

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

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1146

INTRODUCER: Community Affairs Committee and Senator Brodeur

SUBJECT: Florida Building Code

DATE: April 14, 2021

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

|    | ANALYST        | STAFF DIRECTOR  | REFERENCE | ACTION             |
|----|----------------|-----------------|-----------|--------------------|
| 1. | <u>Hackett</u> | <u>Ryon</u>     | <u>CA</u> | <u>Fav/CS</u>      |
| 2. | <u>Davis</u>   | <u>Sadberry</u> | <u>AP</u> | <u>Pre-meeting</u> |
| 3. | _____          | _____           | <u>RC</u> | _____              |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1146 amends the Florida Building Codes Act adding several new provisions. Specifically, the bill:

- Allows a substantially affected person to petition the Florida Building Commission (commission) for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Florida Building Code (building code), and establishes a process for such.
- Allows the commission to issue an “errata to the code” to correct demonstrated errors in provisions contained within the building code.
- Requires the commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law.
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.
- Expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

The bill also allows the owner of an onsite sewage treatment and disposal system, or the owner’s contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health.

Finally, the bill prohibits the Department of Health from requiring assisted living facilities to comply with rules relating to swimming pool lifeguards.

The bill may have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

## II. Present Situation:

### The Florida Building Code and Florida Building Commission

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. 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 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (building code), and that first edition replaced all local codes on March 1, 2002.<sup>2</sup> The current edition of the building code is the seventh edition, which is referred to as the 2020 Building Code.<sup>3</sup>

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The building code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>4</sup>

The main purpose of the building code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.<sup>5</sup>

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<sup>1</sup> Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Feb. 15, 2021).

<sup>2</sup> *Id.*; Department of Business and Professional Regulation (DBPR), *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited Feb. 15, 2021).

<sup>3</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Feb. 26, 2021).

<sup>4</sup> *See* s. 553.72(1), F.S.

<sup>5</sup> Florida Building Commission, *Advanced Florida Building Code Principals*, [http://www.floridabuilding.org/Upload/Courses\\_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf](http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf) (last visited Feb. 26, 2021).

### ***The Florida Building Commission***

The Florida Building Commission (commission) was statutorily created to implement the building code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the building code.<sup>6</sup>

The commission reviews several International Codes published by the International Code Council, the National Electric Code (NEC), and other nationally adopted model codes to determine if the building code needs to be updated and adopts an updated building code every three years.<sup>7</sup>

The commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.<sup>8</sup> TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.<sup>9</sup>

### ***Local Enforcement of the Florida Building Code***

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.<sup>10</sup>

Every local government must enforce the building code and issue building permits.<sup>11</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons that may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>12</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>13</sup> A building official is a local government employee or a person contracted by a local government who supervises building code activities, including plan review, enforcement, and inspection to ensure work complies with the building code.<sup>14</sup>

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<sup>6</sup> Sections 553.73, and 553.74, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> DBPR, *Florida Building Code Online*, [https://www.floridabuilding.org/c/c\\_commission.aspx](https://www.floridabuilding.org/c/c_commission.aspx) (last visited Feb. 26, 2021).

<sup>9</sup> Section 553.73(3), F.S.; Fla. Admin. Code R. 61G20-2.001.

<sup>10</sup> Section 553.72, F.S.

<sup>11</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>12</sup> See Sections 125.56(4)(a) and 553.79(1), F.S.

<sup>13</sup> Section 202 of the Building Code, Sixth Edition.

<sup>14</sup> Section 468.603(2), F.S.

### *Amendments to the Building Code*

The commission and local governments may adopt technical and administrative amendments to the building code. A technical amendment to the building code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the building code.<sup>15</sup> All amendments adopted by the commission require a 75 percent supermajority vote of approval.<sup>16</sup>

The commission may approve technical amendments to the building code once each year for statewide or regional application upon a finding that the amendment:<sup>17</sup>

- Is needed in order to accommodate the specific needs of the state;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the building code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the building code.

In order to adopt a technical amendment to the building code, the commission must meet the following requirements:<sup>18</sup>

- The proposed amendment has been published on the commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- The proposed amendment includes a fiscal impact statement that documents the costs and benefits of the proposed amendment;
- In order for a TAC to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before any consideration by the commission; and
- A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with ch. 120, F.S.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the building code so the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.<sup>19</sup>

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<sup>15</sup> Section 553.73, F.S.; Fla. Admin. Code R. 61G20-2.002.

