

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

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

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Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

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**BILL:** CS/SB 704

**INTRODUCER:** Community Affairs Committee and Senator Hutson

**SUBJECT:** Building Codes

**DATE:** February 16, 2016      **REVISED:** \_\_\_\_\_

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 704 makes the following changes to law:

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

- Provides funding for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup and provides funding for Florida Fire Prevention Code informal interpretations;
- Allows the creation of local boards to address conflicts between the Florida Building Code (Code) and the Florida Fire Prevention Code;
- Restricts the Florida Building Code from requiring more than one fire service access elevator in residential buildings of a certain height, and adds new provisions to the Florida Fire Prevention Code;
- Authorizes local building officials to issue phased permits for construction;
- Replaces advanced course provisions for Code training with Code-related training regarding the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the Code;
- Prohibits a municipality from denying development permit applications for a single-family home solely because a lot or combination of lots does not meet the current underlying zoning dimensional standards for minimum lot size and area;
- Prohibits local enforcement agencies from requiring payment of any additional fees, charges, or expenses associated with providing proof of licensure as a contractor, recording a contractor license, or providing or recording evidence of workers' compensation insurance covered by a contractor;
- Adds Underwriters Laboratories, Inc., to the list of entities that are authorized to produce information on which product approvals are based, related to the Code;
- Exempts Wi-Fi smoke alarms and those that contain multiple sensors, such as those combined with carbon monoxide alarms, from the 10-year, nonremovable, nonreplaceable battery provision;
- Prohibits adopting mandatory blower door and air infiltration testing and mechanical ventilation device requirements into the 2014 Code and reverts to the 2010 Code;
- Reinstates a wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Adds provisions to the Code regarding fire separation distance and roof overhang projections;
- Creates the Construction Industry Task Force within the University of Florida Rinker School of Construction;
- Requires a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, to have a fire area occupancy load requiring sprinklers consistent with the Florida Fire Prevention Code;
- Creates the Calder Sloan Swimming Pool Electrical-Safety Task Force to study and report on specific standards, especially with regard to minimizing risks of electrocutions linked to swimming pools; and
- Allows a specific energy rating index as an option for compliance with the energy code.

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

This bill is effective July 1, 2016.

## II. Present Situation:

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

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

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Code) and that first edition replaced all local codes on March 1, 2002. In 2004, for the second edition of the Code, the state adopted the International Code Council's I-Codes.<sup>2</sup> All subsequent Codes have been adopted utilizing the International Code Council I-Codes as the base code. The most recent Code is the fifth edition which is referred to as the 2014 Code. The 2014 Code went into effect June 30, 2015.<sup>3</sup>

The Florida Building Commission (FBC) was statutorily created to implement the Code. The FBC, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body responsible for the development, maintenance, and interpretation of the Code. The FBC also approves products for statewide acceptance. 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>4</sup>

Most substantive issues before the FBC are vetted through a workgroup process where consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input.

According to the FBC,

General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100 percent acceptance or

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<sup>1</sup> <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Jan. 27, 2016).

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

<sup>3</sup> <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Jan. 27, 2016).

<sup>4</sup> Section 553.74, F.S.

support is not achievable, final decisions require at least 75 percent favorable vote of all members present and voting.<sup>5</sup>

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

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

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

No.	Requirements
Option 1.	Demonstrates five years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 3.	Demonstrates a combination of technical education in the field of construction or a related field and experience which totals four years, with at least one year of such total being experience in construction, building code inspection, or plans review.
Option 4.	Currently holds a standard certificate as issued by the Florida Building Code Administrators and Inspectors Board (Board) or a firesafety inspector license issued pursuant to ch. 633, has a minimum of five years' verifiable full-time experience in inspection or plans review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The Board shall establish, by rule, criteria for the development and implementation of the training programs.
Option 5.	Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plans review and a minimum of two years' experience in the field of building code inspection; plans review; fire code inspections and fire plans review of new buildings as a firesafety inspector; or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program <sup>6</sup> of not less than 300 hours which is approved by the Board in the chosen category of building code inspection or plans review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.

<sup>5</sup> <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited Jan. 27, 2015).

<sup>6</sup> The Board shall coordinate with the Building Officials Association of Florida, Inc., to establish, by rule, the development and implementation of the training program.

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

***Building Code Administrator***

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

No.	Requirements
Option 1.	Demonstrates 10 years combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least five years of such experience in supervisory positions.
Option 2.	Demonstrates a combination of postsecondary education in the field of construction or related field, no more than five years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least five years of such total being experience in supervisory positions.

**Apartment Maintenance Employees**

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is “necessary in the interest of the public health, safety, and welfare to regulate the construction industry.”<sup>7</sup> Section 489.103, F.S., provides exemptions to Part I.

Section 489.103(9), F.S., (also referred to as the “Handyman Exemption”), provides an exemption to Part I for any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000. The exemption does not apply:

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

**Propane Gas Water Heater Installations**

Currently, natural gas utility employees have the authority under s. 489.105, F.S., to disconnect and reconnect water lines when servicing and replacing “existing” water heaters. Although natural gas and propane are piped in the same manner and have the same properties and pressures inside homes, the propane industry does not have the authority to disconnect and reconnect water lines and must contract with plumbers to start and complete this task. This

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<sup>7</sup> Section 489.101, F.S.

creates additional costs for propane water heater customers. According to the Florida Natural Gas Association, the installers of natural gas and propane appliances have the same capabilities for their job duties. For example, currently there are three companies within the state that have natural gas and propane sides to their operations. Their employees can disconnect and reconnect water lines when servicing natural gas water heaters, but the same employees cannot do this when servicing propane water heaters.<sup>8</sup>

**Florida Homeowner’s Construction Recovery Fund**

***Florida Homeowners’ Construction Recovery Fund and the Construction Industry Licensing Board***

The Florida Homeowners’ Construction Recovery Fund (fund) is created in s. 489.140, F.S., as a separate account in the Professional Regulation Trust Fund within the DBPR. The fund was created in 1993 after Hurricane Andrew as a fund of last resort to compensate consumers who contracted for construction, repair, or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment, or fraudulent statement of the licensed contractor,<sup>9</sup> financially responsible officer, or business organization licensed.<sup>10</sup>

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.<sup>11</sup> The proceeds from the surcharge are allocated equally to the fund and support the operations of the Building Code Administrators and Inspectors Board.<sup>12,13</sup> A claimant must be a homeowner and the damage must have been caused by a Division I contractor.<sup>14</sup>

The fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

Division I contractors are listed in s. 489.105(3)(a)-(c), F.S., as the following:

General contractors	Residential contractors
Building contractors	

Division II contractors are listed in s. 489.105(3)(d)-(q), F.S., as the following:

Sheet metal contractors	Residential pool/spa contractors
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<sup>8</sup> Email from Dale Calhoun, President of the Florida Natural Gas Association, RE: propane tank installations (Mar. 13, 2015).

