

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1021 Construction
SPONSOR(S): Commerce Committee, Appropriations Committee, Avila
TIED BILLS: IDEN./SIM. **BILLS:** SB 1312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N	Brackett	Anstead
2) Appropriations Committee	23 Y, 0 N, As CS	Topp	Leznoff
3) Commerce Committee	29 Y, 0 N, As CS	Brackett	Hamon

SUMMARY ANALYSIS

The bill:

- Adopts certain recommendations made by the Construction Industry Workforce Taskforce (CIWT), including:
 - Requiring the Department of Education (DOE) and Department of Economic Opportunity (DEO) to create a plan to implement certain CIWT recommendations, and submit the plan to the CIWT on or before July 1, 2018; and
 - Requiring CareerSource Florida, Inc.(CSF) to create a plan to fund construction training programs recommended by the CIWT using existing federal funds, and to submit the plan to the CIWT on or before July 1, 2018.
- Requires professional engineers to disclose whether they have professional liability insurance and, if so, the limits of the policy prior to contracting for engineering.
- Provides that professional engineers, in addition to the Florida Solar Energy Center, may certify solar energy systems using standards in the Florida Building Code.
- Prohibits a political subdivision from adopting or enforcing ordinances or building permit requirements that conflict with corporate trademarks, service marks, logos, color patterns or other corporate branding on real property in connection with business activities related to the sale of liquid fuels or other franchises; providing for preemption of certain local laws and regulations; and providing for retroactive applicability.
- Requires the Florida Building Commission (FBC) to eliminate duplicative reporting requirements for HVAC and electrical systems, to adopt certain standards related to the substitution of components for residential exterior doors, and authorize electrical or mechanical engineers to provide certain reports.
- Prohibits the FBC from adopting national energy conservation standards related to automatic lights.
- Prohibits special or independent districts from requiring payment of additional fees, charges, or expenses, related to providing proof of licensure and insurance coverage.
- Prohibits local jurisdictions from requiring painting permits for homeowners.
- Prohibits local governments from requiring a separate water connection for a residential fire sprinkler system for a dwelling if the dwelling's original water connection is adequate and prohibits a local government from charging certain fees for larger water meters.
- Requires local jurisdictions to calculate the cost savings to the jurisdiction when owners or contractors hire private providers for inspection and plans examination services in lieu of local building inspectors and to reduce the fees accordingly.
- Includes municipal gas utilities in the exemption from construction contracting licensure requirements for public utilities and removes the Department of Business and Professional Regulation's (DBPR) rulemaking authority to define the term "incidental to their business."

The bill has an insignificant negative fiscal impact on state government. The fiscal impact on local governments is also likely to be insignificant. The bill has a positive fiscal impact on the private sector.

The bill provides an effective date of July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1021e.COM

DATE: 4/12/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Building Code

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.¹

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 1st edition replaced all local codes on March 1, 2002. In 2004, for the 2nd edition of the Code, the state adopted the International Code Council's I-Codes. All subsequent Codes have been adopted utilizing the International Code Council I-Codes as the foundation code.² The most recent Code is the 5th edition which is referred to as the 2014 Code. The 2014 Code went into effect June 30, 2015.

Florida Building Commission

The Florida Building Commission (FBC) was statutorily created to implement the Code. The FBC, which is housed within 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.³

Solar Energy Systems – Current Situation

Florida Solar Energy Center

In order to develop a sound energy policy relating to incident solar energy⁴ in Florida and ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality, the Legislature formed the Florida Solar Energy Center (FSEC)⁵ in 1976 to serve as the state's energy research institute.⁶

A solar energy system is equipment which provides for the collection and use of solar energy for water heating, space heating or cooling, or other applications which would otherwise require a conventional

¹ DBPR, http://www.floridabuilding.org/fbc/information/building_commission.htm (last visited on Mar. 17, 2017).

² 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 fifty states have adopted the I-Codes.

³ DBPR, <http://www.myfloridalicense.com/dbpr/bcs/buildingcomm.html> (last visited on Mar. 17, 2017).

