

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1252

INTRODUCER: Senator Simpson

SUBJECT: Building Construction

DATE: March 18, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.	_____	_____	RI	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1252 amends a number of provisions related to building construction in the state. The bill:

- exempts specified septic tank system inspections and evaluations when remodeling a home and establishes guidelines for construction proximity to a system;
- increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;
- revises local government and Department of Business and Professional Regulation (DBPR) collection retention percentages for unpaid fines and costs ordered by the Construction Industry Licensing Board;
- removes a requirement that local governments send minor violation notices to contractors prior to seeking fines and other disciplinary penalties;
- prohibits adopting any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;
- authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site;
- specifies DBPR procedures for Florida Building Code product approval compliance and authorizes the process for expedited 10-day approval reviews;
- renames the statewide standard for energy efficiency;
- specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment;
- changes the purpose of the Florida Building Energy-Efficiency Rating Act from rating system development to energy rating system oversight;
- directs DBPR to establish and maintain criteria for a building energy-efficiency rating system

- removes the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings;
- allows DBPR to recognize and approve another nationally recognized building energy-efficiency rating system; and
- clarifies DBPR's role in developing, adopting and administering the building energy-efficiency system.

This bill amends the following sections of the Florida Statutes: 381.0065, 489.127, 489.131, 489.531, 553.73, 553.79, 553.842, 553.901, 553.902, 553.903, 553.904, 553.905, 553.906, 553.912, 553.991, 553.992, 553.993, and 553.995.

II. Present Situation:

Onsite Sewage Treatment and Disposal Systems and Remodeling

An “onsite sewage treatment and disposal system (system)” is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system.¹

Section 381.0065(3), F.S., authorizes the Department of Health (DOH) to adopt rules administering system statute provisions and to perform system application reviews, site evaluations and issue permits. In addition, DOH may inspect residential system construction, modification, and repair. Currently, a system modification, replacement, or upgrade is not required for a remodeling addition to a single-family home if a bedroom is not added.²

Penalties for Unlicensed Contracting

Prohibitions and penalties for construction contracting and electrical and alarm system contracting are found in Part I, ch. 489, F.S., and Part II, ch. 489, F.S., respectively. The local governing body of a county or municipality is authorized to enforce codes and ordinances against unlicensed contractors. The local governing board may enact an ordinance establishing procedures for implementing codes, including a schedule of penalties to be assessed by the code enforcement officer for violations.³ The maximum civil penalty which may be levied for a citation shall not exceed \$500.⁴

A person charged with a violation has two options: correct the cited violation and pay the civil penalty, or, request an administrative hearing before the enforcement or licensing board or designated special magistrate. If either of these entities finds that a violation exists, it may order the violator to pay a civil penalty of not less than the original citation but not more than \$1,000

¹ Section 381.0065(2)(k), F.S.

² Section 381.0065(4)(aa), F.S.

³ See ss. 489.127(5)(c) and 489.531(4)(c), F.S.

⁴ *Id.*

per day for each construction contracting violation and \$500 for each electrical contracting violation.⁵

Outstanding Fines Issued by the Florida Construction Industry Licensing Board

Section 489.127(6), F.S., authorizes local municipalities and counties to collect unpaid fines and costs ordered by the Florida Construction Industry Licensing Board. These local governments may retain 25 percent of the total amount collected if they remit the remaining 75 percent to the Department of Business and Professional Regulation (DBPR).⁶ According to DBPR, the department currently uses the Department of Financial Services' approved collections vendor to collect unpaid fines and costs when a required payment remains delinquent for more than 6 months.⁷ The vendor charges a 23 percent fee in order to collect the ordered amount. This fee becomes due upon collection regardless of who collects the unpaid fine.

Compliance with State Law and Local Ordinances on Contracting

Section 489.131(7)(a), F.S., provides that local government contracting fines and other penalties are assessed for the primary purpose of gaining compliance with the laws regulating the unlicensed practice of contracting. The subsection further requires that local jurisdictions issue a notice of noncompliance prior to seeking fines and other penalties for first-time "minor violations."⁸ Such notices of non-compliance must identify the ordinance violated, specify a method of compliance, and provide a reasonable time period for compliance. Failure to address a notice of non-compliance is grounds for additional disciplinary proceedings.