<sup>9</sup> Florida Department of Business and Professional Regulation, *Legislative Bill Analysis for 2014 SB 1098* (Mar. 11, 2014).

<sup>10</sup> Section 489.1402(1)(g), F.S.

<sup>11</sup> Section 468.631(1), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> In 2013, the Legislature gave the DBPR the authority to transfer excess cash to the fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; however, DBPR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S. See s. 2, ch. 2013-187, L.O.F.

<sup>14</sup> Section. 489.1402(1)(c), (d), and (f), F.S.

Roofing contractors	Swimming pool/spa servicing contractors
Class A air-conditioning contractors	Plumbing contractors
Class B air-conditioning contractors	Underground utility and excavation contractors
Class C air-conditioning contractors	Solar contractors
Mechanical contractors	Pollutant storage systems contractors
Commercial pool/spa contractors	Specialty contractors

Decisions regarding the fund are made by the Construction Industry Licensing Board (CILB) which is housed within the DBPR.

The CILB consists of 18 members who are responsible for licensing and regulating the construction industry in the state.<sup>15</sup> The CILB is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, with the jurisdiction falling to each division relative to their scope.<sup>16</sup> Five members constitute a quorum for each division.

The CILB meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.<sup>17</sup> It engages in rulemaking to implement the provisions set forth in the statutes and conducts other general business, as necessary.<sup>18</sup>

The CILB, with respect to actions for recovery from the fund, may “intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review” on behalf of the state.<sup>19</sup> In accordance with the DBPR rules, “The CILB shall either authorize payment of the claim in full or in part, or deny the claim in full, by entry of a Final Order in accordance with s. 489.143, F.S. Action by the CILB shall be considered final agency action.”<sup>20</sup>

Section 489.129, F.S., grants the CILB the authority to take actions against any certificate holder or registrant if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of certain acts, including the acts that may qualify a claim to the fund. Specifically, the acts that may qualify a claim to the fund are financial misconduct, abandonment of the project, or fraudulent statement of the contractor<sup>21</sup> and are described in s. 489.129(1)(g), (j), or (k), F.S. If the violation is not expressly

<sup>15</sup> Section 489.107, F.S.

<sup>16</sup> Section 489.107(4)(c), F.S.

<sup>17</sup> Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (Last visited Jan. 27, 2016).

<sup>18</sup> Section 489.108, F.S.

<sup>19</sup> Section 489.142(1), F.S.

<sup>20</sup> Rule 61G4-21.004(7), F.A.C.

<sup>21</sup> Florida Department of Business and Professional Regulation, *Legislative Bill Analysis for 2014 SB 1098*, (Mar. 11, 2014).

based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those subsections.<sup>22</sup>

### *Claims*

The claimant must have obtained a final judgment, arbitration award, or CILB-issued restitution order against the contractor for damages that are a direct result of a compensable violation. A claim for recovery must be made within one year after the conclusion of any civil, criminal, administrative action, or award in arbitration based on the act.<sup>23</sup>

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum. For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000 per claim with a total lifetime aggregate limit of \$250,000 per licensee.<sup>24</sup> For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000 with a total lifetime aggregate of \$500,000 per licensee.<sup>25</sup> Claims are paid in the order that they are filed.<sup>26</sup>

The CILB will not compensate claimants from the recovery fund for any of the following reasons:

- The claimant is a licensee who acted as the contractor;
- The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;
- The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;
- The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;
- The claimant was associated in a business relationship with the licensee other than the contract at issue;
- When, after notice, the claimant has failed to provide documentation in support of the claims required by rule;
- Where the licensee has reached the aggregate limit; or
- The claimant has contracted for scope of work described in s. 489.105(3)(d)-(q), F.S. (Division II contractors).<sup>27</sup>

The fund is also not permitted to compensate consumers who suffered damages as a result of payments made in violation of the Florida Construction Lien Law under part I of ch. 713, F.S.

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<sup>22</sup> Rule 61G4-21.003(3), F.A.C.

<sup>23</sup> Rule 61G4-21.003(5), F.A.C.

<sup>24</sup> Section 489.143(2) and (5), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 489.143(6), F.S.

<sup>27</sup> Rule 61G4-21.004(3), F.A.C.



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

Any agreement or contract for the repair, restoration, improvement, or construction to residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the recovery fund, unless the total contract price is less than \$2,500.<sup>28</sup>

### **Low Voltage Landscape Lighting**

Chapter 489, Part II, F.S., regulates electrical and alarm system contractors. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.<sup>29</sup>

Section 489.503, F.S., provides exemptions to Part II for persons performing various tasks such as someone licensed as a fire protection system contractor while engaged in work as a fire protection system contractor, an employee monitoring an alarm system of a business, a lightning rod or related systems installer, etc.

### **Public Portable Swimming Pools**

The FBC has included standards for the construction of public swimming pools in the Code which are enforced by local building departments throughout the state. In 2012, the Legislature determined that local building entities would have jurisdiction over permitting, plan reviews, and inspections of public swimming pools and public bathing places and that the Department of Health (DOH) would continue to have jurisdiction over the operating permits for public swimming pools and public bathing places.<sup>30</sup>

The Miami-Dade school district has operated a learn-to-swim program for over 20 years. One of the ways they provide swimming lessons is through the use of portable pools. The DOH recently advised the school district that using portable pools to provide swimming lessons does not meet the DOH operating criteria and the school district cannot use them for that purpose.<sup>31</sup>

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

The 1993 Legislature created the Florida Americans with Disability Accessibility Implementation Act which incorporated the architectural accessibility requirements of the Americans with Disabilities Act of 1990.<sup>32</sup> The Florida Accessibility Code for Building Construction contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied

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<sup>28</sup> Section 489.1425, F.S.

<sup>29</sup> Section 489.501, F.S.

<sup>30</sup> Ch. 2012-184, Laws of Fla.

<sup>31</sup> March 24, 2015, email on file with the House Government Operations Appropriations Subcommittee.

<sup>32</sup> Preface to the 2010 Florida Building Code, Accessibility.

during the design, construction, additions to, and alteration of sites, facilities, buildings, and elements.<sup>33</sup>

Section 553.512, F.S., directs the FBC to provide criteria for granting individual modifications of, or exceptions from, the “literal requirements of this part upon a determination of unnecessary, unreasonable, or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council.”

The Accessibility Advisory Council consists of seven members, who are to be knowledgeable in the area of accessibility for persons with disabilities. The Secretary of the DBPR is to appoint the following for the membership:

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

According to the DBPR, the Florida Council of Handicapped Organizations no longer exists.<sup>34</sup>

All Accessibility Advisory Council members are limited to two four-year terms and any member may be replaced by the Secretary if he or she has three unexcused absences from meetings. The members serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided by s. 112.061, F.S.