⁴ "Incident" in the study of physics means "the striking of a ray of light, beam of electrons, etc., on a surface;" therefore, in this instance, "incident solar energy" means solar energy from solar rays striking a building, etc. Dictionary.com, LLC, *Incidence*, <http://www.dictionary.com/browse/incidence> (last visited March 16, 2017).

⁵ s. 377.705(2)(a)-(b), F.S.

⁶ Florida Solar Energy Center, *About Us*, <http://www.fsec.ucf.edu/en/about/index.htm> (last visited March 16, 2016).

source of energy, but perform primarily with solar energy. In systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy are considered to be a solar energy system.⁷

FSEC has been tasked with:

- Developing and promulgating standards for solar energy systems manufactured or sold in Florida based on the best currently available information and consulting with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems; and
- Establishing criteria for testing performance of solar energy systems and maintaining the necessary capability for testing or evaluating performance of solar energy systems. The center may accept results of tests on solar energy systems made by other organizations, companies, or persons when such tests are conducted according to the criteria established by the center and when the testing entity has no vested interest in the manufacture, distribution or sale of solar energy systems. FSEC may receive a testing fee sufficient to cover the costs of such testing.⁸

All solar energy systems manufactured or sold in Florida must meet the standards set by FSEC.⁹ FSEC also accepts standards and certifications for solar thermal products from the Solar Rating & Certification Corporation (SRCC)¹⁰ and the International Association of Plumbing and Mechanical Officials¹¹ (IAPMO).¹² In addition, the current version of the Code provides that solar energy systems installed in Florida are required to meet certain standards.¹³

In 2009, the Office of Program Policy Analysis & Government Accountability (OPPAGA) reported that FSEC had a 2 year backlog for testing and certifying solar energy systems, adversely affecting both manufacturers and citizens.¹⁴ However, in 2011, OPPAGA reported that the backlog had been eliminated and testing times were down to 129 days due to streamlined testing procedures.¹⁵

Professional Engineers

Current law provides that only professional engineers or licensed engineers may practice engineering in Florida. Engineers are regulated by the Florida Board of Professional Engineers (Board). The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The Board is comprised of 11 members appointed by the Governor and meets six times a year.¹⁶ Administrative, investigative and prosecutorial services are provided to the Board by the Florida Engineers Management Corporation

⁷ s. 377.705(3)(b), F.S.

⁸ s. 377.705(4)(a) –(c), F.S.

⁹ s. 377.705(4)(d), F.S.

¹⁰ SRCC produces solar thermal standards and certifications which are widely used globally. Solar Rating & Certification Corporation, *About Us – General*, <http://www.solar-rating.org/about/general.html> (last visited March 17, 2017).

¹¹ IAPMO certifies solar thermal products for use in North America. International Association of Plumbing and Mechanical Officials, *Solar Product Certification*, <http://www.iapmort.org/Pages/SolarCertification.aspx> (last visited March 17, 2017).

¹² Florida Solar Energy Center, *Testing and Certification*, <http://www.fsec.ucf.edu/En/certification-testing/index.htm> (last visited March 17, 2017).

¹³ Chapter 14 of the 5th edition of the Florida Building Code (Mechanical), Chapters 9 and 23 of the 5th edition of the Florida Building Code (Residential), Chapter 15 of the 5th edition of the Florida Building Code (Building), and Chapter 4 of the 5th edition of the Florida Building Code (Energy Conservation).

¹⁴ OPPAGA, Report No. 09-17, Florida Solar Energy Center Conducts Research and Development; Legislature Could Direct Fee Increases and Drop Certification Requirement, p. 1 (March 2009).

¹⁵ OPPAGA, Report No. 11-19, The Florida Solar Energy Center Eliminated the Backlog for Testing and Certification and Reduced its Reliance on State Funds, p. 1 (September 2011).

¹⁶ The Florida Board of Professional Engineers, *About Florida Board of Professional Engineers*, <https://fbpe.org/about/about-fbpe/> (last visited on Apr. 10, 2017).

(FEMC).¹⁷ FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

In order to obtain licensure as a professional engineer, applicants must: pass a fundamentals examination and a principles and practice examination, have good moral character, obtain a degree from a four year engineering curriculum, and have four years of engineering experience.¹⁸

Solar Energy Systems - Effect of the Bill

The bill allows a professional engineer to certify solar energy systems using the standards contained in the most recent version of the Code.