Residential Fire Sprinklers

In 2010, the Legislature amended s. 553.73(17), F.S., to prohibit the Florida Building Commission from adopting or incorporating mandatory fire sprinklers provisions in section R313 of the most current version of the International Residential Code (IRC) as part of the Florida Building Code or as a local amendment to the Code.⁹ Pursuant to the enacted prohibition, the Florida Building Commission did not adopt the current version section as part of the 2010 Florida Building Code and, according to DBPR, the Commission is not considering it for the next edition of the Code.¹⁰

Electronic Documents

The Building Code requires that a permit applicant submit one or more copies of construction documents to the building official and specifically authorizes applicants to submit such

⁵ See 489.127(5)(f) and 489.531(4)(f), F.S.

⁶ DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.

⁷ Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

⁸ A violation is deemed "minor" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm.

⁹ Chapter 2010-176, s. 32, Laws of Fla.

¹⁰ Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

documents electronically when authorized by the local building official.¹¹ Construction documents include at a minimum “a floor plan; site plan; foundation plan; floor/roof framing plan or truss layout; all fenestration penetrations; flashing; and rough opening dimensions; and all exterior elevations” pursuant to s. 107.3.5, Florida Building Code, Building (2010). Once reviewed and approved by the building official, the Florida Building Code requires that one set of construction documents be retained by the building official and another be provided to the applicant to “be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative” pursuant to s.107.3.1, Florida Building Code, Building (2010).

Florida Building Code and the State Product Approval Program

The State Product Approval System, which went into effect October 1, 2003, covers certain structural products (i.e., panel walls, exterior doors, roofing products; skylights, windows, shutters, structural components, and new and innovative products) and provides manufacturers of these products with the choice of obtaining state approval as an alternative to receiving local approval.¹²

To obtain state approval for his or her products, a manufacturer must demonstrate compliance with applicable standards and provisions of the Florida Building Code by submitting one of the following reports:

- a certification mark or listing from an approved certification agency,
- a test report from an approved test laboratory,
- a product evaluation report from an evaluation entity authorized under s. 553.842(8)(a), F.S., or
- a product evaluation report developed, signed and sealed by a Florida licensed engineer or architect.

Currently, applications for product approval using the test report method and evaluation report method are subject to approval by the Florida Building Commission using the normal approval process. However, applications for product approval using the certification method are subject to approval by DBPR using the expedited 10-day review process as outlined in s. 553.842(5), F.S.

The Florida Energy Code

Part V of ch. 553, F.S.(ss. 553.900 – 553.912), titled “Florida Thermal Efficiency Code,” was enacted in 1979 in response to the oil crisis of the 70s and required the establishment of a “statewide thermal efficiency code.” The Florida Building Commission adopted the Florida Energy Efficiency Code for Building Construction (FEECBC), which remained Florida’s statewide energy code from 1979 to 2012.

In 2008, s. 553.73(7)(a), F. S., was amended to require the Florida Building Commission to use the International Energy Conservation Code as the foundation for Florida’s Energy Code, while retaining the Florida-specific criteria which were established as part of the FEECBC.¹³ The 2008

¹¹ See s. 468.604(4), F.S.

¹² See s. 553.842, F.S.

¹³ Chapter 2008-227, s. 108, Laws of Fla.

legislation required the Florida Building Commission to effectively adopt both the International Energy Code and the Florida Energy Efficiency Code for Building Construction. On March 15, 2012, the Florida Building Commission adopted the 2010 Florida Building Code – Energy Conservation, which is based on the 2009 IECC but maintains the Florida-specific criteria of the FEECBC.