Section 553.775, F.S., provides procedures that may be invoked regarding interpretations of the Florida Accessibility Code for Building Construction, which include requiring the FBC to coordinate with the Building Officials Association of Florida, Inc., to designate panels of five members each to hear requests to review decisions of local building officials.

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

### ***Education and Training Requirements***

The DBPR administers the Florida Building Code Compliance and Mitigation Program (program), which was created to develop, coordinate, and maintain education and outreach to persons who are required to comply with the Code and ensure consistent education, training, and communication of the Code’s requirements, including, but not limited to, methods for mitigation of storm-related damage.<sup>35</sup> The program is geared toward persons licensed and employed in the

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<sup>33</sup> Section 101.1, of the 2012 Florida Accessibility Code for Building Construction.

<sup>34</sup> Correspondence from Department of Business and Professional Regulation to Mr. Warren H. Jernigan, President, Pensacola Pen Wheels Inc. Employ the Handicapped Council, Feb. 19, 2014.

<sup>35</sup> Section 553.841(2), F.S.

design and construction industries. The services and materials under the program must be provided by a private, nonprofit corporation under contract with the DBPR.<sup>36</sup>

The education and training requirements of the program include maintaining a thorough knowledge of the Code, a thorough knowledge of Code compliance and enforcement, duties related to consumers, project completion, and compliance of design and construction to protect against consumer harm, storm damage, and other damage. The FBC establishes, via rules, the qualifications of accreditors and criteria for the accreditation of courses. Currently, the program requires advanced Code courses for each profession referenced in the Code.

Proponents of the bill state the following:

The advanced code course(s) was initiated when we first adopted a statewide uniform building code. It was mandated that all contractors and design professionals take the “advanced” code course. The various boards adopted the mandate as part of their rules and it became synonymous with any course that was “approved” by the FBC. It is now just a duplicative process in that you have to get a course approved by the FBC as an “advanced” course to access any of the training dollars through the Building A Safer Florida program. The same courses are approved individually by the various professional boards. It is a duplicative, costly process - you have to pay an accreditor to accredit the course, take it to the FBC Education Program Oversight Committee and then take it to the full FBC for approval. The courses are the same whether they get a stamp of “advanced” or not.<sup>37</sup>

### ***Surcharge***

Section 553.721, F.S., provides for the DBPR to collect a surcharge that is 1.5 percent of the permit fees associated with enforcement of the Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting. The minimum amount to be collected on any permit issued is \$2. The proceeds that are collected from the surcharge are remitted to the DBPR and deposited in the Professional Regulation Trust Fund quarterly. These monies fund the program and the FBC.<sup>38</sup> Section 553.721, F.S., provides that the program is allocated \$925,000 from this fund each fiscal year.<sup>39</sup>

### ***Building Code System Uniform Implementation Evaluation Workgroup***

The Building Code System Uniform Implementation Evaluation Workgroup was created on January 31, 2012, by the FBC and is composed of building industry stakeholders. Its objective

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<sup>36</sup> Section 553.841(3), F.S.

<sup>37</sup> Email from Kari Roth, representing the Building Industry, RE: advanced courses in Florida Building Code Compliance and Mitigation Program (Mar. 8, 2015).

<sup>38</sup> The Florida Building Code Compliance and Mitigation Program is established in s. 553.841, F.S. Funds used by the DBPR as well as funds to be transferred to DOH shall be as prescribed in the annual General Appropriations Act.

<sup>39</sup> Funds used by the DBPR as well as funds to be transferred to DOH shall be as prescribed in the annual General Appropriations Act.

was to evaluate the success of the FBC to implement a unified building code throughout the state.<sup>40</sup>

### ***Fire Code Interpretation Committee***

Section 633.212, F.S., provides legislative intent that the “Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner that reasonably and cost-effectively protects the public safety, health, and welfare; ensures uniform interpretations throughout this state; and provides just and expeditious processes for resolving disputes regarding such interpretations.” Further, it is the intent of the Legislature that the Division of State Fire Marshal establish a Fire Code Interpretation Committee composed of seven members and seven alternates, equally representing each area of the state, to which a person can pose questions regarding the interpretation of the Florida Fire Prevention Code provisions.<sup>41</sup>

Each nonbinding interpretation of Florida Fire Prevention Code provisions must be provided within 15 business days after receipt of a request for interpretation. The response period may be waived with the written consent of the party requesting the nonbinding interpretation and the State Fire Marshal. The interpretations are advisory only and nonbinding on the parties or the State Fire Marshal.<sup>42</sup>

### **Florida Building Code and the Florida Fire Prevention Code**

Section 553.73(11)(a), F.S., provides that,

In the event of a conflict between the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as applied to a specific project, the conflict shall be resolved by agreement between the local building code enforcement official and the local fire code enforcement official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.

Any decision made by the local fire official and the local building official may be appealed to a local administrative board designated by the municipality, county, or special district having firesafety responsibilities. If the decision of the local fire official and the local building official is to apply the provisions of either the Code or the Florida Fire Prevention Code and the Life Safety Code, the local administrative board may not alter the decision unless the local administrative board determines that the application of such code is not reasonable.<sup>43</sup>

If the decision of the local fire official and the local building official is to adopt an alternative to the codes, the local administrative board shall give due regard to the decision rendered by the

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<sup>40</sup> Jeff A. Blair, Building Code System Uniform Implementation Evaluation Workgroup Report to the Florida Building Commission, p. 19 (Apr. 8, 2013).

<sup>41</sup> Section 633.212(1), F.S.

<sup>42</sup> Section 633.212(3), F.S. The Division of State Fire Marshal may charge a fee, not to exceed \$150, for each request for a review or nonbinding interpretation.

<sup>43</sup> Section 553.73(11)(b), F.S.

local officials and may modify that decision if the administrative board adopts a better alternative, taking into consideration all relevant circumstances. In any case in which the local administrative board adopts alternatives to the decision rendered by the local fire official and the local building official, such alternatives shall provide an equivalent degree of lifesafety and an equivalent method of construction as the decision rendered by the local officials.<sup>44</sup>

If the local building official and the local fire official are unable to agree on a resolution of the conflict between the Code and the Florida Fire Prevention Code and the Life Safety Code, the local administrative board shall resolve the conflict in favor of the code which offers the greatest degree of lifesafety or alternatives which would provide an equivalent degree of lifesafety and an equivalent method of construction.<sup>45</sup>

Prior to June 30, 2015, the Code required that high-rise buildings with occupied floors in excess of 120 feet above the lowest level of fire department vehicle access have at least one fire service access elevator.<sup>46</sup>

On June 30, 2015, the 2014 Code went into effect. Included in the 2014 Code was the following requirement:

**Section 403.6.1 F.S., Fire service access elevator.** In buildings with an occupied floor more than 120 feet (36,576 mm) above the lowest level of fire department vehicle access, no fewer than two fire service access elevators, or all elevators, whichever is less, shall be provided in accordance with Section 3007. Each fire service access elevator shall have a capacity of not less than 3500 pounds (1588 kg).<sup>47</sup>

In Special Session 2015-A, prior to the Code going into effect, the Legislature enacted legislation to delay the effective date of this provision until July 1, 2016.<sup>48</sup>

### **Phased Permitting**

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within the state without first obtaining a permit from the appropriate enforcing agency.<sup>49</sup> Further, a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the FBC within the Code. However, the Code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only.<sup>50</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> Section 553.73(11)(c), F.S.

