

**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 Appropriations

BILL: CS/CS/SB 156

INTRODUCER: Appropriations Committee; Community Affairs Committee; and Senator Detert

SUBJECT: Swimming Pools and Spas

DATE: April 25, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Fav/CS
2.	Kraemer	Imhof	RI	Fav/1 amendment
3.	Davis	DeLoach	AGG	Favorable
4.	Davis	Hansen	AP	Fav/CS
5.				
6.				

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

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 156 creates a new, mandatory licensing requirement for residential pool cleaning in Florida. In addition, the bill amends a number of provisions related to building construction in the state.

The bill as filed has an indeterminate fiscal impact. The Department of Business and Professional Regulation (DBPR or department), indicates the bill will increase application and renewal fees from registered electrical, alarm system and electrical specialty contractors grandfathering their registered contractors' licenses to certified contractors' licenses. The DBPR anticipates an increase of \$570,080 in application and license fees during Fiscal Year 2013-2014, \$447,440 in Fiscal Year 2014-2015, and \$570,080 in Fiscal Year 2015-2016.

According to the department, the new, mandatory licensing for water treatment service providers and the reduction in eligibility requirements for the swimming pool/spa servicing contractors' examination in CS/CS/SB 156, which become effective October 1, 2014, will produce an estimated \$5.2 million net increase in revenue to the Professional Regulation Trust Fund in Fiscal Year 2014-2015, a net loss of revenue to the Professional Regulation Trust Fund in Fiscal Year 2015-2016, and a \$3.7 million net increase in revenue for the Professional Regulation Trust

Fund in Fiscal Year 2016-2017. These impacts include the DBPR's estimated administrative costs necessary to handle the additional workload associated with processing new license and renewal license applications and responding to consumer inquiries. Those estimated administrative costs in Fiscal Year 2014-2015 are \$296,747, five full-time-equivalent positions and two Other Personal Services (OPS) positions. See Section V.

Specifically, the bill:

- Revises noticing requirements of alleged violators of local codes and ordinances.
- Clarifies that a state agency constructing or renovating certain buildings is required to select a sustainable building rating system or national model green building code.
- Requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available, and their price, fitness, and quality are equal.
- Exempts specified septic tank system inspections and evaluations when remodeling a home.
- Provides that certain residential construction may not impact sewage treatment or disposal systems or encroach on septic areas as determined by a local health department floor and site plan review.
- Revises the definition of the term "contractor," adds "maintenance for water treatment" to the definition of a contractor, and includes cleaning, maintenance, and water treatment of swimming pools and spas within the licensure scope for commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors.
- Removes current licensure exemptions for individuals and businesses that provide only pool and spa cleaning, maintenance and water treatment services.
- Removes the one year experience requirement for swimming pool/spa service contractors and instead requires 20 hours of in-field, hands-on instruction.
- Provides an exemption from licensure requirements for owners or operators, or their direct employees, who maintain a public swimming pool or spa for the purpose of water treatment.
- Revises the meaning of "demolish" as it is used to define licensed contractors.
- Provides that amendments enacted in 2012 related to the licensing of contractors and subcontractors are remedial in nature, are intended to clarify existing law, and apply retroactively.
- Increases the maximum civil penalty a local governing body may levy against an unlicensed contractor.
- Revises local government and the 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.
- Extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses.
- Adds a definition for "local technical amendment" in the Florida Building Code.
- Clarifies a prohibition to adopt any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code.
- Adds a member to the Florida Building Commission from the natural gas distribution industry.

- Authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site.
- Includes “impact protective systems” among the categories of products that receive approval by the Florida Building Commission.
- Specifies the 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.
- Eliminates the DBPR’s responsibilities regarding a statewide uniform building energy-efficiency rating system.
- Creates building energy-efficiency system definitions.
- Provides additional energy-efficiency rating system changes which reflect the DBPR’s revised role in the process.

This bill substantially amends the following sections of the Florida Statutes: 162.12, 255.20, 255.257, 255.2575, 381.0065, 489.103, 489.105, 489.111, 489.127, 489.131, 489.514, 489.531, 553.71, 553.73, 553.74, 553.79, 553.842, 553.901, 553.902, 553.903, 553.904, 553.905, 553.906, 553.912, 553.991, 553.993, 553.994, 553.995, 553.996, 553.997, and 553.998.

This bill repeals section 553.992 and creates an unnumbered section of the Florida Statutes.

## II. Present Situation:

### Code Enforcement Notices

Notices to alleged violators of local government codes and ordinances are governed by s. 162.12, F.S. There are four options cited in s. 162.12(1), F.S., by which notices are provided, including by:

certified mail to the address listed in the tax collector’s office for tax notices, or to any other address provided by the property owner in writing to the local government for the purpose of receiving notices. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.[, relating to publication of notices and the physical posting of notices, respectively]

The other options for serving notices in s. 162.12(1), F.S., are by:

- Hand delivery by the sheriff, code inspector, or other designated person;
- Leaving at the violator’s residence with any person residing there above the age of 15; or
- For commercial premises, leaving the notice with the manager or other person in charge.<sup>1</sup>

<sup>1</sup> See ss. 162.12(1)(b)-(d), F.S.

