hot tubs.

Several news stories in South Florida in the past year have also highlighted the issue. Three children were shocked in a Hialeah condominium community pool in April 2014. The building inspector's report found that the pool pump was not properly grounded.<sup>29</sup> During the same month

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<sup>24</sup> Department of Health, *House Bill 915 Analysis* (February 25, 2015), p. 2.

<sup>25</sup> Rule 64E-9.005, F.A.C.

<sup>26</sup> Rule 64E-9.006(2)(c)3, F.A.C.

<sup>27</sup> Rule 64E-9.006(2)(d), F.A.C.

<sup>28</sup> U.S. Product Safety Commission, *Safety Alert, CPSC Document #5059* (August 14, 2012), <http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited Apr. 1, 2015).

<sup>29</sup> Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah, Policy Say*, LOCAL 10.COM, (May 8, 2014) <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796> (last visited Apr 1, 2015).

in North Miami, a 7 year-old boy, Calder Sloan, was electrocuted in his family's North Miami swimming pool from faulty wiring.<sup>30</sup>

In October 2014, the Miami-Dade Board of County Commissioners passed the Swimming Pool Light Ordinance 14-95. The Ordinance modifies two sections of the Florida Building Code, which applies to commercial pools for underwater lighting and makes those requirements applicable to residential pools.<sup>31</sup> Existing pools will be required to comply with the new low voltage requirements at the time of repair or alteration or the homeowner may decide not to have an underwater pool light. The county permit to change an existing pool light to low voltage light or to remove a light without a replacement in unincorporated Miami-Dade County is \$65.

### **Building Code Compliance and Mitigation Program**

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to people who are required to comply with the code and ensure consistent education, training, and communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.<sup>32</sup> The program is geared toward persons licensed and employed in the design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with DBPR.<sup>33</sup> The Florida Building Commission implemented the accreditation process required by statute through its standard process of gathering input from all affected stakeholders and has continued to regularly modify the process based on concerns identified by its users. To date, the Florida Building Commission has accredited approximately 300 courses finding that the courses' content to be an accurate reflection of the Florida Building Code or related processes.<sup>34</sup>

### **Florida Building**

Currently, s. 553.73(11), F.S., requires local building code enforcement officials and local fire code enforcement officials to resolve conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Florida Life Safety Code by agreement as to the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and equivalent method of construction. Additionally, decisions made by local fire officials and the local building officials may be appealed to local administrative boards having firesafety responsibilities. All such decisions are subject to review by a joint committee composed of members of the Florida Building Commission and the Fire Code Advisory Council.

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<sup>30</sup> Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, LOCAL10.COM, (April 17, 2014), <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited Apr. 1, 2015).

<sup>31</sup> Miami-Dade County Regulatory and Economic Resources Department, *Is My Pool Safe?* <http://www.miamidade.gov/permits/library/brochures/swimming-pool-light.pdf> (last visited Apr. 1, 2015).

<sup>32</sup> Section 553.841(2), F.S.

<sup>33</sup> Section 553.841(3), F.S.

<sup>34</sup> Department of Business and Professional Regulation, *Senate Bill 1232 Analysis* (March 17, 2015) (on file with Senate Committee on Health Policy).

### **Building Plan Review**

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit therefor from the appropriate enforcing agency. Further, a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Florida Building Commission within the Florida Building Code. However, the Florida Building Code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.

Section 105.13 (phased permit approval), of the Florida Building Code provides the following:

After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

### **Product Approval**

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the Florida Building Commission rather than seeking approval in each local jurisdiction where the product is used. One method of obtaining a state approval uses product evaluation reports from an approved evaluation entity.

Section 553.842(8)(a), F.S., explicitly names the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, and the Miami-Dade County Building Code Compliance Office Product Control as evaluation entities.<sup>35</sup>

Underwriters Laboratories (UL) is a safety science company established in 1890 which certifies, validates, tests, inspects, audits, advises, and trains. According to their webpage, UL is “dedicated to promoting safe living and working environments, UL helps safeguard people, products and places in important ways, facilitating trade and providing peace of mind.”<sup>36</sup>

### **Duct and Air Infiltration Tests**

On June 30, 2015, the new 5th Edition (2014) Florida Building Code, Energy Conservation, will go into effect. Part of this new code is section R402.4.1.2. According to this section, a home constructed to this code will be required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.