Professional Engineers Liability Insurance – Current Situation

Current law does not require professional engineers to maintain professional liability insurance unless the engineer is performing building inspection services.¹⁹ A professional engineer is also not required to disclose to a client whether they maintain professional liability insurance. If the professional engineer does have professional liability insurance, they are not currently required to disclose the limits of such policy.

Professional Engineers Liability Insurance - Effect of the Bill

The bill requires professional engineers to disclose prior to contracting for engineering whether they maintain professional liability insurance. If an engineer does have professional liability insurance, the bill requires the engineer to disclose the limits of the policy. Failure to do so may subject a professional engineer's license to discipline by the Board.

Construction Industry Workforce Taskforce Recommendations – Current Situation

Construction Industry Workforce Taskforce

In 2016, the Legislature created the “Construction Industry Workforce Taskforce” (CIWT) to address the construction industry labor force shortage in the state.²⁰ The CIWT proposed a list of recommendations to remediate the shortage of construction industry workers. The CIWT recommended that the Legislature:

- Expand the definition of a Local Educational Agency (LEA), as used in apprenticeship programs in Florida, to include institutions other than public schools, such as private training organization (for profit and nonprofit), labor unions, industry trade associations or other community based organizations;
- Create a legislative study to consider the appropriateness of moving apprenticeship programs from the Department of Education (DOE) to the Department of Economic Opportunity (DEO);
- Provide clarity regarding how current apprenticeships are funded from the state to the LEAs and what options the LEAs have in how they spend apprenticeship funding;
- Require DOE to recognize the National Center for Construction Education and Research (NCCER) curriculum, or other comparable national curriculum, as eligible for high school credits, college credits, and state supported scholarships (e.g., bright futures);
- Provide additional state Career and Technical Education (CTE) support to be directed towards K-12 programs so that “shop” or other construction related programs are added back into CTE programs;

¹⁷ The Florida Board of Professional Engineers, *About Florida Engineers Management Corporation*, <https://fbpe.org/about/about-femc/> (last visited on Apr. 10, 2017).

¹⁸ s. 471.015, F.S.

¹⁹ s. 471.033(1), F.S.

²⁰ ch. 2016-129, Laws of Fla.

- Extend the “sunset” timeframe for CIWT 4 additional years and provide funding of \$100,000 per year, and a mechanism to obtain matching funds to continue to coordinate CIWT. Funding will be used to continue data collection and analysis, ongoing economic impact studies, and subsequent strategies, implementation planning, and follow up;
- Direct CareerSource Florida, Inc. (CSF) to set aside existing federal training dollars for construction training programs using the previous state-wide Florida reBuilds Initiative (FRI) as an implementation model.
- Provide funding from the existing Department of Business & Professional Regulation (DBPR) “Building Permit Surcharge” trust fund dedicated to better code compliance through the recruitment and training of a qualified workforce.
- Allow for an alternative instructor certification process through the DOE that does not require certification through a LEA;
- Create a joint legislative audit committee to review compliance regarding use of building permit fees beyond the scope of supporting the building department activities; and
- Support The Building Officials Association of America, Inc. in the development of initiatives to further opportunities for potential building code enforcement professionals.²¹

CareerSource Florida, Inc.

CSF is a not-for-profit corporation administratively housed within DEO and is the principal workforce policy organization for the state. CSF designs and implements strategies that help Floridians enter, remain in, and advance in the workplace. CSF procures and disburses funds for workforce development.²²

Florida reBuilds Initiative

FRI was a program formed in 2005, in part, to counter the growing shortage of construction workers. The former Florida Agency for Workforce Innovation (AWI) performed a survey of 50,000 employers, which identified 13,712 construction job vacancies. In order to tackle the issue, AWI sought to provide individuals with short-term, entry-level training to enable them to enter into the construction trades.²³

FRI’s targeted areas for training programs were:

- Air Conditioning, Refrigeration, and Heating Technology (maximum of 240 class hours);
- Carpentry (maximum of 120 class hours);
- Dry wall (maximum of 120 class hours);
- Electricity (maximum of 240 class hours);
- Masonry (maximum of 80 class hours);
- Plumbing (maximum of 180 class hours); and
- Roofing (maximum of 120 class hours).