In addition to the noticing provisions outlined in s. 162.12(1), F.S., the code enforcement board may serve notice through publication or posting methods.<sup>2</sup>

### **Florida Energy Conservation and Sustainable Buildings Act**

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,<sup>3</sup> which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, F.S.) provides that:

Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings.<sup>4</sup>

Section 255.252(3), F.S., provides legislative intent that “it is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code” and “[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code.”

“Sustainable building rating or national model green building code” means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative’s Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.<sup>5</sup>

Section 255.257(4)(a), F.S., specifies that: “[a]ll state agencies shall adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings.” Section 255.2575(2), F.S., provides that “[a]ll county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code.”<sup>6</sup>

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<sup>2</sup> See s.162.12(2), F.S.

<sup>3</sup> Chapter 2008-227, L.O.F.

<sup>4</sup> Section 255.252(2), F.S.

<sup>5</sup> Section 255.253(7), F.S.

<sup>6</sup> This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.

The Department of Management Services (DMS) states on its website that:

State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency's ultimate decision must be made on the basis of long-term cost-effectiveness.<sup>7</sup>

Administrative rules adopted by the DMS pertaining to sustainable building ratings<sup>8</sup> implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. The DMS then evaluates this life-cycle cost analysis for technical correctness and completeness.<sup>9</sup> According to the DMS, these Rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

The following are basic, brief descriptions of the four statutorily-authorized sustainable building rating systems:

- **Leadership in Energy and Environmental Design (LEED)** is a “voluntary, consensus-based, market-driven” program that provides third-party verification of green buildings [and] addresses the entire lifecycle of a building. LEED projects have been established in 135 countries.... For commercial buildings and neighborhoods, to earn LEED certification, a project must satisfy all LEED prerequisites and earn a minimum 40 points on a 110-point LEED rating system scale.<sup>10</sup>
- **International Green Construction Code (IgCC)** is the “first model code to include sustainability measures for the entire construction project and its site - from design through construction, certificate of occupancy and beyond. The new code is expected to make buildings more efficient, reduce waste, and have a positive impact on health, safety and community welfare....” The IgCC “creates a regulatory framework for new and existing buildings, establishing minimum green requirements for buildings and complementing voluntary rating systems, which may extend beyond the baseline of the IgCC. The code acts as an overlay to the existing set of *International Codes*....”<sup>11</sup>
- **Green Globes** is a web-based program for green building guidance and certification that includes an onsite assessment by a third party. “Green Globes offers a streamlined and affordable...way to advance the overall environmental performance and sustainability of

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<sup>7</sup>[http://www.dms.myflorida.com/business\\_operations/real\\_estate\\_development\\_management/facilities\\_management/sustainablebuildings\\_and\\_energy\\_initiatives](http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives).

<sup>8</sup> Chapter 60D, F.A.C.

<sup>9</sup> Rule 60D-4.004(1)(c)1 and 2, F.A.C.

<sup>10</sup> <http://new.usgbc.org/leed>.

<sup>11</sup> <http://www.iccsafe.org/cs/igcc/pages/default.aspx>.

commercial buildings. The program has modules supporting new construction... [and]...existing buildings.... It is suitable for a wide range of buildings from large and small offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities.”<sup>12</sup>

- The **Florida Green Building Coalition (FGBC)** is a nonprofit corporation “dedicated to improving the built environment, [whose] mission is to lead and promote sustainability with environmental, economic, and social benefits through regional education and certification programs. FGBC was conceived and founded in the belief that green building programs will be most successful if there are clear and meaningful principles on which ‘green’ qualification and marketing are based.”<sup>13</sup>

According to proponents of the bill, LEED is the only sustainable building rating system that does not award points for timber that is grown on a majority of Florida’s 16 million acres of forest, leaving only approximately 200 acres of Florida-grown wood being certified under this rating system, because LEED only awards points for timber that is grown under the Forest Stewardship Council requirements.<sup>14</sup> The DMS has chosen the LEED rating system to meet its own needs.

### **Florida Timber Industry**

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.<sup>15, 16</sup> Although forests cover about 50 percent of the state’s land area, Florida’s timberlands are located mostly north of Orlando. In the northern half of the state most counties are at least 50 percent forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90 percent of its area. The peninsula is forested at 40 percent or less and a number of counties in southeast Florida are less than 10 percent forested.<sup>17</sup>

In 2010, there were 59 primary wood-using mills in Florida. Almost half of those are sawmills (27). Other types of mills include mulch (7), pulp/paper (6), chip-and-saw (5), chip mill (3), post (3), plywood (2), pole (2), pellet, strand board, veneer and firewood (1 each). The primary wood-using mills in Florida are located mostly in the northern part of the state.<sup>18</sup>

There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Forest Stewardship Council, the

<sup>12</sup> <http://www.thegbi.org/green-globes/>.

<sup>13</sup> <http://www.floridagreenbuilding.org/home>.

<sup>14</sup> “‘Backlash’ bill against LEED green-building certification program moving in House,” available at: <http://www.thefloridacurrent.com/article.cfm?id=32144596>.