<sup>16</sup> Fla. Admin. Code R. 61G20-2.002(13).

<sup>17</sup> Section 553.73(9), F.S.

<sup>18</sup> Section 553.73(3) and (9), F.S.

<sup>19</sup> Section 553.73(7), F.S.

However, for certain amendments the commission may adopt amendments at any time and only has to follow the rule adopting procedures in ch. 120, F.S. The commission may adopt amendments using the rule adoption procedure to address the following:<sup>20</sup>

- Conflicts within the updated building code;
- Conflicts between the updated building code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;
- Adoption of an updated edition of the NEC if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhancement of the construction requirements relating to wind resistance or the prevention of water intrusion.

### ***Local Amendments to the Building Code***

Local governments may adopt amendments to the building code that are more stringent than the building code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the building code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the building code.<sup>21</sup>

Current law allows local governments to adopt technical amendments to the building code every six months if:<sup>22</sup>

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the building code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the building code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the commission.

A technical amendment adopted by a local government takes effect 30 days after the commission receives the amendment and publishes the amendment on its website.<sup>23</sup>

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<sup>20</sup> Section 553.73(8), F.S.; Fla. Admin. Code R. 61G20-2.002(2).

<sup>21</sup> Section 553.73(4), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 553.73(4), F.S.; Fla. Admin. Code R. 61G20-2.003.

The commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the commission decides to review a local amendment, it must send the amendment to the applicable TAC for review.<sup>24</sup>

The TAC must then make a recommendation to the commission about whether the local amendment complies with the requirements of current law. The commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.<sup>25</sup>

Each county and municipality that adopts technical amendments to the building code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.<sup>26</sup>

A local government or the substantially affected party may appeal the compliance review board's decision to the commission within 14 days of the board's decision. The commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.<sup>27</sup>

The commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.<sup>28</sup>

### ***Interpretations of the Building Code***

The commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the building code, and give binding interpretations of the building code.<sup>29</sup>

A substantially affected person, state agency, or a local government may petition the commission in writing for a declaratory statement relating to interpretations of the building code, or the enforcement or administration of the building code by local governments. The commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.<sup>30</sup>

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<sup>24</sup> *Id.*

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

<sup>26</sup> Section 553.73(4), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Section 553.775, F.S.

<sup>30</sup> Sections 553.775(3), 120.565, and 120.68, F.S.

A substantially affected person may also petition the commission to review a local building official's interpretation of the building code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.<sup>31</sup> A substantially affected person may petition the commission to review a local building official's interpretation of the building code if:<sup>32</sup>

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the commission on a form adopted by the commission which contains:
  - The name and address of the local government and the local building official;
  - The name, address, and phone number of the substantially affected person, and an explanation of how they are substantially affected by the building official's interpretation;
  - A statement of the provisions of the building code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
  - The local building official's response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the building code, the commission must provide copies to a panel, and publish the petition and the local building official's response on the commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The commission must coordinate with the Building Officials Association of Florida<sup>33</sup> to designate the panel.<sup>34</sup>

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the commission's website. The panel must issue a determination within 21 days of the petition being filed with the commission. The determination is binding upon all parties and all jurisdictions in Florida.<sup>35</sup> The determination must be published on the commission's website and the Florida Administrative Register.<sup>36</sup>

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<sup>31</sup> Section 553.775(3), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, <https://boaf.net/page/About> (last visited Jan. 8, 2020).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida Administrative Code & Florida Administrative Register, *FL Rules FAQ*, <https://www.flrules.org/Help/newHelp.asp#FAW> (last visited Jan. 15, 2020).

A party may appeal the panel's determination by filing an appeal with the commission within 30 days of the panel's determination. The commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The commission's ruling is subject to judicial review by a district court of appeal.<sup>37</sup>

### **Product Evaluation and Approval**

Current law requires the commission to develop and implement an approval of products for statewide use. The commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.<sup>38</sup> The commission approves the products in several categories for statewide use.<sup>39</sup>

To obtain state approval, a manufacturer must demonstrate that a product complies with the applicable standards and provisions of the building code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed, and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
  - The National Evaluation Service;
  - The International Association of Plumbing and Mechanical Officials Evaluation Service;
  - The International Code Council Evaluation Services;
  - Underwriters Laboratories, LLC;
  - The International Conference of Building Officials;
  - SBCCI Public Safety Testing and Evaluation Services, Inc.;
  - Intertek Testing Services NA, Inc.; or
  - The Miami-Dade County Building Code Compliance Office Product Control Division.<sup>40</sup>

Currently, the commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the commission's rules.<sup>41</sup> However, the commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

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<sup>37</sup> Sections 553.775(3) and 120.68, F.S.