Participants were eligible for FRI programs if they were 18 years of age, a United States citizen, and willing to commit to attend the full program. If an eligible participant registered for the program, they were entered into database run by a regional workforce made available to educational providers. Once the educational provider recruited enough eligible participants and was authorized by AWI to begin the program, the participants were enrolled in classes lasting up to 8 weeks.

²¹ University of Florida, FLORIDA CONSTRUCTION WORKFORCE TASKFORCE 9-10 (January 27, 2017), available at <http://www.cce.ufl.edu/projects/current-projects/construction-workforce-taskforce/reports/>.

²² s. 445.004, F.S.

²³ Florida Division of Emergency Management, *Lt. Governor Jennings Unveils Florida Rebuilds Initiative to Assist with Labor Shortage and Hurricane Recovery* (December 13, 2005), available at http://www.floridadisaster.org/eoc/eoc_Activations/Wilma05/Reports/FLRebuilds.pdf.

The educational providers were reimbursed \$9 per class hour, up to the maximum hours identified per program area. Regional workforce boards were paid \$25 per participant in an approved program and \$250 per participant who was placed on a job site within 90 days of the program completion.²⁴

Construction Industry Workforce Taskforce Recommendations - Effect of the Bill

The bill requires DOE and DEO to create a plan to implement the recommendations of the CIWT, which must be provided to the CIWT on or before July 1, 2018.

The bill also requires CSF to create a plan to fund construction training programs recommended by the CIWT using existing federal funds and provide the plan to the CIWT on or before July 1, 2018. CSF must use FRI as the implementation model.

Building Commissioning Reporting Requirements, Automatic Lights and Door Components – Current Situation

Building Commissioning Reports

The Code defines “building commissioning” to mean that selected building systems have been designed, installed, and function according to the owner’s project requirements, construction documents, and the minimum requirements of the Code.²⁵ Commissioning reports are performed by registered design professionals. A registered design professional is anyone licensed in Florida as an architect, landscape architect, professional engineer, or a land surveyor and mapper.²⁶

Section C408 of the 5th edition of the Code (Energy Conservation) requires a commercial building to receive a commissioning report prior to receiving a passing mechanical final inspection. Heating, ventilation, air conditioning, and the lighting systems are tested in the report. The commissioning report includes:

- A commission plan which includes:
 - A description of the activities to accomplish in the report including the personnel intended to accomplish the activities;
 - A listing of the equipment, appliances, or systems to be tested, and a description of the tests to be performed;
 - The functions to be tested;
 - Conditions under which the test will be performed; and
 - Measurable criteria for performance.
- A preliminary report of tests and results which must identify:
 - Deficiencies found during testing that have not been corrected; and
 - Tests that cannot be performed because of climate conditions and the conditions required to perform the tests.
- A final report which includes:
 - Test results;
 - Disposition of deficiencies found during testing; and
 - A test procedure used for repeatable testing outcomes.²⁷

Door components

Door components are the items such as the hinge, lockset, weatherstrip, trim, and rails that make up a door.

²⁴ Florida Agency for Workforce Innovation, *Florida Rebuilds Program Operations*, available at http://floridajobs.org/pdg/Memos/FIReBuildsProgOp_Atchmnt_121305.pdf.

²⁵ Section C202 of the 5th edition of the Florida Building Code (Energy Conservation).

²⁶ s. 725.08(4), F.S.

²⁷ Section C408 of the 5th edition of the Florida Building Code (Energy Conservation).