<sup>15</sup> Florida Forestry Association website: <http://floridaforest.org/about-us/fl-forests-facts/>.

<sup>16</sup> 2010 *Florida’s Forestry and Forest Product Industry Economic Impacts*, by the Florida Forest Service (PDF file accessed at <http://floridaforest.org/about-us/fl-forests-facts/>).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

American Tree Farm System, and the Sustainable Forestry Initiative are some commonly-used programs.

The Forest Stewardship Council (FSC) is an independent, non-profit organization. “[M]embership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all FSC-certified forests conform to the requirements contained within an FSC forest management standard.... Certifiers are independent of FSC and the companies they are auditing.”<sup>19</sup>

The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their “forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value.” Further, that the standard “has strong acceptance in the global marketplace so we can deliver a steady supply of wood and paper products from legal and responsible sources. This is especially important at a time when there is growing demand for green building and responsible paper purchasing, and less than 10 percent of the world’s forests are certified.”<sup>20</sup>

The American Tree Farm System (ATFS), another commonly-used program, “offers certification to landowners who are committed to good forest management.... Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest...protect[ing] economic, social and environmental benefits.”<sup>21</sup>

### **Florida Lumber Preference in Local Government Construction Contracting**

Section 255.20, F.S., specifies requirements for local government construction contracting. Section 255.20(3), F.S., provides as follows:

All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest products produced and manufactured in this state if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

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<sup>19</sup> Forest Stewardship Council website: <https://us.fsc.org/about-certification.198.htm>.

<sup>20</sup> Sustainable Forestry Initiative website: <http://www.sfiprogram.org/sustainable-forestry-initiative/>.

<sup>21</sup> American Tree Farm System website: <https://us.fsc.org/about-certification.198.htm>.

## **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.<sup>22</sup>

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.<sup>23</sup>

## **Pool Cleaning in Florida**

Currently, the practice of pool contracting is regulated by DBPR under the auspices of the Construction Industry Licensing Board (CILB). Pursuant to ss. 489.105(3)(j), (k) and (l), F.S., mandatory licensure is required for commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors respectively to construct or repair pools. Contractors must maintain one of these licenses to contract for the installation, repair, or servicing of commercial or residential pools, spas and hot tubs. However, each of these categories specifically exempts persons who offer only cleaning, maintenance and water treatment of pools, spas and hot tubs from mandatory licensing, so long as the work contracted does not affect the structural integrity of the pool, spa or hot tub or require installation, modification or replacement of its permanently attached equipment. This exemption was added by the legislature in 1996.<sup>24</sup>

While DBPR does not currently require licensure for persons offering only pool cleaning services, the Florida Department of Health (DOH) has responsibility under s. 514.075, F.S., to certify public pool service technicians. Public pool service technicians must demonstrate knowledge of pool maintenance and water treatment by passing a 16-hour course approved by DOH. Persons holding a current commercial pool/spa contractor, residential pool/spa contractor, and/or swimming pool/spa servicing contractor license from DBPR are exempt from certification under s. 514.075, F.S.

The DOH estimates there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.<sup>25</sup> According to the DOH’s estimate, there are currently 14,000 certified pool servicing technicians.<sup>26</sup> Pool service technicians may or may not be direct employees of an owner or operator of a public pool.

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<sup>22</sup> Section 381.0065(2)(k), F.S.

<sup>23</sup> Section 381.0065(4)(aa), F.S.

<sup>24</sup> Ch. 96-365, L.O.F.

<sup>25</sup> *2013 Legislative Analysis for SB 156*, Department of Health, dated January 7, 2013.

<sup>26</sup> *2013 Legislative Analysis for CS/SB 156 as amended*, Department of Health, dated March 7, 2013.



Currently, applicants for commercial swimming pool/spa contractor and/or residential pool/spa contractor license are eligible to sit for the state certification examination if he or she has at least four years of experience in the required licensure category. Applicants may substitute up to three years of college credits in lieu of years of experience but must have at least one year of experience as a foreman in the license category sought. Pursuant to s. 489.111(2)(c)6.d., F.S., a person is qualified to sit for the swimming pool/spa servicing contractor's examination if they possess one year of experience in swimming pool service work and complete 60 hours of instruction in course work approved by the Construction Industry Licensing Board. All applicants must also establish that they are 18 years of age, of good moral character, and meet minimum financial stability requirements.

### **Construction Contracting Regulation**

Construction and electrical contracting is regulated under ch. 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR).<sup>27</sup> Section 489.115, F.S., provides that contractors must either be certified (licensed by the state to contract statewide) or registered (licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only) to engage in contracting in Florida.

The CILB is divided into two divisions: Division I and Division II.<sup>28</sup> Division I of the CILB has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II of the CILB has jurisdiction over the remaining contractors defined in s. 489.105(3), F.S., which include contractors in sheet metal, roofing, air conditioning, pools and spas, plumbing, underground utilities, solar panels, and pollutant storage systems.

### **Construction Contracting and Licensure to Demolish**

Section 489.105(3), F.S., defines "contractor" as:

a person, who for compensation undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others . . . .<sup>29</sup>

Of the defined contractor activities, demolish is the sole act that receives additional clarification in the statute.