<sup>46</sup> Section 403.6.1 of the 2010 Florida Building Code, Building.

<sup>47</sup> Section 403.6.1, of the 2014 Florida Building Code, Building.

<sup>48</sup> See s. 69, ch. 2015-222, L.O.F. 2015 (SB 2502-A, the Implementing Bill for 2015-2016 General Appropriations Act).

<sup>49</sup> Section 553.79(1), F.S.

<sup>50</sup> Section 553.79(6), F.S.

Section 105.13, F.S. (phased permit approval), of the Code provides the following:

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

### **Substandard Lots**

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

Landowners have claimed that these restrictions on the development of their land constitute a taking<sup>51</sup> under the United States Constitution. There are two main types of claims under the Takings Clause. First, there is a facial taking, also known as a per se or categorical taking, which occurs when the mere enactment of a regulation precludes all development of the property and deprives the property owner of all reasonable economic use of the property.<sup>52</sup> Because this is a very difficult standard of proof, the Supreme Court has recognized that "facial takings challenges face an uphill battle."<sup>53</sup> There are also "as-applied" takings claims, in which the determination is whether there has been a substantial deprivation of economic use or reasonable investment-backed expectations.<sup>54</sup>

The Supreme Court held that an as-applied takings claim against a municipality's enforcement of regulation is not ripe for review until (1) "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue" and (2) "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation."<sup>55</sup> Florida courts have adopted this federal ripeness requirement.<sup>56</sup>

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<sup>51</sup> U.S. Const. amend. V

<sup>52</sup> See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1017, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002).

<sup>53</sup> *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 736 n. 10, 117 S.Ct. 1659, 137 L.Ed.2d 980 (1997).

<sup>54</sup> See generally *Penn Central Transp. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978).

<sup>55</sup> *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186-94, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

<sup>56</sup> See *City of Jacksonville v. Wynn*, 650 So.2d 182 (Fla. 1st DCA 1995); *Tinnerman v. Palm Beach County*, 641 So.2d 523, 526 (Fla. 4th DCA 1994); *Glisson v. Alachua County*, 558 So.2d 1030, 1034 (Fla. 1st DCA 1990).

Ordinarily, before a takings claim becomes ripe, a property owner must take “reasonable and necessary”<sup>57</sup> steps to permit the land use authority to exercise its discretion in considering development plans, including the opportunity to grant any variances or waivers allowed by law. The requirement is usually met when the property owner files an application for a development permit with the local land use authority and receives a grant or denial of the permit.<sup>58</sup> If a court determines the claim is ripe, it must determine for each property, what, if any, reduction in beneficial use has been sustained by application of the challenged land use regulation and must consider the reasonable investment-backed expectations of each landowner relative to the date of purchase.<sup>59</sup>

### **Local Government Fees**

Part I of ch. 489, F.S., regulates licensed construction contractors and provides that it is “necessary in the interest of the public health, safety, and welfare to regulate the construction industry.”<sup>60</sup> Section 489.113(1), F.S., provides for individuals to become certified as a contractor in order to provide contracting services state-wide after the applicant meets licensure requirements and pays a fee. Likewise, those seeking to engage in contracting on other than a statewide basis may be registered, rather than certified, but must first submit a fee and file evidence of successful compliance with the local examination and licensure requirements for the geographical area for which the person wishes to be registered.<sup>61</sup>

Section 553.80, F.S., provides that, except for construction regarding correctional and mental health facilities, elevators, storage facilities, educational institutions, and toll collection facilities,<sup>62</sup> each local government and each legally constituted enforcement district with statutory authority shall regulate building construction. Section 553.80(7), F.S., authorizes local governments to provide a schedule of consistent reasonable fees to be used solely for carrying out the local government’s responsibilities in enforcing the Code. The basis for the fee structure must relate to the level of service provided by the local government.

Local governments have created schedules of fees to be submitted by contractors at the time of application for a building permit. These fees include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including repermitting fees, time extension fees, reinspection fees, and licensure and workers’ compensation recording fees.<sup>63</sup>

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<sup>57</sup> Palazzolo v. Rhode Island, 533 U.S. 606, 620-21, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001).

<sup>58</sup> See, Glisson 558 So.2d at 1036 (holding that property owner failed to apply for, and been denied, a development permit, variance or rezoning request, resulting in a facial challenge).

<sup>59</sup> Collins v. Monroe County, 999 So.2d 709, 718 (Fla. 3d DCA 2008).

<sup>60</sup> Section 489.101, F.S.

<sup>61</sup> Section 489.117(1), F.S.

<sup>62</sup> Section 553.80(1), F.S.

<sup>63</sup> General fee information obtained on the website of Pasco County, Florida, *Permitting Document, Forms and Fees*, available at <http://www.flvec.com/pasco/content/UrlView?id=1529>.

## Product Evaluation and Approval

The State Product Approval System provides manufacturers an opportunity to have building products approved for use in Florida by the FBC rather than seeking approval in each local jurisdiction where the product is used.<sup>64</sup> Section 553.842, F.S., directs the FBC to adopt rules to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the Code. The FBC may enter into contracts to provide for administration of the product evaluation and approval system. The product evaluation and approval system is to rely on national and international consensus standards, whenever adopted by the Code, for demonstrating compliance with Code standards. Other standards which meet or exceed established state requirements are also to be considered.

Section 553.842(8), F.S., authorizes the FBC to adopt rules to approve the following types of entities that produce information on which product approvals are based. The entities must comply with a nationally recognized standard demonstrating independence or no conflict of interest. The FBC is directed to specifically approve the following evaluation entities:<sup>65</sup>

- The National Evaluation Service;
- The International Association of Plumbing and Mechanical Officials Evaluation Service;
- International Code Council Evaluation Services; and
- The Miami-Dade County Building Code Compliance Office Product Control Division.