Section R612.9 of the 5th edition of the Code (Residential) provides that residential door components may be substituted or interchanged in exterior door assemblies if the components have been approved by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices.²⁸

American National Standards Institute and World Millwork Alliance

The American National Standards Institute (ANSI) is a non-profit organization that aims to strengthen the U.S. market place, protect the environment, and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines.²⁹

The World Millwork Alliance (WMA) is a wholesale distribution association dedicated to the progression and prosperity of the millwork industry.³⁰ The WMA also develops standards and is accredited by ANSI. In 2009, the WMA developed the WMA 100, a voluntary performance standard for side-hinged exterior doors. The WMA 100:

- Is approved by ANSI;
- Uses the ASTM E330 test method to obtain a full system design pressure rating;
- Defines methods for qualifying door system components for substitution in the rated system; and
- Outlines slab stiffness testing procedures for use in determining component substitution.³¹

The ASTM E330 test is designed by the American Society for Testing and Materials International, and is a standard for determining the effects of a wind load on exterior building surface elements.³² The 5th edition of the Code (Residential) requires exterior doors with side hinges to either conform to the AAMA/WDMA/CSA 101/I.S.2/A440 or the ASTM E330.³³

American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard

The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) is a society founded in 1894 that focuses on improving building systems, energy efficiency, indoor air quality, and refrigeration through research publishing, continuing education and standards.³⁴

ASHRAE's energy conservation standard for buildings that are not low-rise residential buildings is Standard 90.1-2016 (Standard 90). Section 9.4.1.1(g) of Standard 90 provides that the general lighting power in an enclosed area of a building must automatically reduce by 50% within twenty minutes of all occupants leaving the area.³⁵

The most current version of the Code adopted the 2010 version of Standard 90.³⁶ However, the 2010 version of Standard 90 does not include Section 9.4.1.1(g).³⁷

²⁸ Section R612.9 of the 5th edition of the Florida Building Code (Residential).

²⁹ ANSI, *About ANSI*, https://www.ansi.org/about_ansi/overview/overview?menuid=1 (last visited on Apr. 10, 2017).

³⁰ WMA, *About*, <http://worldmillworkalliance.com/about/> (last visited on Apr. 10, 2017).

³¹ WMA, *ANSI/WMA 100*, <http://worldmillworkalliance.com/codes-and-standards/wma-100/> (last visited on Apr. 10, 2017).

³² ASTM International, *Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights, and Curtain Walls by Uniform Static Air Pressure Difference*, <https://www.astm.org/Standards/E330.htm> (last visited on Apr. 10, 2017).

³³ Section R612.3 and R612.5 of the 5th edition of the Florida Building Code (Residential).

³⁴ ASHRAE, <https://www.ashrae.org/about-ashrae> (last visited on Mar. 16, 2017).

³⁵ ASHRAE, *Standard 90.1-2016: Energy Standards for Buildings Except Low-Rise Residential Buildings*, [https://ashrae.iwrapper.com/ViewOnline/Standard_90.1-2016_\(IP\)](https://ashrae.iwrapper.com/ViewOnline/Standard_90.1-2016_(IP)), (last visited Mar. 16, 2017).

³⁶ Section C405.7 of the 5th edition of the Florida Building Code (Energy Conservation).

³⁷ ASHRAE, *Standard 90.1-2010: Energy Standards for Buildings Except Low-Rise Residential Buildings*,

http://www.usailighting.com/stuff/contentmgr/files/1/b90ce247855d0f17438484c003877338/misc/ashrae_90_1_2010.pdf, (last visited April 4, 2017).

Building Commissioning Reporting Requirements, Automatic Lights and Door Components - Effect of the Bill

The bill requires the FBC to eliminate duplicate commissioning reporting requirements for HVAC and electrical systems. The bill also authorizes electrical or mechanical engineers to provide commissioning reports.

The bill provides that residential door components may be substituted in exterior door assemblies if the components:

- Are provided by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices;³⁸ **or**
- Comply with the ANSI/WMA 100.

The bill prohibits the FBC from adopting Section 9.4.1.1(g) of Standard 90 of the ASHRAE related to automatic lighting.

Local Ordinances, Building Permits and Sign Requirements – Current Situation

Florida has adopted a uniform building code in accordance with s. 553.³⁹ Section 553.79, F.S., as part of the Florida Building Codes Act, has provisions relating to permits, applications, issuance, and inspections pertaining to the Florida Building Code. Local jurisdictions ensure compliance with the Florida Building Code.