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<sup>35</sup> Supra note 34.

<sup>36</sup> About UL, available at <http://ul.com/aboutul/> (last visited Apr. 1, 2015).

Section R402.4.1.2 (testing), of the Florida Building Code provides the following:

The building or dwelling unit shall be tested and verified as having an air leakage rate of not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 3 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 Pascals). Where required by the code official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

### **Division of the State Fire Marshal**

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.01, F.S., and designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal.<sup>37</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College. Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>38</sup>

The Division of the State Fire Marshal consists of the following four bureaus: fire and arson investigations, fire standards and training, forensic fire and explosives analysis, and fire prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 6,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year.

Every three years, the State Fire Marshal is required to adopt by rule the Florida Fire Prevention Code which must contain or incorporate by reference all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 468.609, F.S., to

- Modify certain training requirements to take the certification exam for building code inspector by:
  - Reducing the number of years' experience in inspection or plan review from 5 to 3 years and lowers the hour requirements for the training program from 200 to 100 hours;

<sup>37</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.

<sup>38</sup> Section 633.0215(1), F.S.

- Lowering the hour requirements for the training program from 300 to 200 hours and limits the required hours of instruction from not less than 20 hours to at least 20 hours but not more than 30 hours; and
- By adding the option to hold a standard certificate issued by the FBCAIB or a firesafety inspector license issued pursuant to ch. 633, F.S., and:
  - Have at least 5 years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable full-time experience as a firesafety inspector licensed pursuant to ch. 633; and
  - Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 40 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the FBCAIB. The FBCAIB shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category.
- Modify certain training requirements to take the certification exam for building code administrator by:
  - Reducing the number of combined years' experience from 10 to 7 years and the required number of years of experience in supervisory positions from 5 to 3. The bill also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement; or
  - Reducing the number of combined years' experience from 10 to 7 years and the required number of years of experience in supervisory positions from 5 to 3. The bill adds a requirement of at least 20 hours but not more than 30 hours of training in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. It also adds firesafety inspector certified under s. 633.216, F.S., to the list of occupations that may satisfy the experience requirement.

**Section 2** amends s. 489.105, F.S., to clarify that the definition of a “plumbing contractor” does not require a person licensed for the sale of liquefied petroleum gas under ch. 527, F.S., to become certified or registered as a plumbing contractor in order to disconnect or reconnect water lines when servicing or replacing a hot water heater.

**Sections 3 - 7** amend various sections of the Florida Statutes related to the Florida Homeowners' Construction Recovery Fund to include Division II contractors within the parameters of the fund.

The bill revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2016, for any contract entered into after July 1, 2015. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee. The bill revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund, to advise that payments from the fund are up to a limited amount. The bill also removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law.

**Section 8** amends s. 489.503, F.S., to exempt persons who install low-voltage landscape lighting with a factory-installed electrical cord with a plug and which does not require installation,

wiring, or modification to the electrical wiring of a structure from the requirement to be certified as an electrical contractor.

**Sections 9, 10, and 13** amend various sections of the Florida Statutes related to the operation and maintenance of public pools.

Section 514.031, F.S., is amended to require the DOH to inspect permitted public swimming pools to ensure that they continue to be operated in compliance with DOH rules, the original plans and specifications for the pool, and provisions in the Florida Building Code<sup>39</sup> applicable to public pools. The DOH is authorized to adopt rules for such inspections and the bill specifies that DOH authority to inspect extends to the pool, the pool deck, the pool barrier,<sup>40</sup> and the bathroom facilities for pool patrons. Local enforcement agencies are required to permit and inspect repairs required as the result of DOH inspections and are authorized to take enforcement actions to ensure compliance. The DOH is required to ensure that rules enforced by the local enforcement agency are not inconsistent with the Florida Building Code.

Section 514.05, F.S., is amended to authorize the DOH to deny a permit, to impose administrative fines, or to close a public pool for noncompliance with applicable provisions in the Florida Building Code.

Section 553.79, F.S., is amended to comply with changes made in section 9 of the bill.

**Section 11** amends s. 553.721, F.S., to require the Florida Building Code Compliance Mitigation Fund to fund from existing resources, up to \$30,000, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to \$15,000, for Florida Fire Code informal interpretations managed by the State Fire Marshal.