## Windstorm Loss Mitigation

Section 553.844, F.S., requires the FBC to implement windstorm loss mitigation techniques into the Code to combat property damage associated with hurricanes. The Code requires buildings located in wind-borne debris regions to be designed to withstand the minimum wind loads prescribed for that region.<sup>66</sup>

In 2010, the Legislature provided that, notwithstanding other provisions of law, exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs are deemed to comply with wind resistance requirements of the 2007 Florida Building Code. The provision was set to expire on the effective date of the 2010 Code (March 15, 2012).<sup>67</sup>

In 2012, the Legislature added that further support or enclosure of the exposed mechanical equipment and appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs is not required. The provision was set to expire on the effective date of the most recent Code.<sup>68</sup>

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<sup>64</sup> Florida Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704, 5* (Dec. 10, 2015).

<sup>65</sup> Architects and engineers licensed in this state are also approved to conduct product evaluations, as provided in s. 553.842(5), F.S.

<sup>66</sup> Section 1609 of the 2014 Florida Building Code, Building.

<sup>67</sup> Florida Department of Business and Professional Regulation, *available at* [http://www.floridabuilding.org/fbc/thecode/FBC\\_2009\\_Icode\\_Supplement.htm](http://www.floridabuilding.org/fbc/thecode/FBC_2009_Icode_Supplement.htm) (last visited Feb. 1, 2016).

<sup>68</sup> The most recent Code is the 2014 Code, which was effective June 30, 2015.



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

In relation to smoke alarms in one-family and two-family dwellings and townhomes, the Code provides that, “When alterations, repairs, or additions requiring a permit occur, or when one or more sleeping rooms are added or created in existing dwellings, the individual dwelling unit shall be equipped with smoke alarms located as required for new dwellings.”<sup>69</sup>

Section 553.883, F.S., requires owners of one-family and two-family dwellings and townhomes undergoing a repair, or a level 1 alteration as defined in the Code, to use a smoke alarm powered by a 10-year non-removable, non-replaceable battery in lieu of retrofitting the dwelling with a smoke alarm powered by the electrical system.

Effective January 1, 2015, each battery-powered smoke alarm that is installed or that replaces an existing battery-powered smoke alarm must be powered by a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years. These battery requirements do not apply to a fire alarm, smoke detector, smoke alarm, or ancillary component that is electronically connected as a part of a centrally monitored or supervised alarm system.

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

Building contractors install certain features to intentionally ventilate and exhaust unwanted odors or combustion byproducts from a home—such as exhaust fans in the bathroom and above the stove. Unintentional air leakage can occur because of the construction techniques used and/or lack of attention to proper air sealing during construction. Air leakage can cause homes to be less energy efficient.<sup>70</sup>

To identify and measure the cracks and holes present in a building’s envelope, a “blower door test” or an air infiltration test is used which measures the airtightness of a building by changing the building’s static pressure with respect to the outdoors and recording the amount of air flow required for that change. Results of the blower door test provide a standard measure of the leakage of a home, measured in cubic feet per minute of airflow which is then converted to air changes per hour so a home’s leakage can be compared to standard recommendations for healthy and energy-efficient homes. While less leakage is typically considered better, a home that has very little leakage can also cause poor indoor air quality. In order to prevent poor indoor air quality caused by a house that does not have proper ventilation or is sealed too tight, contractors use mechanical ventilation devices to filter outside air through the house HVAC system.<sup>71</sup>

On June 30, 2015, the 2014 Code went into effect. Included in the 2014 Code was the requirement that a home be tested via a blower door/air infiltration test to demonstrate specific air infiltration levels. Also part of the 2014 Code was required installation of a mechanical ventilation device designed to filter outside air through an HVAC system under certain circumstances.

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<sup>69</sup> Section R314.3.1 of the 2010 Florida Building Code, Residential.

<sup>70</sup> Florida Dep’t of Agriculture and Consumer Services, available at <http://www.myfloridahomeenergy.com/help/library/contractors-certifications/testing-for-air-leakage/#sthash.mLO9s4Q2.dpbs> (last visited Jan. 27, 2016).

<sup>71</sup> *Id.*

In Special Session 2015-A, prior to the Code going into effect, the Legislature enacted legislation to delay the effective date of these two provisions until June 30, 2016.<sup>72</sup>

### **Florida Fire Prevention Code**

State law on fire prevention and control is provided in ch. 633, F.S. The Chief Financial Officer is designated as the State Fire Marshal, operating through the Division of the State Fire Marshal (division) within the Department of Financial Services.<sup>73</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.

The State Fire Marshal is required to adopt the Florida Fire Prevention Code by rule every three years. The code contains or references all firesafety laws and rules regarding public and private buildings that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.<sup>74</sup>

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

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

Any amendments or modifications to the foundation codes found within the Code remain in effect only until the effective date of a new edition of the Code, every three years.<sup>75</sup> At that point, the amendments or modifications to the foundation codes are removed from the foundation code, unless the amendments or modifications are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties, which are carried forward into the next edition of the Code.

When a provision of the current Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the FBC during the Code adoption process in order to be considered for the next edition of the Code.<sup>76</sup>

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<sup>72</sup> See ch. 2015-222, L.O.F. 2015 SB 2502-A Implementing Bill for 2015-2016 General Appropriations Act).

<sup>73</sup> Section 633.104, F.S.

<sup>74</sup> Section 633.202, F.S.

<sup>75</sup> Section 553.73(7)(g), F.S.

<sup>76</sup> Section 553.73(7)(g), F.S.

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

With regard to fire safety, an external wall is a “special kind of wall that is different from ordinary internal walls, and may be different from fire walls and fire partitions. Within flame contact range, the external wall needs to function like a fire wall and cope with fire from both sides. Beyond flame contact range, but within radiation danger range, the external wall needs to cope with fire from inside and radiation on the outside.”<sup>77</sup> The risk of fire spreading from one building to another reduces as the distance between them increases.

In the 2014 Code, Fire Separation Distance was defined as the distance measured from the building face to one of the following:<sup>78</sup>

- To the closest interior lot line;
- To the centerline of a street, an alley or public way; or
- To an imaginary line between two buildings on the lot.<sup>79</sup>

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

A Florida-specific Code provision related to roof overhang projections was adopted by the FBC in the 2010 Code. Section R 302 Fire-Resistant Construction provides that “[c]onstruction, projections, openings, and penetrations of exterior walls of dwellings and accessory buildings shall comply with table R302.1.”

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<sup>77</sup> C.R. Barnett, *Fire Separation Between External Walls of Buildings*, Fire Safety Science - Proceedings of the Second International Symposium, International Association for Fire Safety Science, p. 841.

<sup>78</sup> Section R202 of the 2010 Florida Building Code, Residential.

<sup>79</sup> The distance must be measured at right angles from the face of the wall.

