

**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 Fiscal Policy

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BILL: CS/SB 704

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: Building Codes

DATE: February 26, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Fav/CS</b>
2.	Davis	DeLoach	AGG	<b>Recommend: Favorable</b>
3.	Hrdlicka	Hrdlicka	FP	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 704 makes the following changes to law:

- Makes several adjustments to the training and experience required to take the certification examinations for building code inspector, plans examiner, and building code administrator;
- Authorizes a local jurisdiction to allow an individual who possesses a residential certification issued by the International Code Council to be a residential building code inspector or plans examiner within the jurisdiction;
- Exempts employees of apartment communities with 100 or more units from contractor licensing requirements if making minor repairs to existing electric water heaters or existing electric heating, ventilation, and air conditioning (HVAC) systems, if they meet certain training and experience criteria and the repair involves parts costing under \$1,000;
- Allows Category I liquefied petroleum gas dealers, liquefied petroleum gas installers, and specialty installers to disconnect and reconnect water lines in the servicing or replacement of existing water heaters;
- Adds Division II contractors to the Florida Homeowners' Construction Recovery Fund section, which would allow homeowners to make a claim and receive restitution from the fund when they have been harmed by a Division II contractor, subject to certain requirements and financial caps;
- Exempts specific low-voltage landscape lighting from having to be installed by a licensed electrical contractor;
- Clarifies that a portable pool used for swimming lessons that are sponsored or provided by school districts is a private pool and not subject to regulation;

- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on specific standards, especially with regard to minimizing risks of electrocutions linked to swimming pools;
- Replaces a representative on the Accessibility Advisory Council for a defunct organization with the new organization;
- Revises the panels designated to review interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction;
- Replaces advanced course provisions for Florida Building Code training with code-related training regarding the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code;
- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Prevention Code informal interpretations;
- 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 that must include at least one fire professional;
- Restricts the Florida Building Code from requiring more than one fire service access elevator in residential buildings of a certain height;
- Authorizes local building officials to issue phased permits for construction;
- Prohibits a municipality from denying development permit applications for a single-family home solely because a lot or combination of lots does not meet the current underlying zoning dimensional standards for minimum lot size and area;
- Prohibits local enforcement agencies from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing or recording evidence of workers' compensation insurance covered by a contractor;
- Adds Underwriters Laboratories, Inc., to the list of entities that are authorized to produce information on which product approvals are based, related to the Florida Building Code;
- Reinstates a wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Exempts Wi-Fi smoke alarms and those that contain multiple sensors, such as those combined with carbon monoxide alarms, from the 10-year, nonremovable, nonreplaceable battery provision;
- Prohibits adopting mandatory blower door and air infiltration testing and mechanical ventilation device requirements into the 2014 Florida Building Code and reverts to the 2010 code;
- Adds provisions to the Fire Prevention Code to:
  - 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 Accessibility volume of the Florida Building Code;
  - Authorize existing assisted living facilities to use the home environment provisions enumerated in the most current edition of the code;
  - Authorize fire officials to use the Fire Safety Evaluation System to identify low-cost alternatives for compliance; and

- Require technicians that work on fire pump control panels and drivers to be under contract with a licensed fire protection contractor;
- Requires a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, to have a fire area occupancy load requiring sprinklers consistent with the Florida Fire Prevention Code;
- Adds provisions to the Florida Building Code regarding fire separation distance and roof overhang projections;
- Creates the Construction Industry Task Force within the University of Florida Rinker School of Construction; and
- Allows a specific energy rating index as an option for compliance with the energy code.

The bill has an indeterminate fiscal impact to the Department of Business and Professional Regulation (DBPR) and an insignificant negative impact to the Service Charge to General Revenue (see Section V. Fiscal Impact Statement).

This bill is effective July 1, 2016.

## II. Present Situation:

### The Florida Building Code and the Florida Building Commission

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.<sup>1</sup>

In 1996, a study commission was appointed to review the system of local codes and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Code) and that first edition replaced all local codes on March 1, 2002. In 2004, for the second edition of the Code, the state adopted the International Code Council's I-Codes.<sup>2</sup> All subsequent Codes have been adopted utilizing the International Code Council I-Codes as the base code. The most recent Code is the fifth edition which is referred to as the 2014 Code. The 2014 Code went into effect June 30, 2015.<sup>3</sup>

The Florida Building Commission (FBC) was statutorily created to implement the Code. The FBC, which is housed within the DBPR, is a 27-member technical body responsible for the

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<sup>1</sup> DBPR, *Florida Building Codes and Standards: Building Code*, available at <http://www.myfloridalicense.com/dbpr/bcs/buildingcode.html> (last visited Feb. 21, 2016).

<sup>2</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.

<sup>3</sup> ICC, *Florida Building Codes*, available at [http://www2.iccsafe.org/states/florida\\_codes/](http://www2.iccsafe.org/states/florida_codes/) (last visited Feb. 21, 2016).

development, maintenance, and interpretation of the Code.<sup>4</sup> Most substantive issues before the FBC are vetted through a workgroup process where consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input. According to the FBC, through this participatory process, the members “strive for agreements which all of the members can accept, support, live with or agree not to oppose;” when the FBC finds that 100 percent acceptance or support is not achievable, “final decisions require at least 75 percent favorable vote of all members present and voting.”<sup>5</sup>

Due to the number of issues addressed in the bill, the present situation for each section is discussed below in Effect of Proposed Changes.