Although Florida’s 2010 Florida Building Code – Energy Conservation is different from the Florida Energy Efficiency Code for Building Construction, according to DBPR, most of the significant changes to its content result directly from the Florida-specific changes approved by the Florida Building Commission through the code update process.¹⁴

The Florida Building Energy Efficiency Rating System (BERS)

Chapter 553, part VIII, F.S., is known as the “Florida Building Energy-Efficiency Rating Act.” The Act requires DBPR to provide a statewide uniform system for rating the energy efficiency of buildings. In addition, DBPR is required to develop a training and certification program to certify energy raters. DBPR established the Building Energy Raters System (BERS) program to train and certify energy raters. DBPR currently outsources administration of the BERS program to the Florida Solar Energy Center (FSEC) on a no-cost basis through a Memorandum of Understanding.¹⁵ Energy raters are trained and tested by FSEC and the Department issues the rater a certificate based on completion of the FSEC program. The rating system is a voluntary program and does not require any rating be performed.

Currently, BERS rules adopt by reference the 2006 Mortgage Industry National Home Energy Rating Systems Accreditation Standards, promulgated by the National Association of State Energy Officials (NASEO)/Residential Energy Services Network (RESNET) as the standard for energy rater certifications under the BERS program. As a national program for energy rating, RESNET’s services and rating procedures are similar to those of the BERS program. Based on adoption of the NASEO standard, Florida BERS raters are also required to undertake national examinations and certifications.

III. Effect of Proposed Changes:

Section 1 amends s. 381.0065, F.S., on onsite sewage treatment and disposal systems when remodeling a single family home that does not include the addition of a bedroom. Currently, a system modification, replacement or upgrade of a system is not required in these types of remodeling projects. This section specifies that an “existing inspection or evaluation, or an existing system tank pump-out” is also not required for such remodels.

The section also clarifies that the remodeling addition or modification may not cover any part of the system or encroach upon a required setback or the unobstructed area as determined by a timely local health department floor and site plan review.

¹⁴ Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

¹⁵ *Id.* The remainder of this section of the analysis is drawn from the DBPR Agency Analysis of the bill.

Section 2 amends s. 489.127, F.S., on construction contracting prohibitions and penalties to increase the maximum amount local municipalities and counties may charge for unlicensed contracting citations from \$500 to \$2,000 and to increase the maximum civil penalties for unlicensed contracting from \$1,000 to \$1,500 per day of each violation. In addition, the bill increases the percentage of funds a local government may retain when they collect unpaid fines and costs ordered by the Construction Industry Licensing Board from 25 percent to 75 percent. The remaining 25 percent would be remitted to DBPR.

Section 3 amends s. 489.131, F.S., on compliance with state law and local ordinances for contractors to remove the statutory intent that collection of fines and imposition of other penalties is secondary to the goal of attaining compliance with current regulations. In addition, the section removes the requirement that local counties and municipalities issue a notice of non-compliance for first time minor violations prior to seeking fines and other disciplinary penalties.

Section 4 amends s. 489.531, F.S., on electrical and alarm systems contracting prohibitions and penalties to increase the maximum amount local municipalities and counties may charge for unlicensed contracting citations from \$500 to \$2,000.

Section 5 amends s. 553.73, F.S., to prohibit adopting any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code.

Section 6 amends s. 553.79, F.S., on Florida Building Code permits and applications to authorize that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site.

Section 7 amends s. 553.842, F.S., to require that DBPR approve products that demonstrate compliance with the Florida Building Code using product evaluation reports from approved evaluation entities. Applications for product approval using product evaluation reports may be considered and approved by DBPR under the expedited 10-day review process. The current procedure requires applications be held until the next meeting of the Florida Building Commission.

Section 8 amends s. 553.901, F.S., to rename the statewide standard for energy efficiency the Florida Building Code-Energy Conservation, to reflect a coordination of construction standards related to energy efficiency within the Florida Building Code adopted in accordance with s. 553.73(7)(a), F.S.

Section 9 amends s. 553.902, F.S., to conform to the change made by section 8.

Section 10 amends s. 553.903, F.S., to conform to the change made by section 8.

Section 11 amends s. 553.904, F.S., to conform to the change made by section 8.

Section 12 amends s. 553.905, F.S., to conform to the change made by section 8.

Section 13 amends s. 553.906, F.S., to conform to the change made by section 8.

Section 14 amends s. 553.912, F.S., to conform to the change made by Section 8 and codifies the current energy code provision applicable to existing residential heating and cooling equipment excepting that equipment from meeting minimum equipment efficiencies unless necessary to preserve the listing of the equipment.

