

**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 Community Affairs Committee

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BILL: CS/SB 648

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Building Safety

DATE: April 7, 2010

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u><b>Fav/1 amendment</b></u>
2.	<u>Messer</u>	<u>Burgess</u>	<u>BI</u>	<u><b>Favorable</b></u>
3.	<u>Gizzi</u>	<u>Yeatman</u>	<u>CA</u>	<u><b>Fav/CS</b></u>
4.	_____	_____	<u>EA</u>	_____
5.	_____	_____	<u>WPSC</u>	_____
6.	_____	_____	_____	_____

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

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

**I. Summary:**

This committee substitute (CS) revises various laws related to building safety.

The CS provides that the expiration, lapse, non-renewal, or revocation of a building permit issued to the property owner after a 3 year period provided to commence repair or rebuilding constitutes abandonment of the property as homestead.

The CS delays applicability of home inspector and mold assessor licensure and regulation until July 1, 2011, names home inspector and mold assessor licensing programs, amends licensure requirements, and provides guidelines for practicing home inspectors and mold assessors to be licensed under a grandfather provision.

Regarding elevator safety, the CS:

- States that the Division may enter and have reasonable access to all buildings and rooms or spaces which an existing or newly installed conveyance or equipment are located, authorizing the Division to grant variances for undue hardship.

- Exempts elevators issued certificates of operation before July 1, 2088 from any updates to the Elevator Safety Code concerning modifications for Phase II Firefighter Services until July 1, 2015 or until it is replaced or modified.
- Permits the use of a lock box to provide regional emergency elevator access.
- Repeals emergency alternative power requirements for high-rise residential multi-family dwellings.

Regarding the Florida Building Code, the CS:

- Authorizes distance learning courses as an alternative to continuing education requirements for certain licenses.
- Revises the surcharge for the Building Code Administrators and Inspectors Fund.
- Authorizes the Department of Community Affairs to contract for administration of the inspection and certification of manufactured buildings and reinstates local jurisdiction over prototype buildings.
- Amends authority of the Florida Building Commission to allow fees for nonbinding interpretations of the Building Code and amendments to the Florida Building Code addressing equivalency of standards, needs of state agencies facing federal mandates, and inconsistencies in federal and state law.
- Requires state agencies to contract for inspection services under the alternative plans review and inspection process or with a local governmental entity.
- Exempts certain mausoleums and prisoner housing from the Building Code.
- Revises requirements related to: carbon monoxide alarms, residential pool filtration pumps and motors, energy-saving devices, air conditioner installation, ground and roof-mounted mechanical equipment, windstorm mitigation, and classroom and public building illumination.

Relating to Fire Prevention and Safety, the CS:

- Prohibits a local government from requiring a property owner to install fire sprinklers in any residential property based on the use, change in use, or reclassification of that property as a rental property.
- Provides guidelines for the State Fire Marshal to follow when issuing expedited declaratory statements.
- Establishes a process for the Division and the Fire Code Interpretation Committee to issue nonbinding interpretations of the Florida Fire Prevention Code.
- Requires continuing education reciprocity between the Division of the State Fire Marshall and the Building Code Administrators and Inspectors Board.
- Amends certification requirements for fire protection service contractors, fire equipment dealers and certain firefighters.
- Revises continuing education licensure requirements.
- Prohibits agencies from requesting certain fire sprinkler systems to be removed.

The CS also directs that public fire hydrants owned by a governmental entity be inspected following standards adopted by the State Fire Marshal or equivalent standards. Additionally, the CS provides that county, municipal, and special district utilities may perform fire hydrant inspections with employees that have not been certified by the State Fire Marshal. However, the

fore mentioned utilities are responsible for ensuring that the designated employees are qualified to perform such inspections.

The CS repeals the 5-year inspection requirement concerning the maintenance, useful life, and replacement cost of common elements for certain condominiums.

This CS substantially amends the following sections of the Florida Statutes: 196.031, 399.02, 399.15, 455.2123, 468.631, 468.83, 468.8311, 468.8312, 468.8313, 468.8318, 468.8319, 468.832, 468.8324, 468.84, 468.8412, 468.8413, 468.8414, 468.8418, 468.8419, 468.842, 468.8421, 468.8423, 489.103, 489.5335, 553.37, 553.375, 553.509, 553.512, 553.721, 553.73, 553.74, 553.76, 553.775, 553.79, 553.80, 553.841, 553.842, 553.844, 553.885, 553.9061, 553.909, 553.912, 626.061, 627.711, 633.021, 633.0215, 633.0245, 633.025, 633.026, 633.081, 633.082, 633.352, 633.521, 633.524, 633.537, and 633.72.

This CS creates the following sections of Florida Statutes: 455.2122, 468.8325 and 468.8424.

This CS reenacts section 553.80(1) of the Florida Statutes.

This CS repeals section 718.113(6) of the Florida Statutes.

## **II. Present Situation:**

### **Abandonment of Property**

Section 196.031(6), F.S., provide:

[w]hen homestead property is damaged or destroyed by misfortune or calamity and the property is uninhabitable on January 1 after the damage or destruction occurs, the homestead exemption may be granted if the property is otherwise qualified and if the property owner notifies the property appraiser that he or she intends to repair or rebuild the property and live in the property as his or her primary residence after the property is repaired or rebuilt and does not claim a homestead exemption on any other property...

If the property owner fails to initiate the repair or rebuilding of the homestead property within three years after it was damaged or destructed, he or she is considered to have abandoned the property as a homestead.

### **Elevator Safety**

#### ***A. Regional Emergency Access***

The “Elevator Safety Act” in ch. 399, F.S., provides minimum safety standards for elevators and requires elevator personnel working under the provisions of the Florida Building Code to possess documented training and/or experience as well as familiarity with the operation and safety functions of components and equipment.”<sup>1</sup> The Bureau of Elevator Safety (bureau) in the Division of Hotels and Restaurants within the Department of Business and Professional

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<sup>1</sup> Section 399.001, F.S.