<sup>38</sup> Section 553.842(1), F.S.; Fla. Admin. Code R. 61G20-3.001.

<sup>39</sup> Fla. Admin. Code R. 61G20-3.001. The categories considered by this rule are panel walls, exterior doors, roofing products, skylights, windows, shutters, structural components, and impact protective systems.

<sup>40</sup> Section 553.842, F.S.; DBPR, Product Evaluation Entity List, [https://www.floridabuilding.org/pr/pr\\_org\\_lst.aspx](https://www.floridabuilding.org/pr/pr_org_lst.aspx) (last visited Mar. 29, 2021).

<sup>41</sup> Fla. Admin. Code R. 61G20-3.008.



## Required Information in Building Permit Application

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:<sup>42</sup>

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.<sup>43</sup>

## Private Providers

Any construction work that requires a building permit also requires plans and inspections by a local building official to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections. In addition to required inspections, a local building official may require other inspections of any work to ensure it complies with the building code.<sup>44</sup>

In 2002, the Legislature created s. 553.791, F.S., allowing contractors and property owners to hire licensed building code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may not audit a private provider more than four times in a month unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.<sup>45</sup>

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<sup>42</sup> Section 713.135(5) and (6), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> Sections 107, 110.1, and 110.3 of the Building Code, Sixth Edition.

<sup>45</sup> Sections 553.791(1), (13), and (18), F.S.

## Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.<sup>46</sup> Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria breakdown the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.<sup>47</sup>

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.<sup>48</sup> In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.<sup>49</sup> For example, in rural areas and low-density developments, central sewer systems are not cost-effective.

Permitting and official inspection of OSTDSs is administered by the Environmental Health Section of the Department of Health (DOH) in each county.<sup>50</sup> The section permits, regulates, and inspects the construction of new systems, repairs and modifications to existing systems, existing system approvals, and abandonments of systems.<sup>51</sup> Much like other construction projects, installation, repair, alteration, modification, abandonment, and replacement of OSTDSs requires a permit.<sup>52</sup> Before an OSTDS is covered with earth, put into service, or repaired, the county DOH must inspect the system for compliance with statutory requirements and the DOH rules.<sup>53</sup> Chapter 2020-150, L.O.F., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

## Assisted Living Facilities

An assisted living facility is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>54</sup> A personal service is

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<sup>46</sup> Department of Health (DOH), *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 31, 2021); Environmental Protection Agency (EPA), *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Mar. 31, 2021).

<sup>47</sup> *Id.*

<sup>48</sup> DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 24, 2021).

<sup>49</sup> DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited Mar. 24, 2021). The report begins on page 56 of the PDF.

<sup>50</sup> DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Apr. 12, 2021).

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

<sup>52</sup> Fla. Admin. Code R. 64E-6.003(1).

<sup>53</sup> Fla. Admin. Code R. 64E-6.003.

<sup>54</sup> Section 429.02(5), F.S. An assisted living facility does not include an adult family-care home or a non-transient public lodging establishment.

direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>55</sup> Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>56</sup>

Assisted living facilities are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S., Florida Administrative Code Rule 59A-36. In addition to a standard license, an assisted living facility may have one or more specialty licenses that allow the assisted living facility to provide additional care. These specialty licenses include limited nursing services,<sup>57</sup> limited mental health services, and extended congregate care services.<sup>58</sup>

Current law requires rules governing assisted living facilities to promote a safe and sanitary environment that is residential and non-institutional in design or nature.<sup>59</sup> Current law also requires that rules set requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions that are not in conflict with ch. 553, F.S., governing building construction standards. Current law also requires the AHCA to develop key quality-of-care standards for assisted living facilities with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.<sup>60</sup> Rules must also address moratoriums, classification of deficiencies, the levying of penalties and the use of income from fees and fines.<sup>61</sup>

### ***Public Pools***

The DOH is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from the DOH must be obtained. If the DOH determines that the public swimming pool is, or is reasonably expected to be, operated in compliance with state laws and rules, the DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. The DOH is authorized to establish a schedule of fees for plan approval and permitting.<sup>62</sup> Operating permits must be renewed annually and may be transferred from one name or owner to another.<sup>63</sup>

A public swimming pool includes “a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without

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<sup>55</sup> Section 429.02(16), F.S.