Section 15 amends s. 553.991, F.S., of Florida Building Energy-Efficiency Rating Act to identify the purpose of the Act as statewide oversight of energy rating systems to promote energy efficiency rather than to develop a statewide rating system.

Section 16 amends s. 553.992, F.S., to direct DBPR to establish and maintain criteria for a building energy-efficiency rating system and to require that the department's rules specifically prohibit a sole provider of functions related to the system.

Section 17 amends s. 553.993, F.S., to include a definition of "building energy-efficiency rating system" as a system created by one of three national systems and allows DBPR to recognize and approve another nationally recognized rating system.

Section 18 amends s. 553.995, F.S., to remove the requirement that a building energy-efficiency rating system provide a uniform rating scale of the efficiency of buildings; to direct the efforts of a designated stakeholders' group to provide input on the adoption and administration of the system; and to specify that DBPR approve training and certification programs applicable to raters.

Section 19 provides an effective date of July 1, 2013.

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:

Certain DFS approved collection vendors currently utilized by DBPR may experience indeterminate revenue losses related to the collection retention percentage changes in the bill.

C. Government Sector Impact:

The bill will have an indeterminate impact on DBPR and local government revenue. DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.¹⁶ It is unknown to what extent the bill's change in the local government collection retention percentage (from 25 percent to 75 percent) may entice local governments to begin such collections. Any collections by local governments would increase local revenue at the expense of DBPR revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DBPR raised the following issues in the *Comments or Concerns* section of its agency analysis of the bill.¹⁷

- Section 2 of the bill appears to contain an internal inconsistency by requiring a local licensing board or special magistrate to assess a civil penalty which is no less than the citation amount but no more than \$1,500. Since the maximum citation is more than the maximum penalty, a local board or magistrate would be unable to comply with the provisions since the minimum civil penalty required (\$2000) would be more than the \$1,500 maximum civil penalty permitted.
- The term site plan, as referred to in Section 6 of the bill, identifies a particular subset of documents submitted in support of a building permit application. The International Building Code describes the contents of a site plan as a scale drawing depicting “the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey.” The reference to “inspections” in the bill indicates that the sponsor may intend the bill to apply to a broader scope of documentation that might be best referred to as “construction documents” consistent with the Florida Building Code or “the plans and specifications required by the Florida Building Code” as used in s. 553.79(2), F.S.
- If DBPR has transferred the collection of the delinquent Final Order to a DFS approved collection vendor, under the terms of the DFS statewide contract, the approved collection vendor will receive 23 percent of the collection amount regardless of who collects it.

¹⁶ Florida Department of Business and Professional Regulation, *Agency Analysis of SB 1252: Building Construction* (Mar. 13, 2013) (on file with the Senate Committee on Community Affairs).

¹⁷ *Id.*

DBPR also offered potential revisions to the bill in the *Comments or Concerns* section of its agency analysis. These are provided below.

- In section 7, s. 553.842(5)(a), F.S., change “commission staff” to “Department staff.” Currently, there is no specific staff designated as “commission staff.” DBPR is the sole agency with the responsibility of staffing the Florida Building Commission.
- In section 14, s. 553.912, F.S., change the term “Florida Energy Efficiency Code for Building Construction” to “Florida Building Code – Energy Conservation” for consistency with the proposed legislation.
- Sections 15 and 16, ss. 553.991 and 553.992, F.S. DBPR conducted several workshops with industry groups regarding improvements to the BERS program. During these workshops, industry groups urged the department to open BERS to more providers and thus eliminate the perceived monopoly by FSEC. The department believes that the Florida Building Energy Rating Act is no longer necessary since available national energy rating programs adequately accomplish the objectives of the statutes. Reliance on national programs with no oversight from the Department could permit additional avenues for training and certification sought by several stakeholder groups.
- According to DBPR, the effective date of July 1, 2013, may not allow sufficient time to update the current BERS rules for consistency with the legislation proposed under sections 15 through 18. The department anticipates an additional ten months from the effective date of the Act would be necessary to make the changes.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.