For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; *and all buildings or residences.*<sup>30</sup>

<sup>27</sup> See s. 489.103, F.S., for statutory exemptions.

<sup>28</sup> Section 489.107(4)(a)-(b), F.S.

<sup>29</sup> *Italics* added.

<sup>30</sup> Section 489.105(3), F.S. *Italics* added.

Prior to changes to this definition during the 2012 legislative session,<sup>31</sup> demolition of buildings or residences that were three stories in height or less, as well as, steel tanks, towers and other structures 50 feet in height or less did not require licensure under ch. 489, F.S.

### **Licensing of Contractors and Subcontractors**

Section 489.113(2), F.S., provides that subcontractors who are not certified or registered may perform construction work under the supervision of a certified or registered contractor, provided that the work is within the scope of the supervising contractor's license, the supervising contractor is responsible for the work, and the supervised subcontractor is not engaged in construction work that would require a specialty contractor license under s. 489.105(3)(d)-(o), F.S. This provision was last amended during the 2012 Regular Session by s. 11 of ch. 2012-13, L.O.F., which replaced the term "person" with "subcontractor." It also replaced the term "supervisor's license" with "supervising contractor's license."

### **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.<sup>32</sup> The maximum civil penalty which may be levied for a citation shall not exceed \$500.<sup>33</sup>

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 per day for each construction contracting violation and \$500 for each electrical contracting violation.<sup>34</sup>

### **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 CILB. These local governments may retain 25 percent of the total amount collected if they remit the remaining 75 percent to the DBPR.<sup>35</sup> According to the 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.<sup>36</sup> The vendor charges a 23 percent

<sup>31</sup> Chapter 2012-13, s. 9, Laws of Fla.

<sup>32</sup> See ss. 489.127(5)(c) and 489.531(4)(c), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> See 489.127(5)(f) and 489.531(4)(f), F.S.

<sup>35</sup> DBPR does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.

<sup>36</sup> 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).

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.”<sup>37</sup> 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.

### **Grandfathering Provisions for Electrical and Alarm System Contractors**

As noted, ch. 489, F.S., requires that all individuals who practice construction and electrical contracting in Florida must either be “certified” or “registered.” Section 489.514, F.S., provides that the CILB issue a “certification” to an electrical, electrical specialty or alarm system contractor who is “registered” upon receipt of a completed application, payment of an appropriate fee, and evidence that he or she meets statutorily specified criteria. The criteria include possessing a registered local license, passing an approved written examination, and having at least five years of contracting. Applicants wishing to obtain a “certificate” pursuant to this statutory “grandfather” allowance were required to make application by November 1, 2004.<sup>38</sup>

### **Technical Amendments to the Florida Building Code**

Under certain conditions, counties and municipalities may adopt by ordinance a technical amendment to the Florida Building Code relating to flood resistance.<sup>39</sup> A technical amendment is authorized to the extent it is more stringent than the base code and is not subject to the requirements governing local government amendments in s. 553.73(4), F.S.

### **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.<sup>40</sup> Pursuant to the enacted prohibition, the Florida Building Commission did not adopt the current version section as part of

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<sup>37</sup> 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.

<sup>38</sup> Chapter 2012-211, s. 6, L.O.F., re-opened and extended a similar grandfather allowance for construction contractors in s. 489.118, F.S.

<sup>39</sup> See s. 553.73(5), F.S.

<sup>40</sup> Chapter 2010-176, s. 32, L.O.F.

the 2010 Florida Building Code and, according to the DBPR, the Commission is not considering it for the next edition of the Code.<sup>41</sup>

### **Florida Building Commission**

The Florida Building Commission is a 25-member technical body responsible for the development, maintenance and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance and administers the Building Code Training Program. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the code.<sup>42</sup>

### **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 documents electronically when authorized by the local building official.<sup>43</sup> 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.<sup>44</sup>

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.

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<sup>41</sup> 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).

<sup>42</sup> See ss. 553.74, 553.76 and 553.77, F.S.

<sup>43</sup> See s. 468.604(4), F.S.

<sup>44</sup> See s. 553.842, F.S.

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 the 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 1970s 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.<sup>45</sup> The 2008 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 the 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.<sup>46</sup>

### **Air Conditioners and the Florida Energy Code**

Section 553.912, F.S, requires all air conditioners sold or installed in the state to meet the minimum efficiency ratings of the Florida Energy Efficiency Code for Building Construction. It is the intent of the Legislature that all replacement air-conditioning systems be installed using energy-saving, quality installation procedures, including, but not limited to, equipment sizing analysis and duct inspection.

### **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 the DBPR to provide a statewide uniform system for rating the energy efficiency of buildings. In addition, the DBPR is required to develop a training and certification program to certify energy raters. The DBPR established the Building Energy Raters System (BERS) program to train and certify energy raters. The DBPR currently outsources

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<sup>45</sup> Chapter 2008-227, s. 108, L.O.F.