Regulation is responsible for carrying out the provisions in chapter 399, F.S. relating to elevator inspection and regulation.<sup>2</sup>

In 2004, upon the recommendations of the Florida Building Commission, the Legislature enacted 2004-12, Laws of Florida, to provide for regional emergency elevator access.<sup>3</sup> It mandates that elevators in buildings on which construction began after June 30, 2004, and are six or more stories in height, including hotels and condominiums, must be keyed or retrofitted with a master key to allow firefighters emergency access. It applies to all elevators that allow public access, including service and freight elevators, and requires that elevators be keyed to allow elevators within each of the Department of Law Enforcement's seven emergency response regions to operate in fire emergency situations with one master elevator key. Buildings with six or more stories that have undergone substantial improvement must also comply with the elevator key requirement. Compliance with this requirement is required of existing buildings by July 1, 2007.

The master elevator key must be issued to the fire department as well as elevator owners, owners' agents, elevator contractors, state certified inspectors, and state agency representatives. If it is technically, financially, or physically impossible to bring a building into compliance with the elevator key requirements, the local fire marshal may allow substitute emergency measures that will provide reasonable emergency elevator access. The local fire marshal's decision can be appealed to the State Fire Marshal.

The Division of State Fire Marshal within the Department of Financial Services (DFS) is authorized to enforce the master elevator key requirements. Persons who fail to comply with the elevator key mandate are subject to administrative penalties. The DFS is given rule-making authority. A building permit is not required to construct or repair an elevator when seeking to attain compliance with emergency elevator access requirements.

Section 399.15, F.S., also requires all public access, service and freight elevators constructed in buildings six or more stories in height and issued a permit after September 30, 2006, or undergoing "substantial improvement" be keyed to permit "each of the seven state emergency response regions to operate the elevator in a fire-emergency situation with one master key."<sup>4</sup> Master elevator keys are only provided to the elevator owners, the owners' agents, elevator contractors, state-certified inspectors, state agency representatives, and the fire department.<sup>5</sup> The provisions of this section are implemented by the Division of State Fire Marshal of the Department of Financial Services. Existing buildings must have complied with this requirement before October 1, 2009.

#### ***B. Retrofitting Elevators to Meet Current Code Requirements***

Section 399.02(1), F.S., mandates that each elevator comply with the edition of the Florida Building Code that is in effect at the time the application for the elevator construction permit is received. It further requires that any alteration, relocation or reclassification of an existing elevator, also be in compliance with the edition of the Florida Building Code that is in effect at

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<sup>2</sup> Section 399.02(6), F.S.

<sup>3</sup> Section 1, ch. 2004-12, L.O.F.

<sup>4</sup> Section 399.15(1)(a), F.S.

<sup>5</sup> Section 399.15(1)(b), F.S.

the time of receipt of the construction permit application to alter, relocate, or change classification.

Section 399.02(1), F.S., requires the Elevator Safety Code to be the same as or similar to the American Society of Mechanical Engineers (ASME), which provides minimum model standards for the installation, operation, and maintenance of elevators. The ASME codes are meant to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 serves as the basis for the Florida Elevator Safety Act and Florida Elevator Safety Code.

The elevator safety code establishes minimum requirements that provide a reasonable degree of safety for the general public and the safe operation of conveyances. For example:

- ASME A17.1 (2004), Part 8, provides requirements related to the installation, alteration, maintenance, repair, inspections, and testing to ensure the minimum safety requirements for *new and existing elevators*.
- ASME A17.2 (2204), provides a guide for the inspection of elevators, escalators, and moving walks.<sup>6</sup>
- ASME A17.3 (1996), is a code for existing elevators to ensure rider safety. The code provision specifically states that it is intended to guide *retroactive requirements for existing elevators*.

The Elevator Safety Code, specifically ASME A17.3, requires owners of existing elevators to retrofit elevators to comply with revisions or updates to the code.

The bureau's rules indirectly adopt the ASME standards for the maintenance and installation of elevators. Instead of specifically referencing the ASME standards, the bureau adopted ch. 30 of the 2004 Florida Building Code, including the 2006 supplements, which relates to elevators.<sup>7</sup> The Florida Building Code adopts the ASME standards, including ASME A17.1, part 8, ASME A17.3. It also delegates the regulation and enforcement of the ASME elevator codes to the bureau.<sup>8</sup>

On October 1, 2005, ASME A17.3 (1996) was first adopted in the 2004 Florida Building Code as the code for the inspection and maintenance of existing elevators.<sup>9</sup> On April 2, 2008, the bureau adopted the ASME elevator standards that were incorporated in the Florida Building Code.

According to state and local elevator inspection officials, the safety standards in ASME A17.3 (1996) that were adopted in the Florida Building Code and the elevator safety code in 2002 and 2005, respectively, were not new and were already in the ASME A17.1, part 8, before the adoption of those building codes.<sup>10</sup>

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<sup>6</sup> ASME A17.2 (2004). The bureau has adopted and incorporated this by reference in rule 61C-5.001(1)(b), F.A.C.

<sup>7</sup> Rule 61C-5.001, F.A.C.

<sup>8</sup> Chapter 30, ss. 3001.1 and 3001.2, Florida Building Code.

<sup>9</sup> Chapter 30, Florida Building Code.

<sup>10</sup> See *Review of Elevator Safety and Regulation*, Interim Report 2010-128, Florida Senate Committee on Regulated Industries, October 2010.