Local jurisdictions may set requirements for signs, and sign placement for local businesses by local ordinance.

The Florida Department of Agriculture and Consumer Services regulates gasoline service stations in accordance with ch. 526. There are approximately 9,000 gasoline stations within Florida.

Federal franchise laws give prospective purchasers of franchises material information needed to weigh risks and benefits of such investments. The Federal Trade Commission's regulations, 16 C.F.R. ss. 436.1, et. seq., require franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. The Florida Franchise Act, s. 817.416, F.S., provides a private right of action to a civil litigant when a person makes certain misrepresentations related to franchises. Florida does not currently regulate private rights to contract related to franchising. Florida limits franchise regulation to antifraud, unfair trade practices, and creating rights for violations of federal franchise disclosure laws.

Local Ordinances, Building Permits and Sign Requirements - Effect of the Bill

The bill amends s. 553.79, F.S., creating s. 553.79(20), specifying that political subdivisions of the state may not adopt or enforce ordinances, or impose building permits or other development order requirements that:

- Contain any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under ch. 526, related to the sale of liquid

³⁸ Email from Mo Madani, Program Manager, Department of Business and Professional Regulation, RE: Question (Apr. 11, 2017).

³⁹ s. 553.72, F.S.

fuels, or in carrying out business franchise activities, as defined by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. Seq.; or

- Impose requirements related to the design, construction or location of signage that advertises the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121, F.S.

The bill specifies that s. 553.79(20), F.S., doesn't affect design and construction requirements contained in the Florida Building Code. Additionally, the bill specifies that all local ordinances and requirements prohibited by s. 553.79(20), F.S., are preempted and superseded and that s. 553.79(20), F.S., shall apply retroactively.

Local Government Fees – Current Situation

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

Local governments have created fee schedules 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 re-permitting fees, time extension fees, re-inspection fees, and licensing fees.

Local governments may not require additional fees for:

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued; and
- Providing, recording, or filing evidence of workers' compensation insurance coverage required by ch. 440, F.S.;⁴⁰

A private provider is a licensed engineer or architect who may be hired to perform building code inspection services by a property owner or contractor. Private providers are able to provide building plans, perform building code inspections within the scope of the provider's license, and prepare certificates of compliance. For purposes of performing inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings, the term "private provider" also includes building officials, inspectors, and plans examiners.⁴¹ Currently, when an owner or contractor hires a private provider to perform plans examination or inspection services that would otherwise be done by the local jurisdiction's official, the owner or contractor is often required to pay the permitting fee to the local jurisdiction resulting in the owner or contractor paying twice for such inspections.

Local Government Fees - Effect of the Bill

The bill provides that special⁴² and independent districts⁴³ may not require additional fees at any time for:

⁴⁰ s. 553.80(7), F.S.

⁴¹ s. 553.791(1)(i), F.S.

⁴² See generally Local Government Formation Manual 2017-2018, Chapter 5.

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued; or
- Providing, recording, or filing evidence of workers' compensation insurance coverage required by ch. 440, F.S.

In addition, the bill prohibits a local government from requiring an owner of a residence to obtain a permit to paint their residence regardless if the owner is a limited liability company.

The bill also provides that it is the intent of the Legislature that owners and contractors should not be required to pay extra costs by local governments related to building permitting when hiring a private provider for building inspection services. The bill requires a local government to calculate their costs savings when an owner or contractor hires a private provider to perform building inspection services in lieu of the local government's building official, and to reduce fees accordingly.

Fire Prevention and Control – Current Situation

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.⁴⁴

One of the duties of the State Fire Marshal is to adopt by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.⁴⁵

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances which conflict with ch. 633, F.S., or any other state law.⁴⁶

Fire Prevention and Control - Effect of the Bill

The bill amends ch. 633, F.S., to prohibit local governments including utility providers from requiring a separate water connection for a fire sprinkler system for a one or two family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system.

The bill also amends ch. 633, F.S., to prohibit a local government from charging a water or sewer rate for a larger water meter for a one or two family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter. However, if the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.

⁴³ Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program Official List of Special Districts Online, *State Totals*, <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm> (last visited Apr. 2017). As of April 11, 2017, there were 631 active dependent special districts and 1,031 active independent special districts in Florida.