<sup>46</sup> 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).

administration of the BERS program to the Florida Solar Energy Center (FSEC) on a no-cost basis through a Memorandum of Understanding.<sup>47</sup> 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 adopted 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. 162.12, F.S., relating to Code enforcement notice requirements. The bill specifies that a notice sent by certified mail include a return receipt request. The notice may be sent to either an address from the tax collector's office *or* one from the database of the county property appraiser. The bill also allows the local government to provide notices to any address it may have for the property owner or through publication or posting methods.

**Section 2** amends s. 255.20, F.S., to exempt transportation projects for which federal aid funds are available from the operation of an existing tiebreaker preference for Florida lumber in local government construction contracting.

**Section 3** amends s. 255.2575, F.S., to require all state agencies, when constructing public bridges, buildings, and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This tiebreaker language does not apply to transportation projects for which federal aid funds are available, and mirrors the language in s. 255.20(3), F.S., in section 2 of the bill.

**Section 4** amends s. 255.257, F.S., to clarify that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code. The selection is made for each building and renovation to a building.

**Section 5** amends s. 381.0065, F.S., which relates to 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 bill specifies that an "existing inspection or evaluation and assessment" is also not required for such remodels.

The bill provides 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. It provides that the Department of Health

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<sup>47</sup> *Id.* The remainder of this section of the analysis is drawn from the DBPR Agency Analysis of the bill.

would determine whether the setback or unobstructed area is impacted through a review and verification of the floor plan for the proposed remodeling of, or addition to, a home. If the review and verification is not completed within seven days, the proposed remodeling or addition is deemed approved.

**Section 6** amends s. 489.103, F.S., effective October 1, 2014, to exempt an owner or operator of public swimming pools<sup>48</sup> and spas permitted by the Department of Health, or his or her direct employees, who undertake to maintain the swimming pool or spa for the purpose of water treatment from the licensing requirement of the bill. Pool service technicians for public swimming pools who are employed by or associated with subsidiary entities or third party contractors are not exempted from the licensing requirement.

**Section 7** amends s. 489.105(3), F.S., to add the phrase “maintain for purposes of water treatment” to the definition of contracting, specifically including such work within the mandatory licensure requirements of commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors. The bill removes the current exemption for businesses and individuals who engage only in pool/spa cleaning, maintenance and water treatment services from s. 489.105(3)(j)-(l), F.S., requiring any businesses or individuals who provide such services to obtain either a commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor license. The above provisions would become effective on October 1, 2014.

This section also defines the term “demolish,” for purposes of licensure, as it existed prior to changes in 2012, and create an exemption from licensure for work that applies to demolition of buildings or residences that are three stories in height or less, as well as, steel tanks, towers and other structures 50 feet in height or less. The effective date for this amended definition is July 1, 2013.

**Section 8** reduces the experience requirements for the swimming pool/spa service contractor’s license under s. 489.111(2)(c)6.d., F.S., from one year of verifiable experience in swimming pool/spa service work to 20 hours of infield, hands-on instruction. However, all applicants for state certification would be required to pass the certification examination prior to licensure. In addition, all applicants for licensure would be required to meet all other licensure requirements, including the requirements to be at least 18 years old, be of good moral character, and meet biennial renewal requirements. These provisions would become effective on October 1, 2014.

**Section 9** creates an undesignated section of law to provide that the amendments to s. 489.113(2), F.S., by s. 11 of ch. 2012, L.O.F., are remedial in nature and intended to clarify existing law relating to subcontractors who perform construction work under the supervision of a

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<sup>48</sup> Section 514.011(2), F.S., defines a public swimming pool as a watertight structure . . . located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment . . . [including] a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

certified or registered contractor. It provides that this section applies retroactively to any action initiated or pending on or after March 23, 2012.

**Section 10** amends s. 489.127, F.S., relating to 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 the DBPR.

**Section 11** amends s. 489.131, F.S., relating to compliance with state law and local ordinances for contractors, to remove the statement of Legislative intent that collection of fines and imposition of other penalties is secondary to the goal of attaining compliance with current regulations. In addition, the bill 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 12** amends s. 489.514, F.S., to re-enact and extend the period for grandfathering of “registered” electrical, specialty electrical and alarm system contractor licenses to statewide “certified” licenses until November 1, 2015. Current law requires a license application by November 1, 2004. The extension is similar to a grandfather allowance for construction contractors, which in 2012 was extended to November 1, 2015.

**Section 13** amends s. 489.531, F.S., to increase the maximum amount local municipalities and counties may charge for unlicensed electrical and alarm system contracting citations from \$500 to \$2,000.

**Section 14** amends s. 553.71, F.S., to add a definition for purposes of the Florida Building Code to include “local technical amendment” to mean “an action by a local governing authority that results in a technical change to the Florida Building Code and its local enforcement.”

**Section 15** amends s. 553.73(17), F.S., to prohibit the adoption of any mandatory fire sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code. The section also clarifies that cost-saving incentives for IRC fire sprinklers are permissible when mutually agreed upon between a builder and code official.

**Section 16** amends s. 553.74, F.S., to add a 26<sup>th</sup> member to the Florida Building Commission to represent the natural gas distribution system industry.