The Regulated Industries Committee conducted an interim study of the enforcement of elevator safety code standards that require elevator owners to modify or retrofit elevators in order to comply with revisions or updates to those standards.<sup>11</sup> The interim study noted the increase in the number of elevators failing inspections and the number of requests filed by elevator owners for a variance or waiver from elevator safety code requirements as a result of failed inspections.

The interim report found that it was not clear from a review of the variance requests and accompanying inspection reports whether any of the code violations related to the retroactive application of code standards. The report found, based on representation by the bureau and code enforcement officials in Miami-Dade County, that the increase in the number of elevator violations may be attributable to other factors, including an increase in the number of state inspectors, and the statutory authorization<sup>12</sup> for the use of private inspectors which has permitted the bureau to meet its workload demands.

The report recommended that ch. 399 F.S., be amended to provide the bureau with guidelines for the issuance of variances and waivers related to the application of elevator standards. It also recommended that:

- The bureau should be required to determine whether any updates or modifications of the Elevator Safety Code require immediate application to existing elevators which would require elevator owners to retrofit elevators to bring them into compliance.
- The bureau should be authorized to delay the application of revisions of the elevator safety code for a period of up to three years in order to give elevator owners additional time to anticipate the costs of compliance.

The report also sets forth recommended guidelines for the bureau to consider for the issuance of variances and waivers and when determining whether revisions to the elevator safety code should be applied immediately.

Regarding the retrofitting of existing elevators for emergency regional access in s. 399.15, F.S., local fire marshals may allow substitute emergency measures that will provide reasonable emergency elevator access if it is technically, financially, or physically impossible to bring a building into compliance with this access requirement.<sup>13</sup> The State Fire Marshal has adopted a rule that establishes a lock box that can accept the regional key as the acceptable alternative.<sup>14</sup>

### ***C. Emergency Alternate Power Generators for Elevators***

During the 2006 Regular Session, s. 553.509(2)(a), F.S.,<sup>15</sup> was enacted to require that any person, firm, or corporation that owns, manages, or operates a residential multi-family dwelling, including a condominium, which is at least 75 feet high (high-rise residential buildings) and contains a public elevator, have at least one elevator capable of operating on alternate generated power. In the event of a general power outage, this elevator must ensure that residents have

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<sup>11</sup> *Id.*

<sup>12</sup> Section 399.061, F.S. In 2000, the Legislature amended s. 399.061, F.S., (s. 4, ch. 2000-356, L.O.F.) to provide for the use of private elevator inspectors.

<sup>13</sup> Section 399.15, F.S.

<sup>14</sup> See rule 69A-47.019, L.O.F.

<sup>15</sup> Section 12, ch. 2006-71, L.O.F.

building access for an unspecified number of hours each day over a five-day period following a natural or manmade disaster, emergency, or other civil disturbance. The alternate generated power source must be capable of powering any connected fire alarm system in the building.

The alternate generated power requirements of s. 553.509(2), F.S., do not apply to high-rise buildings that were in existence on October 1, 1997, or which were either under construction or under contract for construction on October 1, 1997.<sup>16</sup> Newly constructed residential multi-family dwellings meeting the criteria of this section must meet the engineering, installation, and verification requirements of s. 553.509(2), F.S., before occupancy.<sup>17</sup>

Section 553.509(2)(b), F.S., provides that, at a minimum, the elevator must be appropriately pre-wired and prepared to accept alternate generated power. The power source must be capable of powering the elevator, a connected building fire alarm system, and emergency lighting in the internal lobbies, hallways, and other internal public portions of the building. The dwellings must either have a generator and fuel source on the property or proof of a current guaranteed service contract providing such equipment and fuel source within 24 hours of a request. Proof of a current service contract for such equipment and fuel must be posted in the elevator machine room or other place conspicuous to the elevator inspector.

An October 2008 interim report prepared by the Regulated Industries Committee studied the extent of compliance with s. 553.509(2), F.S., and reviewed the problems that citizens and governmental agencies have had in implementing these requirements.<sup>18</sup> Senate professional staff recommended that the Legislature consider the repeal of s. 553.509(2), F.S. The repeal recommendation was based upon the following findings and conclusions:

- The requirement may pose a threat to public safety, i.e., the availability of emergency power for elevators during the five days after a declared state of emergency may encourage persons to stay in high-rise buildings and areas that are not safe and do not have the necessary infrastructure for safe habitation;
- The requirement does not have a clearly defined state or local agency that is responsible for its on-going enforcement;
- Enforcement of the requirement by a state agency would carry a fiscal burden without a clearly defined benefit that may out-weigh the public safety concerns;
- The requirement does not appear to have any clearly defined impact on elevator safety;
- It is not clear what penalty, if any, should be imposed on building owners who cannot comply with the requirement because they cannot afford the expense; and
- To the extent that an alternate emergency power for elevators provides a public benefit, the Florida Building Code currently requires emergency power for elevators in new high-rise residential construction.

Alternatively, the professional staff recommended that the Legislature could continue to require emergency generated power pursuant to s. 553.509(2), F.S., but, to ensure uniform compliance,

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<sup>16</sup> Section 553.507, F.S., exempts such buildings, structures, and facilities from the provisions of ss. 553.501-553.513, F.S., the "Florida Americans with Disabilities Implementation Act."

<sup>17</sup> Section 553.509(2)(c), F.S.

<sup>18</sup> See *Review of Elevator Safety and Regulation*, Interim Report 2009-125, Florida Senate Committee on Regulated Industries, September 2008.

provide funding for the Bureau of Elevator Safety within the Division of Hotels and Restaurants, Department of Business and Professional Regulation, for the enforcement of this provision.

### **Home Inspectors & Mold Services**

In 2007, the Legislature created part XV, ch. 468, F.S.,<sup>19</sup> to provide, in part, for the licensure and regulation of private home inspectors by the Department of Business and Professional Regulation (department), effective July 1, 2010. It provides licensing and continuing education requirements, including certificates of authorizations for corporations offering home inspection services to the public. After July 1, 2010, a person who performs home inspection services must be licensed by the department.