**TABLE R302.1 EXTERIOR WALLS**

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	(Fire-resistance rated)	1 hour-tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	0 feet
	(Not fire-resistance rated)	0 hours	3 feet
Projections	(Fire-resistance rated)	1 hour on the underside	2 feet
	(Not fire-resistance rated)	0 hours	3 feet
Openings in walls	Not allowed	N/A	N/A
	Unlimited	0 hours	3 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

For SI: 1 foot = 304.8 mm  
 N/A = Not Applicable<sup>80</sup>

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

Openings and roof overhang projections shall be permitted on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of 6 feet or more, and the roof overhang projection is separated from an adjacent building projection by a distance of 4 feet or more, with 1 hour fire resistive construction on the underside of the overhang required, unless the separation between projections is 6 feet or more.<sup>81</sup>

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

<sup>80</sup> Table R302.1, Exterior Walls, of the 2010 Florida Building Code, Residential.

<sup>81</sup> Section R302.1 of the 2010 Florida Building Code, Residential.

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

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

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

The Florida Fire Prevention Code requires a building containing one or more assembly occupancies where the aggregate occupant load of the assembly occupancies exceeds 300 to be protected by an approved automatic sprinkler system in accordance with NFPA 13.<sup>82</sup> However, the Code contains a more stringent standard for certain buildings. Specifically, the Code requires restaurants, cafeteria, and similar dining facilities, including associated commercial kitchens, which contain assembly occupancies with occupant loads greater than 100 to be protected by an approved automatic sprinkler system.<sup>83</sup>

### **Calder Sloan Swimming Pool Electrical Safety Task Force**

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

Current construction rules for public pools require that written approval must be received from the DOH before construction can begin.<sup>84</sup> Plans are required to show the pool layout, tile markings, size of the pool ladder, gutter heights and, if night swimming is permitted, an engineer in Florida must provide certification that the underwater lighting meets the requirements of Rule 64E-9.006(2)(c)3, F.A.C., which sets the maximum lighting at 15 volts. The rule also permits all underwater lighting requirements to be waived if overhead lighting provides at least 15 foot candles of illumination at the pool water surface and wet pool deck.<sup>85</sup>

Electrical equipment and wiring must meet national standards relating to the grounding of pool components. The standards that are incorporated into the rule are those of the National Fire Protection Association 70, National Electrical Code (NEC), 2008 Edition, and with any applicable local code. As a part of the plan approval, the electrical contractor or electrical inspector must certify a pool's compliance, on a form designated by the DOH.<sup>86</sup>

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

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<sup>82</sup> Section 13.3.2.7.2, New Assembly Occupancies, Florida Fire Prevention Code, Fifth Edition, I-92.

<sup>83</sup> Section 903.2.1.2, Florida Building Code, Fifth Edition.

<sup>84</sup> Rule 64E-9.005, F.A.C.

<sup>85</sup> Rule 64E-9.006(2)(c)3, F.A.C.

<sup>86</sup> Rule 64E-9.006(2)(d), F.A.C.

circuits in and around pools, spas, and hot tubs.<sup>87</sup> The Safety Alert noted that pools older than 30 years may not have the proper GFCI protection as the NEC provisions for spas only became effective in 1981 and that “electrical incidents involving underwater pool lighting were more numerous than those involving any other consumer product used in or around pools, spas, and hot tubs.”<sup>88</sup>

Several news stories in South Florida in the past two years have also highlighted the issue. Three children were injured by electrical shocks in a Hialeah condominium community pool in April 2014. The building inspector’s report found that the pool pump was not properly grounded.<sup>89</sup> During the same month in North Miami, a 7-year-old boy, Calder Sloan, died from electrocution in his family’s North Miami swimming pool due to faulty wiring.<sup>90</sup>

### **Energy Rating**

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

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

**Section 1** amends s. 468.609, F.S., relating to certification examination requirements for building code inspectors, plans examiners, and building code administrators. Section 468.609(2)(c)4., F.S., or option 4 discussed on page 4, reduces the required number of years’ experience from five years to three years and revises the hours requirement from not less than 200 hours to a minimum of 100 hours but not more than 200 hours. Section 468.609(2)(c)5., F.S., or option 5 discussed on page 4, reduces the hour requirements for the training program from not less than 300 hours to at least 200 hours but not more than 300 hours and revises the required hours of instruction from not less than 20 hours to at least 20 hours but not more than 30 hours. The bill also adds a sixth option for becoming eligible to take the building code inspector or plans examiner certification examination. A person is now eligible to take the examination for certification as a building code inspector or plans examiner if he or she currently holds a standard certificate issued by the Florida Building Code Administrators and Inspectors Board (Board) or a firesafety inspector license issued pursuant to ch. 633, F.S., and:

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<sup>87</sup> U.S. Product Safety Commission, Safety Alert, CPSC Document #5039 (Aug. 14, 2012), available at <http://www.cpsc.gov/PageFiles/118868/5039.pdf> (last visited: Jan. 27, 2016).

<sup>88</sup> *Id.*

<sup>89</sup> Roger Lohse, Shoddy Electrical Work Lead to 3 Kids’ Injuries at a Pool in Hialeah, Policy Say, LOCAL 10.COM, May 8, 2014, available at <http://www.local10.com/news/police-photos-show-shoddy-electrical-work-at-pool-that-caused-three-kids-to-be-shocked/25861796>. (last visited Jan. 27, 2016).

<sup>90</sup> Roger Lohse, South Fla. Boy Electrocuted by Pool Light While Swimming, LOCAL10.COM, April 17, 2014, available at <http://www.local10.com/news/south-fla-boy-electrocuted-by-pool-light-while-swimming/25538944> (last visited Jan. 27, 2016).

- Has at least five years of verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of five years' verifiable full-time experience as a firesafety inspector licensed pursuant to ch. 633, F.S.; and
- Satisfactorily completes a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours of training in the certification category sought, except for one-family and two-family dwelling training programs which are required to provide at least 500 but not more than 800 hours of training as prescribed by the Board. The Board shall establish, by rule, criteria for the development and implementation of classroom training courses and programs in each certification category.

New section 468.609(4)(c)2., F.S., or option 2 on page 5, adds the requirement that the applicant must have completed at least 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder, in Board-approved courses not to exceed 30 hours.

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

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

**Section 6** amends s. 489.103, F.S., relating to exemptions from contracting requirements. The bill adds an exemption to part I of ch. 489, F.S., for an employee of an apartment community or apartment community management company who makes minor repairs to existing electric water heaters or to existing electric heating, venting, and air-conditioning systems when the repair costs do not exceed \$1,000 and are not the functional equivalent of replacing the system. Employees would be required to have one year of apartment maintenance experience and hold an apartment maintenance technician’s certificate from the National Apartment Association (NAA) to qualify for the exemption. The NAA certification course must be accredited by the American National Standards Institute and consists of a 90 hour training course covering identified topics and completion of examination requirements. The exemption only applies to employees of apartment communities of 100 apartments or greater.

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

**Section 9** amends s. 489.1401, F.S., to revise the legislative intent to include both Division I and Division II contractors within the Florida Homeowners’ Construction Recovery Fund (Recovery Fund).