### III. Effect of Proposed Changes:

#### **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 one of the following eligibility requirements:

- Option 1: Demonstrate 5 years of combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
- Option 2: Demonstrate 4 years of a combination of postsecondary education in the field of construction or a related field and experience, with at least 1 year of experience in construction, building code inspection, or plans review.
- Option 3: Demonstrate 4 years of a combination of technical education in the field of construction or a related field and experience, with at least 1 year of experience in construction, building code inspection, or plans review.
- Option 4: Currently hold 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.; have a minimum of 5 years of verifiable full-time experience in inspection or plan review; and satisfactorily complete an approved building code inspector or plans examiner training program of not less than 200 hours in the certification category sought.
- Option 5: Demonstrate a minimum of 2 years combined experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector, or construction; and the completion of an approved training program in the field of building code inspection or plan review of not less than 300 hours 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 certificate holder.

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<sup>4</sup> Section 553.74, F.S. See DBPR, *Florida Building Codes and Standards: Florida Building Commission*, available at <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Feb. 21, 2016).

<sup>5</sup> FBC, *Consensus-Building Process*, available at [http://www.floridabuilding.org/fbc/commission/FBC\\_0608/Commission/FBC\\_Discussion\\_and\\_Public\\_Input\\_Processes.htm](http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm) (last visited Feb. 21, 2016).

Although individuals have been able to meet the above requirements for a single certification, it is difficult to earn additional certifications while employed as an inspector or plans examiner.

### ***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 one of the following eligibility requirements:

- Option 1: Demonstrate 10 years of combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of experience in supervisory positions; or
- Option 2: Demonstrate 10 years of a combination of experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of supervisory experience, and postsecondary education in the field of construction or related field, of which no more than 5 years may be applied.

### ***Effect of Proposed Changes***

**Section 1** amends s. 468.609, F.S., to modify the training requirements required for building code inspectors, plan examiners, and building code administrators to take the certification exams.

Related to certain training requirements for building code inspectors and plans examiners, the bill amends:

- Option 4 to reduce the number of years' experience in inspection or plan review from 5 to 3 years and requires the training program to be between 100 and 200 hours of cross-training.
- Option 5 to require the training program to be between 200 and 300 hours of cross-training and limits the required hours of instruction in state law to between 20 and 30 hours.

The bill creates a new option (Option 6) for individuals who currently hold a standard certificate or a firesafety inspector license to qualify to take the exam, if the person also:

- Has at least 5 years of verifiable full-time experience under the certificate or license; and
- Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides between 200 and 300 hours in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide between 500 and 800 hours of training as prescribed by the FBCAIB.

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

The bill also authorizes a local jurisdiction to allow an individual who possesses a residential certification issued by the International Code Council to be a residential building code inspector or plans examiner within the jurisdiction.

Related to the training requirements for a building code administrator who is demonstrating a combination of years' experience and education under Option 2, the bill adds a requirement that the individual must have also completed between 20 and 30 hours training in state laws, rules,

and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

### **Apartment Maintenance Employees**

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is “necessary in the interest of the public health, safety, and welfare to regulate the construction industry.”<sup>6</sup> Exemptions to Part I of ch. 489, F.S., are provided in s. 489.103, F.S., including a “handyman exemption.” Specifically, s. 489.103(9), F.S., provides an exemption for any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000. The exemption does not apply:

- If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading Part I; or
- To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

### ***Effect of Proposed Changes***

**Section 6** amends s. 489.103, F.S., to add a new exemption for an employee of an apartment community or apartment community management company who makes minor repairs to existing electric water heaters or to existing electric heating, venting, and air-conditioning systems when the repair costs do not exceed \$1,000 and are not the functional equivalent of replacing the system. Such an employee is required to have 1 year of apartment maintenance experience and hold an apartment maintenance technician’s certificate from the National Apartment Association (NAA) to qualify for the exemption. The NAA certification course must be accredited by the American National Standards Institute and consist of a 90 hour training course covering identified topics and completion of examination requirements. The exemption only applies to employees of apartment communities of 100 apartments or greater.

### **Propane Gas Water Heater Installations**

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>7</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. This creates additional costs for the customer, because a plumber must be paid to complete the hook up. Currently, public and private natural gas utility employees are exempt from the requirement to be certified as a plumbing contractor when servicing or replacing a water heater.<sup>8</sup> Natural gas and propane are piped in the same manner and have the same properties and pressures inside homes, and the Florida Natural Gas Association reports that the

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<sup>6</sup> Section 498.101, F.S.

<sup>7</sup> Rule 5J-20.012, F.A.C. *See also* ch. 527, F.S.

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

same skill set is used by installers to hook up both natural gas and propane appliances to a home's plumbing.<sup>9</sup>

### ***Effect of Proposed Changes***

**Section 7** amends s. 489.105(3)(m), F.S., relating to plumbing contractors, to extend the authority to disconnect and reconnect water lines in the servicing or replacement of an existing water heater to licensed Category I liquefied petroleum gas dealers, liquefied petroleum gas installers, and specialty installers.

### **Contractors and the Construction Industry Licensing Board**

The Construction Industry Licensing Board (CILB), within the DBPR, is responsible for licensing and regulating the construction industry in this state.<sup>10</sup> The CILB is divided into Division I and Division II members based on the definitions of Division I and Division II 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 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.

Section 489.129, F.S., grants the CILB the authority to take actions against any certificate holder or registrant if the contractor, or a related party, is found guilty of specific acts, including the acts that may qualify a claim to the Florida Homeowner's Construction Fund, which is discussed below.

### **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 or related party.<sup>11</sup> A claimant must be a homeowner and the damage must have been caused by a Division I contractor.<sup>12</sup>

A claim must involve an act by a contractor under s. 489.129(1)(g), (j), and (k), F.S., which relate to actions that give rise to disciplinary actions by the CILB against a contractor.

- 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.

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<sup>9</sup> Email from Dale Calhoun, President of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).