Section 468.8311(4), F.S., defines the term "home inspection services" to mean:

a limited visual examination of one or more of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

This definition does not specifically include the inspection of windows, doors, walls, floors, and ceilings as services that would require licensure as a home inspector.

Section 468.8312, F.S., grants the Department of Business and Professional Regulation the authority to adopt rules to establish fees for applications, examination, reexamination, licensing and renewals, continuing education and administrative services. The current fees are:

Fee	Amount shall not exceed:
Initial Application and Examination Fee	\$125 <sup>20</sup>
Initial License Fee	\$200
Certificate of Authorization Fee	\$125
Biennial Renewal Fee	\$200
Licensure by Endorsement Fee	\$200
Application for Inactive Status/Reactivation Fee	\$200
Continuing Education Application Fee	\$500

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Section 468.8411(3), F.S., defines the term "mold assessment" to include "the sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth greater

<sup>19</sup> Section 2, ch. 2007-235, L.O.F.

<sup>20</sup> The department may assess the applicant and additional cost for the department's expenses in obtaining and administering the examination. Section 468.8312(2), F.S., provides: "The examination fee shall be an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination."

<sup>21</sup> See s. 468.8312, F.S.



than 10 square feet.”<sup>22</sup> “Mold remediation” is the removal, cleaning, sanitizing, or demolition of mold or mold contaminated matter that was not purposely grown at that location.<sup>23</sup>

Beginning in July 1, 2010, home inspectors, mold assessors and mold remediators must be licensed and will be regulated by the Department of Business and Professional Regulation (DBPR), pursuant to 2007 Legislation that shall become effective on that date.<sup>24</sup> Additional regulations, including continued education requirements and certificates of authorization for corporations offering home inspections or mold services to the public will also go into effect at that time.

### **Florida Building Code**

#### ***A. Florida Building Commission***

The Florida Building Commission (commission) is established in ch. 553, F.S. within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate. The Commission is responsible for adopting and enforcing the Florida Building Code (code) as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.<sup>25</sup> The Commission is required to update the Florida Building Code triennially based upon the “code development cycle of the national model building codes, ...”<sup>26</sup> Under s. 553.73, the commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.<sup>27</sup>

Under s. 553.79(9), F.S., state agencies whose enabling legislation authorize the enforcement of the code are permitted to enter into agreements with other governmental units in order to delegate their code enforcement powers and are permitted to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

#### ***B. Alternative Plans Review and Inspection***

Section 553.791, F.S., establishes that notwithstanding other provisions of law, local ordinance, or local policy, the fee owner of a building or structure, or the fee owner’s contractor (with written permission from the fee owner), may choose to use a private provider for building code inspection services, and may pay the private provider directly, so long as a contract for services is executed. Private providers are defined as licensed engineers or licensed architects, and for residential additions or alterations of 1,000 square feet or less, a private provider can be a building code administrator, inspector or plans examiner holding a standard certificate issued under part XII of ch. 468, F.S.

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<sup>22</sup> Section 468.8411(3), F.S.

<sup>23</sup> Section 468.8411(5), F.S.

<sup>24</sup> Parts XV and XVI, of Ch. 468, F.S.

<sup>25</sup> Sections 553.73 and 553.74, F.S.

<sup>26</sup> Florida Building Commission, *Report to the 2009 Legislature* at 2., January 2009 (on file with the Florida Senate Committee on Regulated Industries).

<sup>27</sup> See ss. 553.76, 553.775, and 553.73(7), F.S., respectively.

***C. License Renewal***

Sections 481.215(5) and 481.315, F.S., require that the Board of Architecture and Interior Design and the department, respectively, provide by rule and with the approval of the commission, a specified number of hours needed for license renewal in specialized or advanced courses on any portion of the code that relates to the licensee's respective area of practice.

***D. Product Evaluation and Approval***

Section 553.842, F.S., provides the commission with the authority to adopt rules to develop a product evaluation and approval system that applies statewide to operate in coordination with the Florida Building Code. Rules relating to product approval are contained in ch. 9B-72, F.A.C.

The commission is authorized to enter into contracts to provide for administration of the product evaluation and approval system, and the system must rely on national and international consensus standards, whenever such standards are adopted into the Florida Building Code, to demonstrate compliance with code standards. Other standards which meet or exceed state requirements must also be considered.<sup>28</sup> Methodology for statewide approval of products, methods, or systems of construction are provided.

The commission is required to maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities.<sup>29</sup> In addition, the commission is authorized to adopt a rule that identifies standards that are equivalent to or more stringent than those specifically adopted by the Florida Building Code, thereby allowing the use in this state of the products that comply with the equivalent standard.

In 2008, the Legislature enacted ch. 2008-191, L.O.F., relating to building code standards. The commission was directed to review the list of product evaluation entities and recommend additions to the list, or report on the evaluation criteria used to approve the evaluation entities. Any rulemaking to adopt such criteria into rule was to be completed by July 1, 2009. It also approved the International Association of Plumbing and Mechanical Officials Evaluation Services (IAPMO-ES) as an evaluation entity until October 1, 2009.<sup>30</sup> If the association was not permanently approved by the commission as an evaluation entity by that date, products approved on the basis of an association evaluation had to be substituted by an alternative, approved entity by December 31, 2009. Effective January 1, 2010, any product approval issued by the commission that is based on an association evaluation was void.

In 2009, the commission recommended legislation permanently recognizing IAPMO-ES in statute and the elimination of rule authority to prescribe criteria for evaluation entities. The commission recommendation did not become law during the 2009 legislative session.<sup>31</sup> According to the DCA, the commission therefore adopted by rule criteria for evaluation entities and approved IAPMO-ES as an evaluation entity to prevent its expiration on October 1, 2009.