⁴⁴ s. 633.104, F.S.

⁴⁵ s. 633.202, F.S.

⁴⁶ ss. 633.108; 633.208; & 633.214(4), F.S.

Construction Contracting Exemption for Public Utilities – Current Situation

Construction contractors are licensed and regulated under Part I of ch. 489, F.S., which provides that it is “necessary in the interest of the public health, safety, and welfare to regulate the construction industry.” Construction contracting essentially means building or altering a structure for compensation.

In order to perform construction contracting a person must be licensed as a contractor, an employee of a contractor, or fall under one of the exemptions to licensure. Employees of a public utility are exempt from licensure. Public utilities include special gas districts, telecommunications companies, and natural gas transmission companies, “performing construction, maintenance, or development work, which includes, but is not limited to, work on bridges, roads, streets, highways, railroads, or work incidental to their business.” Current law requires DBPR to create a rule to define “work incidental to their business.”⁴⁷

DBPR defined by rule “incidental to their business” to mean work performed exclusively on the supply side of the end use metering device, and excludes all work on the commercial side, house side, or customer side of the end use metering device except for inspections for leaks and the repair thereof, testing of water quality, ignition of pilot lights, and termination of or activation of natural gas flow.⁴⁸

A public utility is defined to mean any person or entity supplying electricity or gas to or for the public within the state. The term does not include:

- Municipalities;
- Cooperatives;
- Dependent or independent special natural gas districts;
- Natural gas transmission pipeline companies only making sales or deliveries of natural gas directly to industrial consumers at wholesale;
- Any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; and
- Any person supplying liquefied petroleum gas, in either liquid or gaseous form, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.⁴⁹

A telecommunications company is defined to mean any entity and any political subdivision in the state that offers two-way telecommunications services within the state by use of a telecommunications facility to the public for hire. The term does not include:

- An entity that provides a telecommunications facility exclusively to a certified telecommunications company;
- An entity that provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company;
- A commercial mobile radio service provider;
- A facsimile transmission service;
- A private computer data network company not offering service to the public for hire;
- A cable television company providing cable service as defined in 47 U.S.C. s. 522;
- An intrastate interexchange telecommunications company;
- An operator services provider; or
- An airport that provides communications services within the confines of its airport layout plan.⁵⁰

⁴⁷ s. 489.103(5), F.S.

⁴⁸ Rule 61G4-12.011(10), F.A.C.

⁴⁹ s. 366.02(1), F.S.

⁵⁰ s. 364.02(13), F.S.

A natural gas transmission company is defined to mean any person owning or operating facilities located wholly within the state for the transmission or delivery for the sale of natural gas for compensation. The term does not include any:

- Person that owns or operates facilities primarily for the local distribution of natural gas;
- Person that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act; or
- Municipalities or any agency thereof or a special district created by special act to distribute natural gas.

A special gas district is a unit of local government created by general law, special act, or local ordinance or rule of the Governor and Cabinet that operates within a limited geographic boundary. There are currently four special gas districts in Florida.⁵¹

A municipal gas utility is a natural gas utility owned and/or operated by a municipality engaged in serving residential, commercial, and/or industrial customers, usually within the boundaries of the municipality. There are currently 25 municipal gas districts in Florida.⁵²

Construction Contracting Exemption for Public Utilities - Effect of the Bill

The bill provides that employees of municipal gas utilities performing construction, maintenance, or development work are also exempt from the contractor licensing requirements of Part I of ch. 489.

The bill removes the requirement that work done by public utility employees must be “incidental to their business” in order to qualify for the licensure exemption and removes DBPR’s rulemaking authority to define the term “incidental to their business.”