**Section 10** amends s. 489.1402, F.S., to expand the Recovery Fund’s definition of “contractor” to include Division II contractors and the scopes of work set forth in s. 489.105(3)(a)-(q), F.S.

The section also amends the definition of “residence” to specifically include the term “single-family residence.”

**Section 11** amends s. 489.141, F.S., to permit the payment of claims for consumers who contract after July 1, 2016, with Division II contractors for services that fall within s. 489.105(3)(d)-(q), F.S. In addition, the bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of Florida’s Construction Lien Law for contracts entered after July 1, 2016.

**Section 12** amends s. 489.1425, F.S., relating to notification provided by contractors regarding the recovery fund. The bill revises language for the notice that contractors must give to homeowners informing them of their rights under the recovery fund to advise that payments from the fund are up to a limited amount.

**Section 13** amends s. 489.143, F.S., relating to payments from the Recovery Fund. The bill revises the law to include Division II contractors within the parameters of the Recovery Fund. Specifically, it revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2017, for any contract entered into after July 1, 2016. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee.

The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2016.

**Section 14** amends s. 489.503, F.S., relating to an exemption for certain types of low-voltage landscape lighting. The bill creates an exemption from the requirement to be a licensed electrical contractor for a person who installs low-voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation, wiring, or other modification to the electrical wiring of a structure.

**Section 15** amends s. 489.517, F.S., to remove the requirement for electrical contractors to complete continuing education hours in advanced module courses on the Florida Building Code (Code) that are approved by the Florida Building Commission (FBC). Instead, contractors would be required to complete “code related training” on any portion of the Code. Code related training courses would no longer be required to be approved by the FBC.

**Section 16** amends s. 514.011, F.S., relating to a definition of “private pool.” The bill amends the definition of a private pool in s. 514.011, F.S., to include portable pools used exclusively for the purpose of providing swimming lessons or related instruction in support of an established “Learn to Swim” educational program sponsored or provided by a county school district as a private pool and provides that these pools shall not be regulated as public pools.

**Section 17** amends s. 514.0115, F.S., relating to exemptions from supervision or regulation of public swimming pools and public bathing facilities. A portable pool used for instructional purposes or to further an approved educational program may not be regulated as a public pool.



**Section 18** amends s. 514.031, F.S., relating to permits necessary to operate public swimming pools.

**Section 19** amends s. 553.512, F.S., relating to the Accessibility Advisory Council. The bill replaces the defunct Florida Council of Handicapped Organizations appointee category with Pensacola Pen Wheels Inc., Employ the Handicapped Council, which is an advocacy group that strives to aid the disabled through improving quality of life, work placement, and community involvement. For over 40 years the Pensacola-based group has led the disabled community by working together, growing together, and winning together. The organization focuses on ensuring accessibility for the disabled (ADA compliance, encouraging businesses and government organizations to improve their facilities to better accommodate the disabled).<sup>91</sup>

**Section 20** amends s. 553.721, F.S., relating to the Florida Building Code Compliance and Mitigation Program (program). The bill provides funding from the existing funds of the program, not to exceed \$30,000 in Fiscal Year 2016-2017, for the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup. It also provides that funds collected from the surcharge also be used to fund Florida Fire Prevention Code informal (nonbinding) interpretations, not to exceed \$15,000 each fiscal year.

The bill provides the State Fire Marshal with rule-making authority to address changes made concerning Florida Fire Prevention Code informal interpretations.

**Section 21** amends s. 553.73, F.S., relating to the Code. The bill authorizes local boards that are created to address issues arising under the Code and the Florida Fire Prevention Code to combine the appeals boards to create a single, local board having jurisdiction over matters arising under either or both codes. This combined board has the authority to grant alternatives or modifications but doesn't have the authority to waive the requirements of the Fire Prevention Code. The bill provides that in order to meet the quorum requirement, there must be at least one member of the board who is a fire protection contractor, a fire protection design professional, a fire department operations professional, or a fire code enforcement professional.

The bill prohibits the Code from requiring more than one fire service access elevator in residential occupancies where the highest occupiable floor is less than 420 feet above the level of fire service access. The remaining elevators must be provided with specified emergency operations.

The bill gives specific requirements for situations where fire service access elevators are required and where transient residential occupancies occur at floor levels above 420 feet above the level of fire service access.

**Section 22** amends s. 553.775, F.S., relating to interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction. The bill also reduces the review panels of five members each to one panel of seven members. Five of the members must be licensed as building code administrators, one member must be a licensed architect, and one member must be licensed as an engineer.

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<sup>91</sup> Email correspondence from staff of Representative Clay Ingram, Apr. 16, 2015.

**Section 23** amends s. 553.79, F.S., relating to phased permitting for construction. The bill provides that after an applicant submits the appropriate construction documents, the local building official may issue a phased permit. The holder of a phased permit for the foundation or other parts of a building or structure shall proceed with permitted activities at the holder's own risk and without assurance that a master building permit for the entire structure will be granted. The building official may require corrections to the phased permit to meet the requirements of the technical codes.

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

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

**Section 25** amends s. 553.841, F.S., relating to the program. The bill authorizes, rather than directs, Department of Business and Professional Regulation (DBPR) to develop code-related training, in place of advanced modules, for each profession when administering program. The bill also removes the requirement that the FBC provide for the accreditation of courses related to the Code. When this requirement is removed, the program course providers will still be required to have their course reviewed and approved under the appropriate board that would be reviewing and approving the course for continuing education purposes. Sections 2, 3, 4, 5, 8, and 15 cover the same conforming changes.

**Section 26** amends s. 553.842, F.S., relating to Code-related product evaluation and approval. The bill adds Underwriters Laboratories, Inc., (commonly known as "UL"), an independent safety consulting and certification company,<sup>92</sup> to the list of entities that are authorized to produce information on which product approvals are based.

**Section 27** revives and amends s. 553.844, F.S., to reinstate the windstorm mitigation exemption from the requirements of the section so that exposed mechanical equipment or appliances fastened on roofs or installed on the ground using rated stands, platforms, curbs, or slabs are deemed to comply with wind resistance requirements of the 2007 Code. The provision was set to expire on the effective date of the 2010 Code. The section also adds walls to the list of items installed on the ground.

**Section 28** amends s. 553.883, F.S., relating to smoke alarms in one- and two-family dwellings and townhomes. The bill adds the following exceptions to the smoke alarm battery requirement:

- An alarm that uses a low-power or radio frequency wireless communication signal; or

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<sup>92</sup> According to Underwriters Laboratories, Inc., "UL is a global independent safety science company with more than a century of expertise innovating safety solutions from the public adoption of electricity to new breakthroughs in sustainability, renewable energy and nanotechnology." <http://UL.com/aboutul/> (last visited Jan. 27, 2016).