**Section 17** amends s. 553.79, F.S., 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 18** amends s. 553.842, F.S., to include “impact protective systems” among the categories of products that receive approval by the Florida Building Commission. Current law includes the categories of panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by Commission rule.



In addition, the section requires that the DBPR approve products that demonstrate compliance with the Florida Building Code when product evaluation testing reports from approved evaluation entities are used. Applications for product approval using product evaluation reports may be considered and approved by the 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 19** amends s. 553.901, F.S., to rename the title of the statewide standard for energy efficiency from the Florida Energy Efficiency Code for Building Construction to 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 20** amends s. 553.902, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

**Section 21** amends s. 553.903, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

**Section 22** amends s. 553.904, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

**Section 23** amends s. 553.905, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

**Section 24** amends s. 553.906, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill.

**Section 25** amends s. 553.912, F.S., to reference the Florida Building Code-Energy Conservation as provided in section 19 of the bill. The bill also codifies the current energy code provision applicable to *existing* residential heating and cooling equipment to exempt that equipment, including system size and duct sealing, from meeting minimum equipment efficiencies unless necessary to preserve the listing of the equipment.

**Section 26** amends s. 553.991, F.S., of Florida Building Energy-Efficiency Rating Act to specify that the purpose of the act is to identify energy rating systems to promote energy efficiency instead of to develop a statewide rating system.

**Section 27** repeals s. 553.992, F.S., to eliminate the DBPR's responsibility to adopt, update, and maintain a statewide uniform building energy-efficiency rating system. Provisions in other sections of the bill effectively transfer this type of rating system oversight to specified nationally-recognized energy-efficiency rating system providers.

**Section 28** amends s. 553.993, F.S., to include a definition of "building energy-efficiency rating system" as a system established by the Residential Energy Services Network, the Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy

Center. The section also provides definitions for “energy auditor,” “energy-efficiency rating,” and “energy rater.”

**Section 29** amends s. 553.994, F.S., to reference the “building energy-efficiency system” instead of the “rating system” that applies to all public, commercial, and residential buildings in this state.

**Section 30** amends s. 553.995, F.S., to revise minimum requirements of the building energy efficiency rating systems established in section 25 of the bill and to remove a uniform rating scale. In addition, this section deletes the requirement that the DBPR establish a voluntary working group of interested persons to provide input on the adoption and administration of a rating system and also removes the DBPR responsibility to approve training and certification programs applicable to raters each of which reflects the department’s changed role in energy efficiency rating systems.

**Section 31** amends s. 553.996, F.S., to remove the DBPR’s responsibility to prepare, and make available for distribution, at no cost, a brochure that informs the prospective purchasers of real property about the option for an energy efficiency rating on the building. Instead, the bill requires that the building energy-efficiency rating system providers must prepare the information on building ratings and make it available for distribution.

**Section 32** amends s. 553.997, F.S., to remove the DBPR’s responsibility to make available energy-efficiency practices information for individuals involved in the design, construction, retrofitting, and maintenance of buildings for state and local governments. Other state agencies will continue to provide these services.

**Section 33** amends s. 553.998, F.S., to delete the DBPR’s responsibility to adopt rules for the tools and procedures used to develop energy-efficiency ratings. Instead, ratings will be developed by the systems recognized in the bill.

**Section 34** provides an effective date of July 1, 2013, except as otherwise stated (see sections 6-8).

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

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

None.

**C. Trust Funds Restrictions:**

None.

#### D. Other Constitutional Issues:

Section 9 of the bill provides that the amendments to s. 489.113(2), F.S., by s. 11 of ch. 2012, L.O.F., are remedial in nature and intended to clarify existing law. It also provides that this section applies retroactively to any action initiated or pending on or after March 23, 2012.

In regards to the retroactive application of law, the general rule courts follow is that, in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities, and duties is presumed to apply prospectively.<sup>49</sup> The Florida Supreme Court has addressed retroactive application of statutes. The court follows an analysis with two interrelated inquiries. The first inquiry is one of statutory construction, which asks whether there is clear evidence of legislative intent to apply the statute retrospectively. If the legislation clearly expresses intent that it apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.<sup>50</sup> If a statute attaches new legal consequences to events completed before its enactment, the courts will not apply the statute to pending cases, absent clear legislative intent favoring retroactive application. This analysis is not necessary where the language of a statute contains an express command that the statute is retroactive.<sup>51</sup>

When the language expressly states that it applies retroactively, the courts review a statute on the basis only of whether it is constitutionally permissible. A court must determine whether substantive or procedural rights are affected by the retroactive application of the new statute. In *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla.1994), the Supreme Court stated that “substantive law prescribes duties and rights and procedural law concerns the means and methods to apply and enforce those duties and rights.” A substantive, vested right is “an immediate right of present enjoyment, or a present, fixed right of future enjoyment.” A retroactive abolition of substantive vested rights is prohibited by constitutional due process considerations.<sup>52</sup>

In 2001, a Florida court interpreted the possible retroactive application of a 2000 amendment to s. 489.128, F.S.<sup>53</sup> In this case, a contractor brought suit after the owner terminated the contract. The Legislature amended s. 489.128, F.S., while the suit was pending by removing a provision in the statute that provided a contractor with the ability to cure his or her unlicensed status. At issue was whether s. 489.128, F.S., could be applied retroactively without the deleted provision that allowed the contractor to cure its unlicensed status. The court held that the 2000 amendment changed the contractor’s substantive rights because it removed the contractor’s previously existing right to cure. The 2000 amendment, therefore, did not operate retroactively.