**Section 12** amends s. 553.73, F.S., to:

- Allow local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board;
- Restrict appeals of decisions made by local fire officials to decisions regarding application, interpretation, or enforcement of the Florida Fire Prevention Code;
- Restrict appeals of decisions made by local building officials to decisions regarding application, interpretation, or enforcement of the Florida Building Code;
- Require that newly installed and replacement water heaters, except those in one- and two-family single-family homes, have hard-wired or battery-operated water-level detection devices secured to the drain pan area at a level lower than the drain connection. The device must have an audible alarm and, if battery operated, a 10-year low-battery notification; and
- Restrict the Florida Building Code from requiring more than one access elevator in buildings that are Occupancy Group R-2.<sup>41</sup>

**Section 13** also amends s. 553.79, F.S., to allow the local building official to issue a phased permit after an applicant submits the appropriate construction documents. If the building official

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<sup>39</sup> Chapter 533, F.S.

<sup>40</sup> As defined in s. 515.25, F.S.

<sup>41</sup> Supra note 1.

issues a phased permit, an outside agency may not require additional reviews or approvals because the project will need additional outside agency reviews and approvals before the issuance of a master building permit. The holder of a phased permit for the foundation or other parts of a building or structure may proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

**Section 14** amends s. 553.841, F.S., to remove the requirement that the DBPR maintain, update, develop, or cause to be developed advanced modules designed for use by each profession while administering the Florida Building Code Compliance and Mitigation Program. Instead the DBPR is authorized to develop or update code-related training for each profession. The bill also removes the requirement that the Florida Building Commission provide by rule for the accreditation of courses related to the Florida Building Code by accreditors approved by the Commission.

**Section 15** amends s. 553.842, F.S., to add Underwriters Laboratories, LLC, to the list of entities evaluation entities approved by the Florida Building Commission.

**Section 16** amends s. 553.908, F.S., to require local enforcement agencies to accept duct and air infiltration tests conducted by specified individuals including energy raters and HVAC contractors.

**Sections 17 - 20** amend various sections of ch. 633, F.S., related to fire prevention and control, to:

- Strike the definition of “use” pertaining to property;
- Add a definition for “change of occupancy” to mean a change in the purpose of level of activity within a building which involves a change in application of the requirements of the Florida Fire Prevention Code;
- Specify that only people who will be or may be affected by the application of the Florida Fire Prevention Code to a property or building that the person owns, controls, or is considering purchasing, selling, designing, constructing, or altering may require the State Fire Marshal to issue a declaratory statement relating to the Florida Fire Prevention Code;
- Specify that a declaratory statement is not intended to be an appeal of a decision of a local fire official or an appeal of a local board reviewing a decision of a local fire official;
- Require new high-rise buildings to comply with minimum radio signal strength for fire department communications set by the local authority with jurisdiction. Existing high-rise buildings must comply by 2022 and existing apartment buildings must comply by 2025;
- Require areas of refuge to be provided when required by the Florida Building Code-Accessibility and restricts dead-end corridors to a maximum length of 50 feet in apartment buildings protected by automatic sprinklers; and
- Require fire prevention plan reviewers to be certified at a minimum as a Fire Inspector I or as the State Fire Marshal determines by rule.

**Section 21** creates a new, undesignated section of the Florida Statutes to establish the Calder Sloan Swimming Pool Electrical-Safety Task Force within the Florida Building Commission.

The bill states the purpose of the task force is to study and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2015, on recommended revisions to the Florida Statutes concerning standards pertaining to grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools. The task force is comprised of 10 members including:

- The chair of the Florida Building Commission or his or her designee;
- The State Surgeon General or his or her designee; and
- Eight members appointed by the chair of the Florida Building Commission including:
  - A certified electrical contractor with experience with swimming pools;
  - A certified general contractor with experience with swimming pools;
  - A licensed swimming pool contractor;
  - A electric utility provider;
  - A county building code inspector;
  - A licensed real estate broker;
  - An owner of a public swimming pool; and
  - An owner of a private swimming pool.