<sup>56</sup> Section 429.02(1), F.S.

<sup>57</sup> Section 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed as a nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.).

<sup>58</sup> Section 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an assisted living facility. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.

<sup>59</sup> Section 429.41(1), F.S.

<sup>60</sup> Section 429.41(5), F.S. The Agency for Health Care Administration (AHCA) reviews the key quality-of-care standards for compliance during an abbreviated biennial licensure inspection (s. 429.41(5), F.S.).

<sup>61</sup> Section 429.41(1)(f), F.S.

<sup>62</sup> Section 514.033, F.S.

<sup>63</sup> Section 514.031(2) and (3), F.S.

payment of a fee, and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.”<sup>64</sup>

All public pools must be equipped with the following safety features:<sup>65</sup>

- Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices;<sup>66</sup>
- A shepherd’s hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd’s hook on each of the longer sides of the pool<sup>67</sup>;
- At least one 18-inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool;
- Safety equipment shall be mounted in a conspicuous place and be readily available for use; and
- Lighting if the pool is used during nighttime.

### ***Lifeguards***

A “lifeguard” is a person responsible for the safety of the users of a public swimming pool. Lifeguards are not required at a public pool unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures.<sup>68</sup>

However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs.<sup>69</sup>

### ***Pools in Assisted Living Facilities***

Current law gives the DOH the authority to adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities.<sup>70</sup> The DOH’s rules require a group care facility, with a pool, to provide direct supervision by an adult employee when in use or when the area is occupied by minors and other residents that cannot swim. The adult employee providing supervision must have completed a community water safety course by the American Red Cross, Y.M.C.A., or other approved aquatic training program.<sup>71</sup>

Group care facilities include public or private schools, assisted living facilities, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment

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<sup>64</sup> *Id.*

<sup>65</sup> Fla. Admin. Code R. 64E-9.008(3) and (7).

<sup>66</sup> Federal law requires public pools and spas to have a drain cover and a secondary anti-entrapment device in order to avoid suction entrapment. 15 U.S.C. s. 106.

<sup>67</sup> Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from the requirement to have shepherd’s hook and lifesaving ring requirement. *Id.*

<sup>68</sup> Section 514.071, F.S.; Fla. Admin. Code R. 64E-9.008(2).

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

<sup>70</sup> *Id.*

<sup>71</sup> Fla. Admin. Code R. 64E-12.011(3).

facilities, home for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, or boarding schools.<sup>72</sup>

On July 6, 2018, the DOH opened up its rules relating to group care facilities, including the rule relating to pools in group care facilities, in order to update the rules by incorporating technical changes for consistency with changes in industry standards, reduce surplus language, and increase clarity. On March 11, 2020, the DOH held a workshop to receive comments on the possible rule updates.<sup>73</sup> The proposed rule requires assisted living facilities with pools, spas, or open water hazards to implement and maintain a written policy pertaining to the use of water safety barriers, water safety devices and equipment, and cardiopulmonary resuscitation. The policy must be available for review by the DOH.<sup>74</sup>

The proposed rule provides that if an assisted living facility has a pool, spa, or open water hazard that is not considered a public swimming pool, the facility must have direct supervision by an adult employee when in use or when the area is occupied by minors and other residents or visitors that cannot swim. The individual responsible for supervision during water activities or near water hazards must be knowledgeable of:<sup>75</sup>

- The written policy;
- The correct use of water safety devices and equipment;
- The correct use of any water safety barriers; and
- Cardiopulmonary resuscitation procedures.

The proposed rule also provides that an assisted living facility with a pool or spa that is not considered a public swimming pool, must have a residential swimming pool barrier that meets the standards of the building code, and be equipped with water safety devices including a shepherd's hook not less than 16 feet in length and an 18-inch diameter lifesaving ring.<sup>76</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 381.0065, F.S., to allow the owner of an onsite sewage treatment and disposal system (OSTDS), or the owner's contractor, to select a private provider to provide official inspection services of such systems in lieu of the Department of Health (DOH).<sup>77</sup> This authorization is substantially similar to the provisions governing private building inspectors in ch. 553, F.S.