Regarding the provision’s intent to clarify existing law, the courts have considered a subsequent amendment to clarify original legislative intent of a statute when the

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<sup>49</sup> *Metropolitan Dade County v. Chase Federal Housing Authority Corp.*, 737 So. 2d 494, 499 (Fla. 1999).

<sup>50</sup> *Id.* at 499.

<sup>51</sup> *Id.* at 500.

<sup>52</sup> *Id.* at 503.

<sup>53</sup> *The Palms v. Magil Construction Florida, Inc.*, 785 So. 2d 597 (Fla. 3rd DCA 2001).

amendment was enacted soon after a controversy regarding the statute's interpretation arose.<sup>54</sup> However, courts have held that it is inappropriate to use an amendment to clarify intent when the amendment was enacted seven years after the original statute.<sup>55</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

The licensing of pool technicians takes effect October 1, 2014, and the DOH estimates there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.<sup>56</sup> According to the DOH's estimate, there are currently 14,000 certified pool servicing technicians.<sup>57</sup> All those pool service technicians that are not direct employees of an owner or operator of a public pool will not be exempt from the licensing requirement.

According to the DBPR, it is estimated that the bill could generate 18,000 new licensees related to the swimming pool and spa provisions. The associated initial license fee, application fee, and exam fee would be approximately \$236 per licensee.

In addition, registered electrical, alarm system and electrical specialty contractors grandfathering their registered contractors' licenses to certified contractors' licenses will now pay \$295 to renew their certified licenses instead of \$150 for renewal of their registrations.

### B. Private Sector Impact:

Florida-based lumber and timber companies could see an increase in sales related to the tiebreaker preference provisions of the bill.

According to the DBPR, the current licensure scope for commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor includes many activities that exceed the normal work of a pool/spa cleaner, and those that have difficulty in passing the state examination due to the extensive nature of the subject matter will not be permitted to engage in the pool cleaning profession and will be placed out of business.<sup>58</sup>

The bill amends s. 489.127(6), F.S., to increase the percentage of outstanding fines collected by local government collection from 25 percent to 75 percent. According to the DBPR, certain DFS approved collection vendors currently utilized by the DBPR may experience indeterminate revenue losses related to the collection retention percentage changes in the bill.

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<sup>54</sup> See *Lowry v. Parole & Prob. Comm'n*, 473 So. 2d 1248, 1250 (Fla.1985), in which the relevant statute was signed by the Governor two days before the date of the court's opinion.

<sup>55</sup> See *McKenzie Check Advance of Florida, LLC v. Betts*, 928 So. 2d 1204 (Fla. ,2006).

<sup>56</sup> See *supra* note 2.

<sup>57</sup> See *supra* note 3.

<sup>58</sup> 2013 Legislative Analysis for CS/SB 156, Department of Business and Professional Regulation, dated March 20, 2013.

**C. Government Sector Impact:**

The tiebreaker preference for Florida-based lumber and timber only applies if the price is equal to that of such products not produced in Florida, so there should be no fiscal impact.

Section 5, amending s. 381.0065, F.S., does not address whether a local health department may charge a fee for the required review and verification of a floor plan and site plan of a proposed remodeling addition or modification to a single-family home to determine if a setback or the unobstructed area is impacted. However, if a fee is necessary to cover the costs of providing such reviews and verifications, s. 381.0066, F.S., may provide the authority. The DOH indicates the bill will result in a loss of revenue from the prohibition on existing system inspections and evaluations. The loss of revenue is expected to be minimal.

Under sections 7 and 8 of the bill which become effective October 1, 2014, the DBPR will see an increase in license applications resulting in additional fees for examination, initial licensure and biennial renewals. The number of new licensees is indeterminate; however, the DBPR estimates that 18,000 new licensees who are not familiar with the DBPR’s licensure requirements could be generated. The increase in calls and additional tasks is estimated by the DBPR to require a total of two additional Full Time Equivalent (FTE)<sup>59</sup> positions and two Other-Personal-Services (OPS) positions, in the Division of Service Operations, including, one additional FTE and two OPS positions<sup>60</sup> (Regulatory Specialist II) in the Bureau of Central Intake and Licensure to process new licensure and renewal applications, and one additional FTE (Regulatory Specialist II) position in the Customer Contact Center to handle increased call volume. The two OPS positions will be staffed for a six month period to process initial license applications. The Division of Regulation will require three additional FTE positions to accommodate the additional workload.