The bill requires the task force to elect a chairperson and requires the Florida Building Commission to provide staff, information and other assistance as reasonably necessary to assist the task force in carrying out its responsibilities. Members of the task force serve without compensation, but may be reimbursed for travel and other necessary expenses. The task force is required to meet as often as necessary to fulfill its responsibilities and meetings may be conducted by conference call, teleconferencing, or other similar technology.

The provisions of this section expire December 31, 2015.

**Section 22** establishes an effective date of July 1, 2015.

#### **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:**

Consumers who have their liquid petroleum gas water heaters serviced or replaced may see an indeterminate positive fiscal impact due to not being required to hire a plumbing contractor to hook the water heater to the water line. Additionally, liquid petroleum gas appliance installers may see an indeterminate positive fiscal impact due to not being required to be certified as a plumbing contractor to hook such water heaters to the water line. Plumbing contractors may see an indeterminate negative fiscal impact due to the loss of such hook-up business.

The requirement for hot water heaters to have leak detection devices may increase the costs when installing or replacing a water heater.

The exemption from the requirement to be certified as an electrical contractor may reduce the costs of installing low-voltage landscape lighting.

Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.

**C. Government Sector Impact:**

The DOH reports that, "As the violations will be cited during inspections already being done at public swimming pools, the bill does not have a significant fiscal impact on the Department."<sup>42</sup>

The bill may cause an indeterminate negative fiscal impact on the Florida Building Commission due to the creation of the Calder Sloan Swimming Pool Electrical-Safety Task Force and the requirement that the commission support and assist the task force.

The Department of Business and Professional Regulation has analyzed the bill and determined that the bill will have an annual fiscal impact of \$27,400.<sup>43</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.609, 489.105, 489.1401, 489.1402, 489.141, 489.1425, 489.143, 489.503, 514.031, 514.05, 553.721, 553.73, 553.79, 553.841, 553.842, 553.908, 633.102, 633.104, 633.202, and 633.216.

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<sup>42</sup> Supra note 6.

<sup>43</sup> Dep't of Business and Professional Regulation, Legislative Bill Analysis of SB 1232, p. 4-5 (Mar. 17, 2015).

This bill creates one undesignated section of the Florida Statutes.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Health Policy on March 23, 2015:**

- Amends current provisions in the bill to:
  - Exempt one- and two-family homes from the requirement to have a hot water heater leak detection device installed when installing or replacing hot water heaters; and
  - Make conforming changes to provisions related to swimming pool inspections.
- Creates new provisions which:
  - Reduce the requirements for certification as a building code inspector, building code administrator, or a plans examiner and allows for a board certificate or a firesafety inspector license to qualify along with 5 years' experience and required training.
  - Require the Florida Building Code Administrators and Inspectors Board to provide for appropriate levels of provisional certificates.
  - Apply the requirements of the Florida Homeowner's Recovery Fund to Division II contractors and makes clarifying and technical changes to those sections related to the recovery fund.
  - Cap payments from the recovery fund for Division II contractors.
  - Exempt landscapers from being certified as an electrical contractor when installing pre-wired low-voltage landscape lighting.
  - Clarify the DOH's authority to deny, revoke, or fine a public swimming pool permittee.
  - Require the Florida Building Code Compliance Mitigation Fund to fund, up to \$30,000, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop and to fund, up to \$15,000, for Florida Fire Code informal interpretations managed by the State Fire Marshal.
  - Allow local boards created to address conflicts between the Florida Building Code and the Florida Fire Prevention Code to combine to create a single local board.
  - Restrict appeals of decisions made by local fire officials or local building officials.
  - Restrict the Florida Building Code from requiring more than one access elevator in buildings that are Occupancy Group R-2.
  - Allow building officials to issue phased permits for the construction of parts of a building project.
  - Require the local enforcement agencies to accept certain duct and air infiltration tests when inspecting for thermal efficiency standards.
  - Amend provisions related to fire prevention and control to:
    - Revise definitions;

- Clarify who may require the State Fire Marshal to issue a declaratory statement relating to the Florida Fire Prevention Code and clarify that such process is not intended to be an appeal of a decision made by a local fire official or local board;
  - Require new and, by certain dates, existing high-rise buildings to comply with minimum radio signal strength;
  - Require areas of refuge to be provided under certain circumstances and restrict certain dead-end corridors; and
  - Require fire prevention plan reviewers to be certified.
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force.

B. Amendments:

None.