- An alarm that contains multiple sensors, such as a smoke alarm combined with a carbon monoxide alarm or other devices as the State Fire Marshal designates by rule.

**Section 29** amends s. 553.908, F.S., relating to blower door and air infiltration tests and mechanical ventilation devices. The bill prohibits adopting mandatory blower door/air infiltration testing and mechanical ventilation device requirements into the 2014 Code and reverts to the 2010 Code.

**Section 30** amends s. 633.202, F.S., relating to the Florida Fire Prevention Code. The bill adds the following provisions to the Florida Fire Prevention Code:

- In all new high-rise and existing high-rise buildings, minimum radio signal strength for fire department communications shall be maintained at a level determined by the authority having jurisdiction.
  - Existing buildings may not be required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2022. However, by December 31, 2019, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must initiate an application for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2022.
  - Existing apartment buildings may not be required to comply until January 1, 2025. However, existing apartment buildings are required to initiate the appropriate permit for the required communications installation by December 31, 2022.
- Areas of refuge shall be provided when required by the Florida Accessibility Code for Building Construction. Required portions of an area of refuge shall be accessible from the space they serve by an accessible means of egress.

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

**Section 32** amends s. 633.208, F.S., relating to minimum firesafety standards. The fire official may consider the Fire Safety Evaluation System<sup>93</sup> as an acceptable tool to identify low cost alternatives. It is acceptable to use the Fire Safety Evaluation System for Board and Care Facilities using prompt evacuation capabilities parameter values on existing residential high-rise buildings.

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

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<sup>93</sup> This system is in NFPA 101A, Alternative Solutions to Life Safety, current edition, adopted by the State Fire Marshal.

**Section 34** directs the FBC to reinsert, within the 2014 Code, the Fire Separation Distance definition with a fourth option of measurement to include an imaginary line between two buildings when the exterior wall of one building is located on a zero lot line.

**Section 35** directs the FBC to insert, within the 2014 Code, a provision that permits openings and roof overhang projections on the exterior wall of a building located on a zero lot line when the building exterior wall is separated from an adjacent building exterior wall by a distance of six feet or more and the projections between that building and an adjacent building is four feet or more.

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

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

The task force consists of 19 members. The task force will elect a chair from among its members. The University of Florida M.E. Rinker, Sr., School of Construction Management will provide assistance to the task force in carrying out its responsibilities. The task force will meet as often as necessary to fulfill its responsibilities, but not fewer than three times. The first meeting will be held no later than September 1, 2016. The meetings may be conducted via conference call, teleconferencing, or similar technology.

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

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

**Section 38** creates the Calder Sloan Swimming Pool Electrical-Safety Task Force. The bill establishes within the FBC the Calder Sloan Swimming Pool Electrical-Safety Task Force (Task Force), the purpose of which is to study standards on grounding, bonding, lighting, wiring, and all electrical aspects for safety in and around public and private swimming pools, especially with regard to minimizing risks of electrocutions linked to swimming pools.

The Task Force is to be composed of the Swimming Pool Committee and Electrical Technical Advisory Committee (both within the FBC) and is to be chaired by the Swimming Pool Contractor appointed to the FBC. The FBC will provide such staff, information, and other assistance as is reasonably necessary to assist the Task Force in carrying out its responsibilities.

The Task Force is directed to meet as often as necessary to fulfill its responsibilities, and meetings may be conducted by conference call, teleconferencing, or similar technology. The Task Force members are to serve without compensation.

The Task Force must submit a report on its findings, including recommended revisions to state law, if any, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016. The Task Force expires on December 31, 2016.

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

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

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 704 has an indeterminate fiscal impact to the private sector. Homeowners who have been harmed by Division II contractors and receive restitution from the Florida Homeowners' Construction Recovery Fund (Recovery Fund) will benefit from the bill.

Apartment owners with communities of 100 or more apartments who have employees make minor repairs to existing electric water heaters or existing electric HVAC systems

may experience savings if they meet the requirements of and utilize the contractor licensing requirements exemption.

**C. Government Sector Impact:**

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

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

In addition, the bill provides \$50,000 from the Program to the University of Florida M.E. Rinker, Sr., School of Construction Management for the Construction Industry Workforce Task Force.

The DBPR estimates an annual reduction in revenue related to eliminations of application fees for accreditation of advanced module courses of \$5,000 and a \$400 corresponding reduction to the Service Charge to General Revenue. The DBPR also estimates a recurring positive fiscal impact of \$22,000 to the Professional Regulation Trust Fund due to the elimination of a continuing course accreditation program administrator.<sup>94</sup>

The impact of permitting claims related to Division II contractors from the Recovery Fund is indeterminate. The amount of annual recovery fund payments is limited by the amount of funding received from the 1.5 percent surcharge on building permit fees. Due to the funding limits, the inclusion of additional claims may extend the amount of time it takes to pay each individual claim.

According to the DBPR, changes in licensing and renewal requirements will require programming modifications which can be handled with existing resources.<sup>95</sup>

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

**VI. Technical Deficiencies:**

None.

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<sup>94</sup> Department of Business and Professional Regulation, *Legislative Bill Analysis for SB 704* (Feb. 10, 2016).

<sup>95</sup> *Id.*

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

The bill creates five undesignated sections of the Florida Statutes.

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

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

**CS by Community Affairs on February 1, 2016:**

- Prohibits a municipality from denying development permit applications for a single-family home solely because a lot or combination of lots does not meet the current underlying zoning dimensional standards for minimum lot size and area;
- Prohibits a local enforcement agency from charging additional fees, charges, or expenses related to the recording of a contractor's license or workers' compensation insurance;
- Reinstates the wind mitigation exemption for professional engineer certification of HVAC units being installed;
- Removes provisions that previously deleted exemptions from legislative ratification for certain updates and amendments to the Florida Building Code and the Florida Fire Prevention Code and required a statement of estimated regulatory costs to evaluate new sections of certain codes;
- Requires the Florida Building Commission to adopt a specified definition of the term "fire separation distance" in the Florida Building Code;
- Requires the Florida Building Commission to amend the Florida Building Code to allow specified openings and roof overhang projections on the exterior wall of a building located on a zero lot line in certain circumstances;
- Creates the Construction Industry Workforce Task Force within the University of Florida Rinker School of Construction Management;
- Requires the Florida Building Commission to adopt into the Florida Building Code a specific energy rating index as an option for compliance with the energy code;
- Requires a restaurant, a cafeteria, or a similar dining facility, including an associated commercial kitchen, to have a fire area occupancy load requiring sprinklers consistent with the Florida Fire Prevention Code; and
- Authorizes a local jurisdiction to allow an individual who possesses a residential certification issued by the International Code Council to be a residential building code inspector or plans examiner within said jurisdiction.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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