<sup>10</sup> Section 489.107, F.S. DBPR, *Construction Industry Licensing Board*, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (last visited Feb. 21, 2016).

<sup>11</sup> See ss. 489.140-489.144, F.S.

<sup>12</sup> Section 489.1402, F.S.

Generally, financial mismanagement or misconduct occurs when the contractor fails to remove a valid lien after payment; the contractor has abandoned the job and has been paid for more than is completed; and the customer is made to pay more than the contract price.

- Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, under certain conditions.
- Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a false statement with respect to a project or contract indicating that the work is bonded, subcontractors have been paid, or workers' compensation and public liability insurance are provided.

If the violation 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 subsections.<sup>13</sup>

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.<sup>14</sup> The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.<sup>15</sup>

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

Section 489.1425, F.S., creates a duty for a contractor to provide notice to a customer of rights under the recovery fund. 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 in the statute.

### ***Requirements to Make a Claim***

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>16</sup> Certain claimants may not make claims, including a claimant that contracted with a Division II contractor and a claimant that suffered damages as a result of making improper payments to a contractor under the Florida Construction Lien Law.<sup>17</sup>

### ***Limits***

Pursuant to s. 489.143, F.S., payment to a claimant from the recovery fund will be an amount equal to the judgment, award, or restitution order or \$25,000, whichever is less, or an amount

<sup>13</sup> Rule 61G4-21.003(3), F.A.C.

<sup>14</sup> Section 468.631(1), F.S.

<sup>15</sup> The DBPR has the authority to transfer excess cash to the fund if it determines it is not needed to support the operation of the FBCAIB; the amount transferred cannot exceed the amount appropriated in the General Appropriations Act or approved by the Legislative Budget Commission for payment of claims from the fund.

<sup>16</sup> Section 489.141(1)(f), F.S.

<sup>17</sup> The term "contractor" is defined as a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. It includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16), F.S. See s. 713.01(8), F.S.

equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant.<sup>18</sup> Each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum.<sup>19</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>20</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>21</sup> Claims are paid in the order that they are filed.<sup>22</sup>

### *Effect of Proposed Changes*

**Sections 9, 10, 11, 12, and 13** amend ss. 489.1401, 489.1402, 489.141, 489.1425, and 489.143, F.S., 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 contractors beginning January 1, 2017, for any contract entered into after July 1, 2016.<sup>23</sup> The bill limits claims against Division II contractors to \$15,000 per claim with a \$150,000 lifetime maximum.

The bill also:

- Clarifies that a "residence" includes a single-family residence.
- Repeals the prohibition against paying claims where the damages resulted from payments made in violation of the Florida Construction Lien Law.
- Clarifies that the prohibition against paying claims against Division II contractors applies only to contracts entered into before July 1, 2016.
- Revises 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.

### **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>24</sup> Section 489.503, F.S., provides exemptions to licensure for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, and a lightning rod or related systems installer.

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<sup>18</sup> Section 489.143(2), F.S.

<sup>19</sup> Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704* (Feb. 10, 2016).

<sup>20</sup> Section 489.143(2) and (5), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 489.143(6), F.S.

<sup>23</sup> The bill includes Division II contractors whose services fall within s. 489.105(3)(d)-(q), F.S.

<sup>24</sup> Section 489.501, F.S.

### *Effect of Proposed Changes*

**Section 14** amends s. 489.503, F.S., to exempt persons who install certain low-voltage landscape lighting from the requirement to be certified as an electrical contractor. The low-voltage landscape lighting must have a factory-installed electrical cord and plug and not require installation, wiring, or modification to the electrical wiring of a structure.

### **Swimming Pools**

The FBC has included standards for the construction of public swimming pools in the Code which are enforced by local building departments throughout the state. 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.

Some local governments provide swimming lessons using portable swimming pools. However, such pools may not meet requirements established by the DOH.

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 are 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. Underwater pool lighting electrical incidents happened more frequently than any other consumer product used in or around pools, spas, or hot tubs.

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<sup>25</sup> Section 514.03, F.S., and Rule 64E-9.005, F.A.C.

<sup>26</sup> Rules 64E-9.006(1)(i)3. and 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. Consumer Product Safety Commission, *Safety Alert: Install Ground-Fault Circuit-Interrupter Protection for Pools, Spas and Hot Tubs*, CPSC Document #5059, <http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited Feb. 21, 2016).

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 in Miami, a 7 year-old boy, Calder Sloan, was electrocuted in his family's 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 to make requirements for underwater lighting in commercial pools 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 to remove the 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.

### *Effect of Proposed Changes*

**Sections 16, 17, and 18** amend ss. 514.011, 514.0115, and 514.031, F.S., to add portable pools used for educational programs established by county school districts to the definition of "private pool," and exempt such pools from regulation as a public pool.

**Section 38** establishes the Calder Sloan Swimming Pool Electrical-Safety Task Force within the FBC. 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 November 1, 2016, 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 the Swimming Pool and Electrical Technical Advisory Committees of the FBC, and chaired by the Swimming Pool Contractor appointed to the FBC.

The bill requires the FBC 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<sup>32</sup> and are required to meet as often as necessary to fulfill the responsibilities of the task force. Meetings may be conducted by conference call, teleconferencing, or other similar technology. The section expires December 31, 2016.

### **Florida Accessibility Code for Building Construction**

The Florida Building Code incorporates the architectural accessibility requirements of the Americans with Disabilities Act of 1990.<sup>33</sup> The Florida Accessibility Code for Building

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<sup>29</sup> Roger Lohse, *Shoddy Electrical Work Lead to 3 Kids' Injuries at a Pool in Hialeah, Policy Say*, Local10.com (May 8, 2014), available at <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796> (last visited Feb. 21, 2016).