<sup>72</sup> Section 381.006(16), F.S.

<sup>73</sup> DOH, *Group Care Facilities*, <http://www.floridahealth.gov/environmental-health/group-care-facilities/index.html> (last visited Feb. 25, 2021). Department of State, History of Rule 64E-12.011 since Jan. 6, 2006, Florida Administrative Code and Florida Administrative Register <https://www.flrules.org/gateway/RuleNo.asp?title=COMMUNITY%20BASED%20RESIDENTIAL%20FACILITIES&ID=64E-12.011> (last visited Feb. 25, 2021).

<sup>74</sup> Email from Andrew Love, Legislative Planning Director, DOH, FW: Violations at pool inspections Re: Pool Bills - Exemption for HOAs HB 463/SB 902 (Feb. 26, 2021).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Chapter 2020-150, Laws of Fla., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

An owner or contractor using a private provider must notify the DOH two days prior to the first inspection of their intention to use a private provider. This notification must include the private provider's business information, professional license or certification number, and qualification statements or resumes. It must also include an acknowledgement form with prescribed language stating the owner's rights and liabilities to the DOH. An owner or contractor who changes the listed private providers must also update the notice given to the DOH.

The DOH must reduce permit fees based on savings to the DOH due to a private provider providing the inspection services.

The OSTDS inspection services may be performed only by a private provider, a duly authorized representative of a private provider, or a person who is:

- Certified as an environmental health professional<sup>78</sup> by the DOH under s. 381.0101, F.S.;
- A master septic contractor<sup>79</sup> licensed by the Department of Business and Professional Regulations pursuant to ch. 489, F.S.;
- A professional engineer who has passed all three parts of the Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training<sup>80</sup>; or
- A person working as staff under such an engineer, who has also passed all three parts of the OSTDS Accelerated Certification Training.

The DOH may audit the performance of OSTDS inspection services by private providers. Such an audit cannot occur more than four times per month unless the DOH determines that an inspected and passed OSTDS should not have passed. Audits may not delay work following a passed inspection.

**Section 2** amends s. 514.0115, F.S., to prohibit the DOH from requiring assisted living facilities with pools to comply with the DOH rules relating to swimming pool lifeguards.

**Section 3** amends s. 553.73, F.S., to provide that a substantially affected person<sup>81</sup> may petition the Florida Building Commission (commission) for a non-binding advisory opinion for any local

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<sup>78</sup> "Environmental health professional" means a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members. Section 381.0101(1)(d), F.S.

<sup>79</sup> "Master septic tank contractor" means a septic tank contractor whose services are unlimited in the septic tank trade who has had at least three years' experience as a Florida-registered septic tank contractor or a certified plumbing contractor who has provided septic tank contracting services for at least three years and who has the experience, knowledge, and skills to install, maintain, repair, close repairs of, and alter all types of onsite sewage treatment and disposal systems, to design onsite sewage treatment and disposal systems, where not prohibited by law, to perform and submit soil evaluations, when determined to meet site-evaluation expertise established by rule, and to use materials and items used in the installation and maintenance of all types of onsite sewage treatment and disposal systems. Section 489.551(2), F.S.

<sup>80</sup> The Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training program, administered by the DOH, provides five days of training on OSTDSs and results in a special certification. The program is available to private individuals, septic tank contractors, licensed plumbers, professional engineers, and staff working under professional engineers. DOH, *Accelerated Environmental Health Professional Certification and Master Septic Tank Contractor Training Participation and Examination Guide*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/training/documents/act-part-n-exam-guide1-12-2021.pdf> (last visited Apr. 1, 2021).

<sup>81</sup> A "substantially affected person" includes an owner or builder subject to the local government's regulation or an association of owners or builders who have members who are subject to the regulation.

government<sup>82</sup> regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Florida Building Code (building code) and was not adopted in accordance with the process for adopting local amendments to the building code.

The commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the building code if the substantially affected person submits a petition to the commission. The petition must also be submitted to the local government's general counsel or administrator by certified mail, return receipt requested. The local government may respond within 14 days, and send a copy of its response to the commission. The petition must be made using a form adopted by the commission that contains at a minimum:

- The name of the local government that enacted the regulation;
- The name and address of the local government's general counsel;
- The name, address, and phone number of the substantially affected person;
- An explanation of how the person is substantially affected by the local government's regulation; and
- A statement of why the regulation is a technical amendment to the building code, and which provisions of the building code are amended by the regulation, if any.