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<sup>28</sup> Equivalence of standards for product approval are standards for products which meet or exceed the standards referenced in the Florida Building Code, and which are certified as equivalent for purposes of determining code compliance (Chapter 9B-72.180, F.A.C.).

<sup>29</sup> Section 553.842(13), F.S.

<sup>30</sup> Section 553.842(17)(a) and (b), F.S.

<sup>31</sup> See CS/CS/SB 2100 by the Regulated Industries Committee; the Community Affairs Committee; and Senator Bennett, which died in Florida Senate Committee on General Government Appropriations.

The commission has reiterated, in its report to the 2010 Legislature, its recommendation to permanently recognize IAPMO-ES in statute and to eliminate the commission's current rule authority to prescribe criteria for evaluation entities.

The DCA has provided the following description of the approval process:

...manufacturers or their representatives submit an application to the commission through an administrator with whom the commission contracts to perform administrative and technical services. The deadline for submittal of an application falls approximately 24 days before a scheduled commission meeting. The administrator will review all applications submitted and post the preliminary findings approximately 2 weeks before the meeting and accept public comments on the applications and the administrator's preliminary recommendations. After reviewing the public comments and making necessary changes to the recommendation, a final list is posted on the internet approximately seven days prior to the meeting. The list containing the administrator's recommendations is presented to the commission and its program oversight committee. There are two opportunities for public comment thereafter; once when the commission's program oversight committee considers the application, and again when the commission considers the committee's recommendation. The commission typically reviews approximately 400 applications each meeting.<sup>32</sup>

#### ***E. Manufactured Buildings***

The Manufactured Building Act of 1979, in s. 553.35, F.S., requires minimum construction requirements for the "manufacture, design, construction, erection, alteration, modification, repair, and demolition of manufactured buildings".<sup>33</sup> Section 553.37(8), F.S., requires the DCA to adopt rules for the enforcement and administration of the code requirements related to manufactured buildings.

According to the DCA, its jurisdiction in regards to manufactured buildings has been limited to buildings that are to be repetitively built. One-of-a-kind manufactured buildings were exempted from the Department's program in favor of local code enforcement,<sup>34</sup> but that exemption was inadvertently deleted in 2008.<sup>35</sup>

#### ***F. Placement of Rooftop Air Conditioning Systems***

The code requires that roof-mounted equipment must be elevated from the roof surface. With respect to a roof-mounted air conditioner, the code requires that this equipment must be elevated to a prescribed distance above the roof surface. The distance varies depending on the width of the air conditioning unit. For example, an 18 inch clearance is required for a roof-mounted air conditioning unit that is 24 to 36 inches in width.<sup>36</sup> According to the DCA, this requirement allows for maintenance of the roof surface beneath the equipment. Additionally, the code

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<sup>32</sup> From the bill analysis for SB 468 provided by the Florida Department of Community Affairs (on file with the Regulated Industries Committee).

<sup>33</sup> Section 553.355, F.S.

<sup>34</sup> See s. 553.37(11), F.S. (2007).

<sup>35</sup> See s. 6, ch. 2008-191, L.O.F.

<sup>36</sup> See Table 1509.7 in ch. 15, Florida Building Code (2007), including the 2009 supplements, relating to rooftop structures.

requires that all roof mounted mechanical equipment must be designed to withstand the forces exerted by wind. According to the DCA, this requirement originated with the model code that served as the foundation for the first edition of the Florida Building Code, the 2001 International Mechanical Code, and has been in effect in Florida since March 1, 2002.

### ***G. Classroom Illumination***

The code requires that artificial illumination in classrooms must provide an average maintained illumination of 50 foot-candles (500 lux) of light at desktop.<sup>37</sup>

### ***H. Building Code Compliance and Mitigation Program***

Section 553.841(4), F.S., requires the DCA to maintain, update, and develop a core curriculum to serve as a prerequisite for advanced module coursework to administer ongoing education under the Building Code Compliance and Mitigation Program. The core curriculum provides a basic introduction to the unified code and its related efforts as well as the system of code enforcement.

During the 2009 Regular Session, the statutes for the various construction-related professions were amended to delete the requirement for completion of the core curriculum or the successful passing of an equivalency test of the Florida Building Code Compliance and Mitigation Program as a condition for renewal of license.<sup>38</sup> The affected professions are building code administrators and inspector certificate-holders,<sup>39</sup> engineer licensees,<sup>40</sup> architects and interior designers,<sup>41</sup> and landscape architects,<sup>42</sup> and construction contractor certificate-holders and registrants.<sup>43</sup>

### ***I. Windstorm Loss Mitigation***

Section 553.844, F.S., requires the commission to implement windstorm loss mitigation techniques into the code in order to combat property damage that is associated with hurricanes. The code requires that buildings located in Wind Borne Debris Regions (WBDR) be designed to withstand the minimum wind loads prescribed within the region. Wind Borne Debris Regions are designated areas in the state where the basic wind speed can reach 120 mph or greater or areas within one mile of the coast with a wind speed over 110 and less than 120 mph.<sup>44</sup>

Regarding wind resistance standards and criteria, s. 553.73(7), F.S., provides that:

Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements.

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<sup>37</sup> See s. 423.27.15, ch. 4, Florida Building Code (2007), relating to requirements for educational facilities.

<sup>38</sup> See ch. 2009-195, L.O.F.

<sup>39</sup> Section 468.627, F.S.

<sup>40</sup> Section 471.0195, F.S.

<sup>41</sup> Section 481.215, F.S.

<sup>42</sup> Section 481.313, F.S.

<sup>43</sup> Section 489.115, F.S.

<sup>44</sup> See s. 1609.1.2, ch. 16, Florida Building Code, relating to wind loads for buildings and structures.