<sup>30</sup> Roger Lohse, *South Fla. Boy Electrocuted by Pool Light While Swimming*, Local10.com (April 17, 2014), available at <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited 4/13/2015).

<sup>31</sup> Miami-Dade County Regulatory and Economic Resources Department, *Is My Pool Safe?*, available at <http://www.miamidade.gov/permits/library/brochures/swimming-pool-light.pdf> (last visited 4/13/2015).

<sup>32</sup> Members may be reimbursed for per diem and travel expenses. Section 112.061, F.S.

<sup>33</sup> Florida Building Code, 5<sup>th</sup> Edition (2014) Accessibility, *Preface*.

Construction contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities.<sup>34</sup> Pursuant to s. 553.512, F.S., the FBC can provide criteria for allowing waivers for modification of or exception from the accessibility requirements. The Accessibility Advisory Council must review such waivers.

The Accessibility Advisory Council consists of seven members appointed by the Secretary of DBPR, who are to be knowledgeable in the area of accessibility for persons with disabilities and represent:

- The Advocacy Center for Persons with Disabilities, Inc.;
- The Division of Blind Services of the Department of Education;
- The Division of Vocational Rehabilitation of the Department of Education;
- A statewide organization representing the physically handicapped;
- The hearing impaired;
- The President of the Florida Council of Handicapped Organizations; and
- The Paralyzed Veterans of America.

The Department of State administratively dissolved the Florida Council of Handicapped Organizations in 2003.<sup>35</sup>

Section 553.775, F.S., provides procedures that may be invoked regarding interpretations of the Florida Accessibility Code for Building Construction, which include requiring the FBC to coordinate with the Building Officials Association of Florida, Inc., to designate *panels* of five members each to hear requests to review decisions of local building officials. The members must be licensed building code administrators and be experienced in interpreting *and* enforcing the codes.

### ***Effect of Proposed Changes***

**Section 19** amends s. 553.512, F.S., to replace the representative of the President of the Florida Council of Handicapped Organizations with a representative of Pensacola Pen Wheels, Inc., Employ the Handicapped Council.

**Section 22** amends s. 553.775, F.S., to revise the panels designated to review interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction. The bill establishes one *panel* of seven members. Five of the members must be licensed as building code administrators, one member must be a licensed architect, and one member must be a licensed engineer. Members must be experienced in interpreting *or* enforcing the codes.

### **Building Code Compliance and Mitigation Program and Code-Related Training**

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

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<sup>34</sup> Section 101.1, 2012 Florida Accessibility Code for Building Construction.

<sup>35</sup> See Department of State, Division of Corporations, search for Florida Council of Handicapped Organizations, Inc., at <http://www.sunbiz.org/> (last visited Feb. 21, 2016).

communication of the code's requirements, including, but not limited to, methods for mitigation of storm-related damage.<sup>36</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>37</sup> The FBC 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. The FBC also accredits advanced continuing education courses on the Florida Building Code. To date, the FBC has accredited approximately 300 courses finding that the courses' content to be an accurate reflection of the Florida Building Code or related processes.<sup>38</sup>

Section 553.721, F.S., allows a surcharge to be imposed of 1.5 percent of building permit fees, with a minimum of \$2 charged on each permit. Local governments remit the collections to the DBPR, less 10 percent for specific local uses, for deposit in the Professional Regulation Trust Fund. These monies fund the FBC and the Florida Building Code Compliance Mitigation Program. Annually, the program must be allocated \$925,000 from collections.<sup>39</sup>

### *Effect of Proposed Changes*

**Section 25** amends s. 553.841, F.S., to repeal the requirement that the DBPR develop or update advanced modules designed for use by each profession. Instead the DBPR is authorized to develop or update code-related training for each profession. The bill also repeals the requirement that the FBC provide by rule for the accreditation of courses related to the Florida Building Code. Program course providers will still be required to have courses reviewed and approved under the appropriate board for continuing education purposes.

**Sections 2, 3, 4, 5, 8, and 15** amend ss. 468.627, 471.0195, 481.215, 481.313, 489.115, and 489.517, F.S., to clarify that appropriate "code-related training" is required for issuance or renewal of specified licenses.

**Section 20** amends s. 553.721, F.S., to require the Florida Building Code Compliance Mitigation Fund to:

- Fund up to \$30,000 in Fiscal Year 2015-2016, from existing resources, the recommendations made by the Building Code System Uniform Implementation Evaluation Workshop; and
- Fund up to \$15,000 annually, from surcharge collections, the Florida Fire Code informal interpretations managed by the State Fire Marshal. The State Fire Marshal is required to adopt rules to address the implementation and expenditure of such funds for Florida Fire Prevention Code informal interpretations.

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<sup>36</sup> Section 553.841(2), F.S.

<sup>37</sup> Section 553.841(3), F.S.

<sup>38</sup> Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704* (Feb. 10, 2016).

<sup>39</sup> However, authority to use these funds must be appropriated in the annual General Appropriations Act.

## Florida Building Code and the Florida Fire Prevention Code

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 that 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 FBC and the Fire Code Advisory Council.

Prior to June 30, 2015, the Florida Building Code required that high-rise buildings with occupied floors in excess of 120 feet above the lowest level of fire department vehicle access have at least one fire service access elevator.<sup>40</sup> On June 30, 2015, the 2014 Code went into effect and requires two fire services access elevators.<sup>41</sup> In Special Session 2015-A, prior to the effective date of the provision, the Legislature enacted legislation to delay the effective date of the provision until July 1, 2016.<sup>42</sup>

### *Effect of Proposed Changes*

**Section 21** amends s. 553.73, F.S., related to the Florida Building Code.

The bill 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 to address both codes. The combined board must have representation by at least one fire official<sup>43</sup> at every meeting of the local board. The board can grant alternatives, but may not waive provisions of the Florida Fire Prevention Code. Board decisions may still be reviewed by a joint committee of the FBC and the Fire Code Advisory Council.