According to the DBPR, the following chart summarizes the impact of CS/SB 156:

REVENUE (PROFESSIONAL REGULATION TRUST FUND)			
	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Exam Fees	1,503,000	83,500	83,500
Application Fees:	720,000	40,000	40,000
Initial License Fees:	3,600,000	100,000	200,000
License Renewal – Individual	0	0	3,800,000
Unlicensed Activity	90,000	5,000	5,000
Unlicensed Activity - Renewal	0	0	95,000
Building Commission Fee	72,000	4,000	4,000
Building Commission Fee -Renewal	0	0	76,000
<b>TOTAL:</b>	<b>5,985,000</b>	<b>232,500</b>	<b>4,303,500</b>

<sup>59</sup> FTE, an acronym for full-time equivalent, is a unit that indicates the workload of an employee for comparison purposes.

<sup>60</sup> The period of staffing the two OPS positions

<b>EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)</b>			
<b>Recurring Budget</b>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Salaries/Benefits # of FTE’s (5 FTE’s)	171,165	228,220	228,220
Salary Rate	157,173	157,173	157,173
Other Personal Services	0	0	0
Expenses	24,272	31,867	31,867
Contract Services	0	0	0
Examination and Testing Services (BET 100106)	25,000	20,000	20,000
Transfer to DMS – HR Services	1,328	1,770	1,770
Subtotal	221,765	281,857	281,857

<b>EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)</b>			
<b>Non-Recurring Budget</b>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Other Personal Services	29,694	0	0
Expense	36,052	0	0
Operating Capital Outlay	0	0	0
Examination and Testing Services (BET 100106)	9,000	0	0
Transfer to DMS – HR Services OPS	236		
Subtotal	74,982	0	0

<b>Non-Operating Expenditures</b>	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Service Charge to GR (8% of revenue)	478,800	18,600	344,280
Indirect Costs (DBPR Administrative Overhead)	0	0	0
Other/Transfers	0	0	0
Subtotal	478,800	18,600	344,280

<b>Net Revenue Over/(Under) Expenditures</b>	<b>\$5,209,453</b>	<b>(\$67,957)</b>	<b>\$3,677,363</b>
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The DBPR will see an increase in application and renewal fees from registered electrical, alarm system and electrical specialty contractors grandfathering their registered contractors’ licenses to certified contractors’ licenses. The department anticipates an increase of \$570,080 in application and license fees during the first year (Fiscal Year 2013-2014) of the grandfathering cycle.

In addition, according to the DBPR, the amendment to s. 489.127(6), F.S., will have an indeterminate impact on the DBPR and local government revenue. The department does not have any record of local governments remitting to the department unpaid fines and costs ordered by the Construction Industry Licensing Board.<sup>61</sup> It is unknown to what extent the bill’s increase 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 the DBPR revenue.

<sup>61</sup> 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).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The tiebreaker preference for Florida lumber created in s. 255.2575, F.S., mirrors the existing local government tiebreaker preference in s. 255.20(3), F.S., and adds state agencies to the list of entities which must use such a preference. The preference will therefore be specified for local government entities in two sections, which is duplicative.

According to the DMS, virtually all construction performed by the DMS is of the commercial, non-combustible type. The wood or timber found within this construction is the plywood specified for monolithic concrete forms, not applicable to the requirement under this bill, or for light framing or millwork. In this construction, the department does not procure “wood or timber” directly, but rather competitively procures a general contractor or construction manager for a low bid, lump sum of materials and labor.<sup>62</sup>

Consideration of the factors outlined in s. 11.62, F.S., (the Sunrise Act) may be appropriate for regulation of the occupation of pool maintenance and cleaning which is currently exempt from licensing. A Sunrise Act review has not been conducted.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Appropriations Committee on April 23, 2013:**

- Revises noticing requirements of alleged violators of local codes and ordinances;
- Clarifies that a state agency constructing or renovating certain buildings is required to select a sustainable building rating system or national model green building code;
- Requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available, and their price, fitness, and quality are equal;
- Exempts specified septic tank system inspections and evaluations when remodeling a home and establishes guidelines for construction proximity to a system;
- Revises the meaning of “demolish” as it is used to define licensed contractors;
- Changes the effective date for the swimming pool and spa provisions from October 1, 2013, to October 1, 2014;
- Provides that amendments enacted in 2012 related to the licensing of contractors and subcontractors are remedial in nature, are intended to clarify existing law, and apply retroactively;
- Increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;

<sup>62</sup> Department of Management Services’ bill analysis of SB 1080, dated February 29, 2013.

- Revises local government and the 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;
- Extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses;
- Adds a definition for “local technical amendment” in the Florida Building Code;
- Clarifies a prohibition to adopt any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;
- Adds a member to Florida Building Commission from the natural gas distribution industry;
- Authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site;
- Specifies the 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;
- Eliminates the DBPR’s responsibilities regarding a statewide uniform building energy-efficiency rating system;
- Creates building energy-efficiency system definitions; and
- Provides additional energy-efficiency rating system changes which reflect the DBPR’s revised role in the process.

**CS by Community Affairs on March 7, 2013:**

Exempts owner or operator of public swimming pools and spas, or his or her direct employees, from the licensing requirement of the bill. Provides the Department of Business and Professional Regulation with the authority to adopt rules, rather than the Construction Industry Licensing Board. Changed the effective date to October 1, 2013.

**B. Amendments:**

None.