**Carbon Monoxide Alarms**

Section 553.885, F.S., requires that buildings that are issued a building permit for new construction on or after July 1, 2008, and that possess a fossil-fuel-burning heater or appliance, a fireplace or an attached garage be required to install an operational carbon monoxide alarm within 10 feet of each room used for sleeping purposes. The carbon monoxide alarm must be approved by the commission and meet the requirements of the code. For purposes of this section, fossil fuel is defined as “coal, kerosene, oil, fuel gases, or other petroleum or hydrocarbon products that emit carbon monoxide as a by-product of combustion.”<sup>45</sup>

According to the DCA, upon implementation of the carbon monoxide alarm requirement, stakeholders expressed uncertainty regarding its application to existing buildings that undergo new construction activity. The DCA has represented that, during the 2009 Regular Session, stakeholders, with the commission’s participation, achieved consensus recommendation for an amendment to s. 553.885, F.S., that would exempt existing buildings undergoing alterations or repairs unless that alteration was an addition that extends or increases the floor area, the number of stories, or the height of a building or structure. However, the bill including this statutory amendment failed to pass the Legislature.<sup>46</sup>

**Thermal Efficiency Standards- Energy Efficient Performance Options**

Florida’s Thermal Efficiency Code in s. 553.900, F.S., requires that the DCA provide a “statewide uniform standard for energy efficiency in thermal design and operation of all buildings statewide”.<sup>47</sup> The standard is adopted into the Florida Building Code by the commission and is updated at least every three years to include “the most cost-effective energy-saving equipment and techniques available.”<sup>48</sup> A schedule of increases in thermal efficiency is outlined in s. 553.9061, F.S. Section 553.9061(2), F.S., requires the commission to identify within the code the specified building options and elements that are available to meet energy efficiency goals.

The Florida Energy Efficiency Code in s. 553.909, F.S., also provides minimum energy requirements for appliances. Section 553.909(4), F.S., requires residential pool pump motor controls that have a total horsepower of 1HP or more to operate at a minimum of two speeds. Under current law, “the default circulation speed shall be the residential filtration speed with a higher speed override capability being for a temporary period not to exceed the lesser of one normal cycle or 120 minutes.” Section 553.909(4), F.S., does not include the circulation speed for solar pool heating systems, which are permitted to run at higher speeds during periods of usable solar heat gain.

**Insurance-Uniform Mitigation Verification**

Section 627.711, F.S., requires insurers to notify residential property insurance applicants or policyholders of premium insurance discounts, rates, or credits that are available for windstorm mitigation fixtures or construction techniques located on the insured property. In factoring discounts for wind insurance, insurers must use the uniform mitigation verification inspection

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<sup>45</sup> Section 553.885(2)(b), F.S.

<sup>46</sup> See CS/CS/SB 2100 by the Regulated Industries Committee; the Community Affairs Committee; and Senator Bennett, which died in Florida Senate Committee on General Government Appropriations.

<sup>47</sup> Section 553.900, F.S.

<sup>48</sup> Section 553. 901, F.S.

form adopted by the Financial Services Commission.<sup>49</sup> A valid uniform mitigation verification inspection form is one that is certified by the Department of Financial Services or signed by the certified individuals outlined in s. 627.711(2), F.S.

### **Fire Prevention and Control**

#### ***A. State Fire Marshal***

Section 633.01(1), F.S., designates the Chief Financial Officer as the State Fire Marshal to carry out the duties of fire prevention, protection, and control through the Division of State Fire Marshal.<sup>50</sup>

#### ***B. Florida Fire Prevention Code***

The Florida Fire Prevention Code has been adopted by the State Fire Marshal. The Florida Fire Prevention Code is updated every three years and contains all firesafety regulations relating to the construction and modification of building structures.<sup>51</sup> The State Fire Marshal is required to notify local fire departments no later than 180 days prior to the triennial adoption of the Florida Fire Prevention Code in order to consider whether local amendments should be implemented. Section 633.026, F.S., requires the Division of State Fire Marshall to establish internal procedures or contract with experienced nonprofit organizations in order to provide nonbinding interpretations of the Florida Fire Prevention Code.

#### ***C. Firesafety Inspectors***

Buildings and structures in violation of the Florida Statutes and/or the minimum provisions of state or local firesafety codes are subject to the inspection of all equipment, vehicles and chemicals within the premises of any such building or structure.<sup>52</sup> To enforce this requirement, s. 633.081(1), F.S., requires each county, municipality, and special district with firesafety enforcement authority to employ or contract with a DFS-certified firesafety inspector who has met the fire inspection training requirements set by the State Fire Marshall in s. 633.081(2), F.S.

#### ***D. Firefighter Certification***

Section 633.35, F.S., requires firefighters to meet the training and education requirements established by the Division of State Fire Marshal prior to being issued a certificate of competency.<sup>53</sup> The minimum standard course requirements for firefighter certification are provided in rule 69A-37.055, F.A.C. The curriculum mandates that firefighters complete 398 training hours provided in classroom and practical skills and receive a passing score of 70 percent on written and practical examinations. The examinations are based on applicable standards of the National Fire Protection Association and Florida and federal laws.<sup>54</sup> The State Fire Marshal is charged with administering the exams, which are required to be offered at least two times a year.<sup>55</sup>

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<sup>49</sup> Section 627.711(2), F.S.

<sup>50</sup> The agency head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of State Fire Marshal is located within the DFS.

<sup>51</sup> Section 633.0215(1), F.S.

<sup>52</sup> Section 633.081, F.S.

<sup>53</sup> Section 633.35(1), F.S. *See also* 69A-37.050(1), F.A.C.

<sup>54</sup> Section 633.521(2), F.S.