The bill provides that in residential buildings:

- With a residential occupiable floor less than 420 feet above the level of fire service access, the Florida Building Code cannot require more than one fire service access elevator. Remaining elevators must be provided with specified emergency operations; and
- With a transient residential occupiable floor more than 420 feet above the level of fire service access, specific requirements related to fire service access elevator lobbies and exit access corridors apply.
- The requirement for a second fire service access elevator is not considered part of the Florida Building Code, and does not take effect until July 1, 2017.

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<sup>40</sup> Section 403.6.1 of the 2010 Florida Building Code, Building.

<sup>41</sup> Section 403.6.1 of the 2014 Florida Building Code, Building.

<sup>42</sup> See s. 69, ch. 2015-222, L.O.F. 2015 (SB 2502-A, the Implementing Bill for 2015-2016 General Appropriations Act).

<sup>43</sup> At every meeting there must be at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional.

## Phased Permitting

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 from the appropriate enforcing agency. Further, a permit may not be issued for any activity unless the applicant for the permit complies with the requirements for plan review established by the FBC within the Florida Building Code. However, the Florida Building Code sets 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.

## Substandard Lots

Many areas in Florida are platted prior to the adoption of zoning ordinances by a local governing body. As a result, the zoning ordinances may require minimum lot sizes for development based on a selected development pattern, rather than the underlying subdivision plat. This leads to many platted lots of record that do not conform to the current zoning standards, creating substandard lots and ultimately restricting the ability of landowners to develop their land.

Landowners have claimed that these restrictions on the development of their land constitute a taking under the United States Constitution.<sup>44</sup> A taking can occur when government regulation completely deprives an owner of all economically beneficial use of the property. In general, the courts will look to “several factors, including the regulation's economic impact on the claimant, the extent to which it interferes with distinct investment-backed expectations, and the character of the government action.”<sup>45</sup> The landowner take reasonable and necessary steps to challenge the regulation and give the government (the land-use authority) an opportunity to review the regulation in question and grant any waivers, if allowed by law, before the court will review such a case.<sup>46</sup>

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<sup>44</sup> See Amend. V, U.S. Const. (“nor shall private property be taken for public use, without just compensation.”)

<sup>45</sup> 10 A.L.R. Fed. 2d 231. See also *Tahoe-Sierra Preservation Council, Inc., v. Tahoe Regional Planning Agency*, 535 U.S. 302, 318 (2002).

<sup>46</sup> “As a general rule, until these ordinary processes have been followed, the extent of the restriction on property is not known and a regulatory taking has not yet been established.” See *Palazzolo v. Rhode Island*, 533 U.S. 606, 620-621 (2001).

### *Effect of Proposed Changes*

**Section 23** 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. The phased permit may be issued for the construction of foundations or any other part of a building or structure before construction documents for the whole have been submitted. The holder of a phased permit 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.

The bill also prohibits a municipality from denying a development permit application for a single-family home solely because a lot or combination of lots does not meet the current underlying zoning dimensional standards for minimum lot size and area.

### **Local Government Fees**

To provide contractor services in Florida, an individual must be certified or registered and pay the required fee.<sup>47</sup> Section 553.80, F.S., provides that, except for construction regarding correctional and mental health facilities, elevators, storage facilities, educational institutions, and toll collection facilities, each local government and each legally constituted enforcement district with statutory authority shall regulate building construction. Section 553.80(7), F.S., authorizes local governments to provide a schedule of consistent reasonable fees to be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. The basis for the fee structure must relate to the level of service provided by the local government.

Local governments have created schedules of fees to be submitted by contractors at the time of application for a building permit. These fees can include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including repermitting fees, time extension fees, reinspection fees, and licensure and workers' compensation recording fees.

### *Effect of Proposed Changes*

**Section 24** amends s. 553.80, F.S., to prohibit local governments from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing, recording, or filing evidence of workers' compensation insurance coverage by a contractor.

### **Product Approval**

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the FBC 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,

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<sup>47</sup> See ss. 489.113(4)(a) and 489.117, F.S.

and the Miami-Dade County Building Code Compliance Office Product Control as evaluation entities.

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>48</sup>

### *Effect of Proposed Changes*

**Section 26** amends s. 553.842, F.S., to add Underwriters Laboratories, LLC, to the list of evaluation entities approved by the FBC.

### **Windstorm Loss Mitigation**

Section 553.844, F.S., requires the FBC to implement windstorm loss mitigation techniques into the Florida Building Code to combat property damage associated with hurricanes. The code requires buildings located in wind-borne debris regions to be designed to withstand the minimum wind loads prescribed for that region.<sup>49</sup>

Notwithstanding other provisions of law, exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code.<sup>50</sup> Further support or enclosure of the exposed mechanical equipment and appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs is not required. These provisions were set to expire on the effective date of the 2013 Florida Building Code.<sup>51</sup>

### *Effect of Proposed Changes*

**Section 27** revives and amends s. 553.844(4), F.S., to reinstate the windstorm mitigation exemption from the requirements of the section so that exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, walls, or slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code. The provision no longer has an expiration date.

### **Smoke Alarms in One-Family and Two-Family Homes**

In relation to smoke alarms in one-family and two-family dwellings and townhomes, the Florida Building Code provides that, “when alterations, repairs, or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings.”<sup>52</sup>

<sup>48</sup> Underwriters Laboratories, *About UL*, available at <http://ul.com/aboutul/> (last visited Feb. 21, 2016).