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 377.705, F.S., exempting certain solar energy systems from the FSEC requirements.
- Section 2.** Amends s. 471.033, F.S., providing that a professional engineer’s license may be disciplined for failing to disclose whether the engineer maintains professional liability insurance.
- Section 3.** Amends s. 489.103, F.S., providing that municipal gas utilities are exempt from construction contracting licensure requirements.
- Section 4.** Amends s. 553.79, F.S., prohibiting a political subdivision from adopting or enforcing certain building permits or other development order requirements related to franchises, providing for preemption of certain local laws and regulations related to gas stations, and providing for retroactive applicability.
- Section 5.** Amends s. 553.791, F.S. requiring local jurisdictions to reduce permitting fees when owners or contractors hire private providers.
- Section 6.** Amends s. 553.80, F.S., prohibiting independent and special districts from charging certain additional fees.

⁵¹ See Florida Public Service Commission, *2017 Facts and Figures of the Florida Utility Industry*, <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/March%202017.pdf> (last visited on Apr. 10, 2017).

⁵² *Id.*

- Section 7.** Creates s. 553.9081, F.S., prohibiting the FBC from adopting certain standards and requiring the elimination of duplicate testing requirements.
- Section 8.** Amends s. 633.208, F.S., exempting residential fire sprinkler systems from certain connection fees.
- Section 9.** Prohibits local enforcement agencies from requiring certain permits.
- Section 10.** Requires DEO and DOE to study how to implement recommendations from the CIWT and submit the study to the CIWT by a certain date.
- Section 11.** Requires CSF to study how to fund certain construction training programs and submit the study to the CIWT by a certain date.
- Section 12.** Requires the FBC to adopt a provision relating to standards for the substitution of door components.
- Section 13.** Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
Unknown.
- 2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
The amount of additional fees collected by independent and special districts associated with applying for building permits may be reduced.⁵³ However, any reduction in fees is indeterminate and likely insignificant.

The amount of building inspection services fees collected by local jurisdictions when private providers are hired by owners or contractors may be reduced. However, any reduction in fees is indeterminate and may be insignificant.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce certain permitting fees contractors and owners pay to pull permits, and obtain building inspection services.

Homeowners may pay less for water meters and there may be an increase in the purchase of fire sprinkler systems for residential dwellings.

D. FISCAL COMMENTS:

⁵³ Department of Business and Professional Regulation Bill Analysis, dated March 28, 2017.
STORAGE NAME: h1021e.COM
DATE: 4/12/2017

The Department of Education, in conjunction with the Department of Economic Opportunity, is directed to create a study on how to implement the recommendations of the CIWT. It is anticipated that the study can be completed within existing resources.

The bill provides that CareerSource Florida, Inc., develop a plan to fund construction training programs from existing federal funds. CareerSource Florida receives \$3 million annually in federal training dollars through the Incumbent Worker Training Program. However, CareerSource Florida's federal funds are currently directed to meet shortfalls in career fields other than construction. Possible redirecting of the federal funds for construction training purpose could leave Florida's current need for training programs in other career fields with deficiencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2017, the Appropriations Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed a requirement that DBPR provide \$150,000 to the University of Florida M.E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force; and
- Amended s. 553.79, F.S., prohibiting a political subdivision from adopting or enforcing certain building permits or other development order requirements, providing construction, providing for preemption of certain local laws and regulations, and providing for retroactive applicability.

On April 6, 2017, the Commerce Committee adopted seven amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide that a professional engineer's license may be disciplined for failing to disclose whether the engineer maintains professional liability insurance and policy limits.
- Clarify that it is the Legislature's intent that owners and contractors should not be required to pay twice for building plans and inspections when hiring private providers. Local jurisdictions must calculate the cost savings and reduce fees accordingly.
- Modify the construction contracting exemption for public utilities by providing that employees of public utilities, including municipal gas utilities, are exempt from construction contracting licensure requirements.

- Provide that a professional engineer may certify solar energy systems in lieu of the Florida Solar Energy Center.
- Clarify that independent or special districts, in addition to local enforcement agencies, cannot at any time charge additional fees for providing proof of licensure and insurance.
- Provide that the Florida Department of Education and the Florida Department of Economic Opportunity must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce report, and submit the plan to the Taskforce by July 1, 2018.
- Provide that CareerSource Florida, Inc., must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce using existing federal funds and the Florida ReBuilds' implementation model, and submit the plan to the Taskforce by July 1, 2018.

This analysis is drafted to the committee substitute as approved by the Commerce Committee.