<sup>55</sup> *Id.*

Firefighter certificates must be renewed every two years through the payment of a biennial renewal fee.<sup>56</sup> Section 633.352, requires firefighters who have been inactive for period of 3 or more years to retake the practical segment of the minimum standard course examination in order to be recertified.<sup>57</sup>

Applicants for certification as a contractor of fire protection, as defined in s. 633.021, F.S., are subjected to additional rules and qualifications.<sup>58</sup>

Section 633.021(5), F.S., defines the four classifications for fire protection system contractor:

- (a) “Contractor I” means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service all types of fire protection systems, excluding pre-engineered systems.
- (b) “Contractor II” means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service as defined in this section, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding pre-engineered systems.
- (c) “Contractor III” means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service CO<sub>2</sub> systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding pre-engineered systems.
- (d) “Contractor IV” means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding pre-engineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings.
- (e) “Contractor V” means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor.

Section 633.521(8), F.S., requires individuals who are employed by a Contractor I or Contractor II certificate-holder, and who will be inspecting water-based fire protection systems, to be issued a permit by the State Fire Marshal to conduct such work.

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<sup>56</sup> Section 633.524(1), F.S. “The biennial renewal fee for each class of certificate shall be \$150.” *See also* s. 633.537, F.S.

<sup>57</sup> Section 633.352, F.S., *See also* 4A-37.056(6)(b), F.A.C.

<sup>58</sup> Section 633.521(2)(e), F.S.

***E. Fire Hydrant Inspection***

Section 633.025(1), F.S., provides that the Florida Fire Prevention Code and the Life Safety Code adopted by the State Fire Marshal shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities. Subsection (2) states that each municipality, county, and special district shall enforce the Florida Fire Prevention Code and the Life Safety Code as the minimum firesafety code required by this section. Because the code incorporates the National Fire Prevention Association annual inspection requirements for fire hydrants; the municipality, county, and special district may enforce the provisions of the code, including the annual inspection of fire hydrants.

***F. Florida Fire Code Advisory Council***

The Florida Fire Code Advisory Council is located within the Department of Financial Services and consists of 11 members who are appointed by the State Fire Marshal for 4-year terms.<sup>59</sup> Council members may not serve more than one term. The duties of the Florida Fire Code Advisory Council are to provide advice and recommendations to the State Fire Marshall on changes and interpretations of the uniform firesafety standards in the Fire Prevention Code and s. 633.022, F.S.

**Condominiums – Maintenance of Common Elements**

Section 718.113(6), F.S., requires that any condominium building greater than three stories in height must be inspected at least every five years (and within five years if not available for inspection on October 1, 2008) to provide a report under the seal of an architect or engineer authorized to practice in this state attesting to the required maintenance, useful life, and replacement costs of the common elements. If approved by a majority of the voting interests present at an association meeting, this requirement may be waived. The meeting and approval must occur prior to the end of the five-year period and is effective only for that five-year period.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 196.031, F.S., to state that after a three year period provided for repair or rebuilding, the expiration, lapse, non-renewal, or revocation of a building permit issued to the property owner will also constitute abandonment of the property as a homestead.

**Section 2** amends s. 399.02, F.S., to state that the division may enter and have reasonable access to all buildings and rooms or spaces in which an existing or newly installed conveyance or equipment are located. The CS creates subsection (8) to authorize the division to grant variance for undue hardship pursuant to s. 120.542, F.S., and the rules adopted under this subsection which must include a process for requests for variances. Stating that the division may not grant a request for variance unless it finds that it will not adversely affect public safety.

The CS also creates subsection (9) to provide that elevators issued certificates of operation before July 1, 2008, shall be exempt from retroactive application of provisions of and any updates to the Elevator Safety Code concerning modifications for Phase II Firefighter Services controls on existing elevators, until the July 1, 2015, or until the elevator is replaced/modified (whichever is first). This applies to elevators in condominiums or multifamily residential

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<sup>59</sup> Section 633.72, F.S.



buildings, including those that are part of a continuing care facility licensed under ch. 651, F.S., or similar retirement community with apartments. This exception does not prevent an elevator owner from requesting a variance from the applicable codes before or after July 1, 2015, nor does it prohibit the division from granting variances pursuant to s. 120.542, F.S., and subsection (8). Providing that the division shall adopt rules to administer this subsection.

**Section 3** amends s. 399.15, F.S., to provide that a lock box containing all elevator keys and accessible by the master key of the relevant emergency response region may be an alternative method to elevator emergency public access requirements. Providing for a master key that shall only be issued to the Division of State Fire Marshal, whom shall have enforcement authority. Directing the Department of Financial Services to select the provider of the uniform lock box.

**Section 4** amends s. 455.2122, F.S., to permit the board, or the department if there is not board, to approve distance learning courses as an alternative to classroom courses to satisfy pre-licensure or post-licensure education requirements provided in Part VIII, of ch. 468, F.S., or Part I, of ch. 475, F.S. The section also states that the board or department may not require centralized examinations for completion of these pre-licensure or post-licensure education requirements.

**Section 5** amends s. 455.2123, F.S., to permit the board, or the Department of Business and Professional Regulation (department) if there is not board, to approve distance learning courses as an alternative to classroom courses to satisfy pre-licensure or post-licensure education requirements provided in Part VIII, of ch. 468, F.S., or Part I, of ch. 475, F.S. The section also states that the board or department may not require centralized examinations for completion of these pre-licensure or post-licensure education requirements.

**Section 6** amends s. 468.631, F.S., effective October 1, 2010, to provide that the Building Code Administrators and Inspectors Fund shall be funded through a surcharge at the rate of 1.5 percent of all permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32, F.S. Stating that the minimum amount collected on any issued permit shall be \$2. Providing for funds to be remitted to the department on a quarterly calendar basis beginning no later than December 31, 2010, for the preceding quarter and continuing each third month thereafter.