<sup>49</sup> Section 1609 of the 2014 Florida Building Code, Building.

<sup>50</sup> When enacted in 2010, the provision was set to expire on the effective date of the 2010 Code (March 15, 2012). Section 40, ch. 2010-176, F.S.

<sup>51</sup> The most recent code is the 2014 version, which was effective June 30, 2015.

<sup>52</sup> Section R314.3.1 of the 2014 Florida Building Code, Residential.

Section 553.883, F.S., allows owners of one-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Florida Building Code, to use a smoke alarm powered by a 10-year non-removable, non-replaceable battery in lieu of retrofitting the dwelling with a smoke alarm powered by the electrical system. Any battery-powered smoke alarm that is installed or that replaces an existing battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years. These battery requirements do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system.

### *Effect of Proposed Changes*

**Section 28** amends s. 553.883, F.S., to add the following exceptions to the smoke alarm battery requirements for alarms that:

- Use a low-power or radio frequency wireless communication signal (Wi-Fi); or
- Contain multiple sensors, such as a smoke alarm combined with a carbon monoxide alarm or other devices as the State Fire Marshal designates by rule.

### **Blower Door/Air Infiltration Tests and Mechanical Ventilation Devices**

Building contractors install certain features to intentionally ventilate and exhaust unwanted odors or combustion byproducts from a home, such as exhaust fans in the bathroom and above the stove. Unintentional air leakage can occur because of the construction techniques used and/or lack of attention to proper air sealing during construction. Air leakage can cause homes to be less energy efficient; however, a home that has very little leakage can also cause poor indoor air quality. In order to prevent poor indoor air quality caused by a house that does not have proper ventilation or is sealed too tight, contractors use mechanical ventilation devices to filter outside air through the home HVAC system.<sup>53</sup>

To identify and measure the cracks and holes present in a building's envelope, a "blower door test" or an air infiltration test is used which measures the airtightness of a building by changing the building's static pressure with respect to the outdoors and recording the amount of air flow required for that change. A home constructed to the 2014 Florida Building Code is required to be tested via a blower door test/air infiltration test to demonstrate specific air infiltration levels.<sup>54</sup> Additionally, the code requires installation of a mechanical ventilation device designed to filter outside air through an HVAC system under certain circumstances. However, in Special Session 2015-A, prior to the code going into effect, the Legislature enacted legislation to delay the effective date of these two provisions until June 30, 2016.<sup>55</sup>

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<sup>53</sup> Department of Agriculture and Consumer Services, *My Florida Home Energy: Testing for Air Leakage*, available at <http://www.myfloridahomeenergy.com/help/library/contractors-certifications/testing-for-air-leakage/#sthash.mL09s4Q2.PRqx71HZ.dpbs> (last visited Feb. 21, 2016).

<sup>54</sup> Section R402.4.1.2 (testing) of the 2014 Florida Building Code, Energy Conservation.

<sup>55</sup> See s. 69, ch. 2015-222, L.O.F. 2015 (SB 2502-A, the Implementing Bill for 2015-2016 General Appropriations Act).

*Effect of Proposed Changes*

**Section 29** amends s. 553.908, F.S., relating to blower door and air infiltration tests and mechanical ventilation devices, to prohibit adoption of mandatory blower door/air infiltration testing and mechanical ventilation device requirements into the 2014 Florida Building Code. Instead, the provision of the 2010 Florida Building Code, Energy Conservation, apply. Local building officials may not require any type of test to determine air infiltration levels or leakage rates. If the provisions of the 2014 Florida Building Code are use, then the local building officials may inspect the construction or renovation for compliance with those provisions.

**Division of the State Fire Marshal**

State law on fire prevention and control is provided in ch. 633, F.S. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of the State Fire Marshal.<sup>56</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.

The State Fire Marshal is required to adopt the Florida Fire Prevention Code by rule every 3 years. The code contains or references all firesafety laws and rules regarding public and private buildings 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.<sup>57</sup>

*Effect of Proposed Changes*

**Section 30** amends s. 633.202, F.S., to add the following provisions to the Florida Fire Prevention Code:

- 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 January 1, 2022 (permit must be applied for by December 31, 2019) and existing apartment buildings must comply by January 1, 2025 (permit must be applied for by December 31, 2022);
- Require areas of refuge to be provided when required by the Accessibility portion of the Florida Building Code.

**Section 31** amends s. 633.206, F.S., relating to uniform firesafety standards. The home environment provisions enumerated in the most current edition of the codes adopted by the Division of State Fire Marshal may be applied to existing assisted living facilities, at the option of each facility, notwithstanding the edition of the codes applied at the time of construction.

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<sup>56</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. s. 633.104, F.S.

<sup>57</sup> Section 633.202, F.S.

**Section 32** amends s. 633.208, F.S., relating to minimum firesafety standards and the application to existing buildings. The local fire official may consider the Fire Safety Evaluation System<sup>58</sup> as an acceptable tool to identify low cost alternatives. It is acceptable to use the Fire Safety Evaluation System for Board and Care Facilities using prompt evacuation capabilities parameter values on existing residential high-rise buildings.

**Section 33** amends s. 633.336, F.S., relating to fire protection contracting, and provides that it is acceptable for a fire protection contractor licensed under ch. 633, F.S., to subcontract with companies providing advanced technical services for installing, servicing, and maintaining fire pump control panels and fire pump drivers. To ensure the integrity of the system and to protect the interests of the property owner, those providing technical support services for fire pump control panels and drivers must be under contract with a licensed fire protection contractor.