Upon receiving a petition to review a local government's regulation, the commission must publish the petition and the local government's response on the building code information system and allow for comments to be posted by interested parties.

The commission must consider the petition, the local government's response, any comments posted on the commission's website, and any recommendation provided by a Technical Advisory Committee. The commission must issue a non-binding advisory opinion stating whether the local government's regulation is a technical amendment to the building code within 30 days of receiving the petition. The commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

This section further provides that the commission may also issue an "errata to the code" to correct demonstrated errors in provisions contained with the building code. An "errata to the code" means a list of errors on current and previous editions of the building code.

The determination of such errors and the issuance of an "errata to the code" must be approved by a 75 percent supermajority vote of the commission.

**Section 5** amends s. 553.79, F.S., to prohibit a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

**Section 6** amends s. 553.791, F.S., to expressly authorize local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

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<sup>82</sup> A "local government" means a county, municipality, special district, or political subdivision of the state.

**Section 7** amends s. 553.842, F.S., to require the commission to adopt rules for approving evaluation entities in addition to the ones already approved and listed in current law.

**Sections 4, 8, and 9** correct statutory references to conform to changes made by the bill.

**Section 10** provides the bill takes effect July 1, 2021.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill may implicate the constitutional single subject rule. Article III, s. 6 of the Florida Constitution imposes a single subject restriction on laws enacted by the Legislature: “Every law shall embrace but one subject and matter properly connected therewith....” The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.

The title of the bill is “An act relating to the Florida Building Code.” However, section one of the bill relates to the inspection of onsite sewage treatment and disposal systems, and section two relates to the Department of Health’s lifeguard standards for pools serving assisted living facilities, which may not properly connect to the Florida Building Code.



**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Allowing the use of private providers to inspect onsite sewage treatment and disposal systems (OSTDSs) may increase efficiencies and lower costs for OSTDS owners. Additionally, persons qualified to be a private provider under the bill will be able to offer official inspection services, increasing business opportunities.

Prohibiting local governments from requiring contracts between owners and builders as a condition to apply or obtain a building permit may have a positive impact by preventing certain proprietary information from becoming public.

**C. Government Sector Impact:**

Allowing the use of private providers to inspect OSTDSs may save government funds by lightening the burden on inspections performed by the government; however, each inspection performed by a private provider reduces the revenue received by the governmental entity that would have done the inspection. The Department of Health is currently responsible for performing these inspections; however, effective July 1, 2021, the Onsite Sewage Program will transfer to the Department of Environmental Protection.

According to Department of Business and Professional Regulation (DBPR), applicants for certification as product evaluation entities will be required to pay an initial application fee and renewals fees. The DBPR estimates no more than 75 new entities will apply for certification and estimates receiving no more than \$45,000 in new application fees and \$15,000 annually in renewal fees for such applicants.<sup>83</sup>

The Florida Building Commission may see an increased workload related to establishing a process for accepting petitions from affected persons, issuing non-binding advisory opinions. According to the DBPR, the technology contractor for the Florida Building Commission (commission) estimates updating the Building Code information system to implement the nonbinding advisory opinion process will cost approximately \$60,000.<sup>84</sup>

The provision allowing the commission to adopt an “errata to the code” is not anticipated to have a significant impact on the commission’s processes.<sup>85</sup>

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<sup>83</sup> See Department of Business and Professional Regulation, *HB 401 Bill Analysis*, p. 5, (Feb. 24, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>84</sup> *Id.*

<sup>85</sup> Email from the Legislative Affairs Coordinator, Department of Business and Professional Regulation, HB 401 Provision, (Mar. 30, 2021).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 1 provides that certain onsite sewage treatment and disposal system inspections may be performed by a “private provider” or a representative thereof. “Private provider” is not defined in ch. 381, F.S., and the operation of the term in the bill is unclear. An amendment may be necessary to more clearly define the professional licensing standards and requirements of a private provider.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 381.0065, 514.0115, 553.73, 553.77, 553.79, 553.791, 553.842, 125.01, and 125.56.

**IX. Additional Information:**

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

**CS by Community Affairs on March 30, 2021:**

The CS incorporates the provisions allowing an owner of an onsite sewage treatment and disposal system, or the owner’s contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health. It also expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

- B. **Amendments:**

None.