### **Automatic Sprinkler Systems for Fire Areas**

The Florida Fire Prevention Code requires a building containing one or more assembly occupancies where the aggregate occupant load of the assembly occupancies exceeds 300 to be protected by an approved automatic sprinkler system in accordance with NFPA 13.<sup>59</sup> However, the Code contains a more stringent standard for certain buildings. Specifically, the Code requires restaurants, cafeteria, and similar dining facilities, including associated commercial kitchens, which contain assembly occupancies with occupant loads greater than 100 to be protected by an approved automatic sprinkler system.<sup>60</sup>

### ***Effect of Proposed Changes***

**Section 37** provides that notwithstanding any law, rule, or regulation to the contrary, a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, is required to have a fire area occupancy load requiring sprinklers consistent with the Florida Fire Prevention Code.

### **Fire Separation Distance and Roof Overhang Projections**

Pursuant to s. 553.73(7)(a), F.S., the FBC must update the Florida Building Code every 3 years. When updating the code, the FBC is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the international Electrical Code. These codes form the “foundation codes” of the updated Florida Building Code.

Any amendments or modifications to the foundation codes found within the Florida Building Code remain in effect only until the effective date of a new edition of the Florida Building Code. At that point, such amendments or modifications to the foundation codes are removed from the foundation code. However, amendments or modifications that are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the

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<sup>58</sup> NFPA 101A, Guide on Alternative Solutions to Life Safety, adopted by the State Fire Marshal.

<sup>59</sup> Section 13.3.2.7.2, New Assembly Occupancies, Florida Fire Prevention Code, Fifth Edition, I-92.

<sup>60</sup> Section 903.2.1.2 of the 2014 Florida Building Code, Fire Protection Systems.

high-velocity hurricane zone of Miami-Dade and Broward Counties are carried forward into the next edition of the Florida Building Code.<sup>61</sup>

When a provision of the current Florida Building Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the FBC during the Florida Building Code adoption process in order to be considered for the next edition of the code.<sup>62</sup>

### ***Fire Separation Distance***

With regard to fire safety, an external wall is a

special kind of wall that is different from ordinary internal walls, and may be different from fire walls and fire partitions. Within flame contact range, the external wall needs to function like a fire wall and cope with fire from both sides. Beyond flame contact range, but within radiation danger range, the external wall needs to cope with fire from inside and radiation on the outside.<sup>63</sup>

The risk of fire spreading from one building to another reduces as the distance between them increases. In the 2014 Florida Building Code, fire separation distance is defined as the distance measured from the building face to one of the following:<sup>64</sup>

- To the closest interior lot line;
- To the centerline of a street, an alley or public way; or
- To an imaginary line between two buildings on the lot.<sup>65</sup>

### ***Roof Overhang Projections***

A Florida-specific code provision related to roof overhang projections was adopted by the FBC in the 2010 Florida Building Code. Section R302 Fire-Resistant Construction provides that “construction, projections, openings, and penetrations of exterior walls of dwellings and accessory buildings shall comply with table R302.1.” Table R301.1(1) of the 2010 Florida Building Code sets forth the minimum fire-resistance rating and minimum fire separation distance for fire-resistance rated and non-fire-resistance rated walls, depending on the exterior wall element (such as walls, projections, openings in walls, and penetrations).

A number of exceptions were provided for in the 2010 code, including one that provides:

Openings and roof overhang projections shall be permitted on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of 6 feet

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<sup>61</sup> Section 553.73(7)(g), F.S.

<sup>62</sup> Section 553.73(7)(g), F.S.

<sup>63</sup> C.R. Barnett, *Fire Separation Between External Walls of Buildings*, Fire Safety Science - Proceedings of the Second International Symposium, International Association for Fire Safety Science, p. 841.

<sup>64</sup> Section R202 of the 2010 Florida Building Code, Residential.

<sup>65</sup> The distance must be measured at right angles from the face of the wall.

or more, and the roof overhang projection is separated from an adjacent building projection by a distance of 4 feet or more, with 1 hour fire resistive construction on the underside of the overhang required, unless the separation between projections is 6 feet or more.<sup>66</sup>

During the adoption process of the 2014 Florida Building Code, the industry failed to request that the exception to the Fire-Resistant Construction be included in the updated code. Because there was no request from the building industry to include the exception, the exception was not included when the 2014 Florida Building Code became effective.

### *Effect of Proposed Changes*

**Section 34** directs the FBC to add to the Fire Separation Distance definition in the 2014 Florida Building Code a fourth option of measurement of an imaginary line between two buildings when the exterior wall of one building is located on a zero lot line.

**Section 35** directs the FBC to reinsert a provision in the 2014 Florida Building Code identical to the provision in the 2010 Florida Building Code related to exceptions to fire-resistant construction standards, discussed above.

### **Impetus for the Construction Industry Workforce Task Force**

Single-family building permit activity, an indicator of new construction, reached its peak in Florida in 2005. During the recent recession, new construction declined significantly, bottoming out in 2009. New construction has increased in recent years, but there are antidotal reports that contractors are having a hard time finding skilled labor.

### *Effect of Proposed Changes*

**Section 36** creates the Construction Industry Workforce Task Force within the University of Florida M.E. Rinker, Sr., School of Construction Management. The goals of the task force are to:

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

The task force consists of 19 members, representing various construction industries and the Legislature. The task force will elect a chair from among its members. The University of Florida M.E. Rinker, Sr., School of Construction Management must provide assistance to the task force in carrying out its responsibilities. The task force must meet by September 1, 2016, and then

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<sup>66</sup> Section R302.1 of the 2010 Florida Building Code, Residential.

meet as often as necessary to fulfill its responsibilities, but not fewer than three times. The meetings may be conducted via conference call, teleconferencing, or similar technology.

The task force will submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2017. The DBPR must provide \$50,000 from funds available for the Florida Building Code Compliance and Mitigation Program to the University of Florida M.E. Rinker, Sr., School of Construction Management. This section expires July 1, 2017.

### **Energy Rating**

The Energy Conservation volume of the Florida Building Code prescribes a variety of energy efficiency and conservation requirements that buildings and homes must meet in order to comply with the code. Currently, the International Code Council I-Codes, which are adopted triennially by the FBC as the foundation code for Florida, include an alternative Energy Rating Index that may be used as an option for meeting the energy conservation demands of the Florida Building Code. The 2014 Florida Building Code does not include this option.

#### *Effect of Proposed Changes*

**Section 39** directs the FBC to insert in the Energy Conservation volume of the 2014 Florida Building Code, the Alternative Performance Path, Energy Rating Index of the 2015 International Energy Conservation Code as an option for demonstrating compliance with the Energy Conservation requirements of the Florida Building Code.

**Section 40** provides an effective date of July 1, 2016.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

## **V. Fiscal Impact Statement:**

### A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The bill has an indeterminate fiscal impact to the private sector.

- Apartment owners with communities of 100 or more apartments who have employees make minor repairs to existing electric water heaters or existing electric HVAC systems may experience savings if they meet the requirements of and utilize the contractor licensing requirements exemption.
- The provision allowing certain licensed gas dealers and installers to disconnect and reconnect water lines of existing water heaters may reduce the costs of servicing or replacing water heaters.
- Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund will benefit from the bill.
- The exemption from the requirement to be certified as an electrical contractor may reduce the costs of installing low-voltage landscape lighting.

**C. Government Sector Impact:**

The Department of Business and Professional Regulation (DBPR) is authorized to collect a surcharge of 1.5 percent of the permit fees associated with enforcement of the building code. This revenue is deposited into the Professional Regulation Trust Fund within the DBPR. The Florida Building Code Compliance and Mitigation Program receives \$925,000 annually from the surcharge. The bill permits the following distributions of funds from the Program:

- Up to \$30,000 in Fiscal Year 2016-2017 from existing resources to fund recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup; and
- Up to \$15,000 annually from surcharge collections to fund the Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal.

In addition, the bill provides \$50,000 from the Florida Building Code Compliance and Mitigation Program to the University of Florida M.E. Rinker, Sr., School of Construction Management for the Construction Industry Workforce Task Force.<sup>67</sup>

The DBPR estimates an annual reduction in revenue related to eliminations of application fees for accreditation of advanced module courses of \$5,000 and a \$400 corresponding reduction to the Service Charge to General Revenue. The DBPR also estimates a recurring positive fiscal impact of \$22,000 to the Professional Regulation Trust Fund due to the elimination of a continuing course accreditation program administrator.<sup>68</sup>

The impact of permitting claims related to Division II contractors from the Recovery Fund is indeterminate. The amount of annual recovery fund payments is limited by the amount of funding received from the 1.5 percent surcharge on building permit fees. Due

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<sup>67</sup> The bill does not address whether task force members will receive per diem.

<sup>68</sup> Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704* (Feb. 10, 2016).

to the funding limits, the inclusion of additional claims may extend the amount of time it takes to pay each individual claim.

According to the DBPR, changes in licensing and renewal requirements will require programming modifications which can be handled with existing resources.<sup>69</sup>

The bill has an indeterminate fiscal impact on local governments. Counties and municipalities that currently require a fee for recording a contracting license or workers' compensation insurance information will lose this source of revenue. It is unknown how many counties require these fees.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The DBPR, FBC, various licensing boards, and the State Fire Marshal are granted rulemaking authority related to the various changes in the bill to the Florida Building Code and programs.

#### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.609, 468.627, 471.0195, 481.215, 481.313, 489.103, 489.105, 489.115, 489.1401, 489.1402, 489.141, 489.1425, 489.143, 489.503, 489.517, 514.011, 514.0115, 514.031, 553.512, 553.721, 553.73, 553.775, 553.79, 553.80, 553.841, 553.842, 553.844, 553.883, 553.908, 633.202, 633.206, 633.208, and 633.336.

The bill creates six undesignated sections of Florida law.

#### **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 Community Affairs on February 1, 2016:**

- Prohibits a municipality from denying development permit applications for a single-family home solely because a lot or combination of lots does not meet the current underlying zoning dimensional standards for minimum lot size and area;
- Prohibits a local enforcement agency from charging additional fees, charges, or expenses related to the recording of a contractor's license or workers' compensation insurance;
- Reinstates the wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Removes provisions that previously deleted exemptions from legislative ratification for certain updates and amendments to the Florida Building Code and the Florida

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<sup>69</sup> *Id.*

Fire Prevention Code and required a statement of estimated regulatory costs to evaluate new sections of certain codes;

- Requires the Florida Building Commission to adopt a specified definition of the term “fire separation distance” in the Florida Building Code;
- Requires the Florida Building Commission to amend the Florida Building Code to allow specified openings and roof overhang projections on the exterior wall of a building located on a zero lot line in certain circumstances;
- Creates the Construction Industry Workforce Task Force within the University of Florida Rinker School of Construction Management;
- Requires the Florida Building Commission to adopt into the Florida Building Code a specific energy rating index as an option for compliance with the energy code;
- Requires a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, to have a fire area occupancy load requiring sprinklers consistent with the Florida Fire Prevention Code; and
- Authorizes a local jurisdiction to allow an individual who possesses a residential certification issued by the International Code Council to be a residential building code inspector or plans examiner within said jurisdiction.

**B. Amendments:**

None.