This section also states that the unit of government responsible for collecting permit fees shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code promulgation processes and to provide education related to enforcement of the Florida Building Code. The proceeds from this surcharge must be allocated equally to fund the Florida Homeowners' Construction Recovery Fund established by s. 489.140, F.S., and the functions of the Building Code Administrators and Inspectors Board.

This section also deletes the requirement for the governing unit to report the total square footage for the number of permits issued for under-roof floor space during the quarter in subsection (2) of s. 467.631, F.S.

**Section 7** amends s. 468.83, F.S., to name the home inspection services licensing program within the Department of Business and Professional Regulation.

**Section 8** amends s. 468.8311, F.S., to revise the definition of "home inspection services".

**Section 9** amends s. 468.8312, F.S. to delete a fee provision that limited the fee for a certificate of authorization to \$125.

**Section 10** amends s. 468.8313, F.S., to revise examination requirements for licensure as a home inspector, and to require initial applicants to submit fingerprints to the department for criminal background checks which shall be conducted by the Department of Law Enforcement (FDLE) for state processing and then forwarded to the Federal Bureau of Investigation for national processing. Providing procedures and requiring that the applicant bear the processing costs.

**Section 11** amends s. 468.8318, F.S., to revise requirements and procedures for certification of corporations and partnerships offering home inspection services to the public. Deleting provisions relating to required certificates of authorization and specifying application and prospective operation of certain provisions.

**Section 12** amends s. 468.8319, F.S., to revise certain prohibitions with respect to providers of home inspection services so as to apply to any *person*. Subsection (3) states that this section does not apply to unlicensed activity as described in paragraph (1)(a)-(b), or s. 455.228, F.S., which occurs before July 1, 2011.

**Section 13** amends s. 468.832, F.S., to provide that the failure to meet any standard of practice adopted by rule constitutes grounds for departmental disciplinary action.

**Section 14** amends s. 468.8324, F.S., to provide standards under which a practicing home inspector may acquire a license through a grandfather clause. Stating that the applicant must:

- Submit an application by March 1, 2011.
- Either have been certified as a home inspector by a state or national association requiring successful completion of an examination and have completed 14 hours of education; or
- Have at least three years of experience and have completed 14 hours of education. Such applicants must submit 120 home inspection reports to establish the required experience.
- Have not had a license revoked, suspended or assessed a fine greater than \$500 in the past five years *after* the application.
- Pass a background check and be of good moral character.
- Maintain general liability insurance.

**Section 15** creates s. 468.8325, F.S., to grant the Department of Business and Professional Regulation (DBPR), with broad rule-making authority to adopt rules to administer this part.

**Section 16** amends s. 468.84, F.S., to name the mold-related services licensing program within the Department of Business and Professional Regulation.

**Section 17** amends s. 468.8412, F.S., to delete a fee provision that limited fees for a biennial certificate of authorization renewal to \$400.

**Section 18** amends s. 468.8413, F.S., to revise examination requirements and procedures for licensure as a mold assessor or mold remediator. Requiring applicants to pass examination requirements and have at least 30 semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or related scientific field. Also requiring applicants to submit fingerprints for background checks conducted by the Department of Law Enforcement (FDLE) for state processing which is then forwarded to the Federal Bureau of Investigation for national processing. Providing procedures and requiring that the applicant bear the processing costs.

**Section 19** amends s. 468.8414, F.S., to specify that possessing liability insurance is an additional applicant qualification criterion for licensure by endorsement.

**Section 20** amends s. 468.8418, F.S., to revise requirements and procedures for certification of corporations and partnerships offering mold assessment or mold remediation services to the public. Deleting provisions relating to required certificates of authorization and specifying application and prospective operation of certain provisions.

**Section 21** amends s. 468.8419, F.S., to revise certain prohibitions with respect to providers of mold assessment services so as to apply to any *person*. Subsection (3) states that this section does not apply to unlicensed activity as described in paragraph (1)(a)-(b), or s. 455.228, F.S., which occurs before July 1, 2011.

**Section 22** amends s. 468.842, F.S., to provide that the failure to meet any standard of practice adopted by rule constitutes grounds for departmental disciplinary action.

**Section 23** amends s. 468.8423, F.S., to specify that mold assessors or mold remediators must maintain general liability and errors and omissions for both preliminary and post-remediation mold assessment insurance coverage of at least \$1 million as a requirement for licensure as a mold assessor or mold remediator.

**Section 24** creates s. 468.8424, F.S., to provide standards under which a practicing home inspector may acquire a license through a grandfather clause. Stating that the applicant must:

- Submit an application by March 1, 2011.
- Either have been certified as a mold assessor or mold remediator by a state or national association requiring successful completion of an examination and have completed at least 60 hours of education on mold assessment or at least 30 hours of education on mold remediation; or
- Have at least three years of experience as a mold assessor or mold remediator. Such applicants must submit at least 40 mold assessments or remediation invoices to establish such experience.
- Have not had a license revoked, suspended or assessed a fine greater than \$500 in the past five years *after* the application.
- Pass a background check and be of good moral character.

- Maintain general liability insurance.

**Section 25** amends s. 468.8424, F.S., to grant the Department of Business and Professional Regulation (DBPR), with broad rulemaking authority to adopt rules to administer this part.

**Section 26** amends s. 489.103, F.S. to conform a cross-reference.

**Section 27** amends s. 489.5335, F.S., to delete core curriculum requirements that persons holding a journeyman license must satisfy in order to work in more than one county or municipality.

**Section 28** amends s. 553.37, F.S., to authorize the Department of Community Affairs (DCA) to enter into contracts for the performance of administrative duties relating to the inspection and certification of manufactured buildings and to adopt a rule requiring manufacturers to pay inspection fees directly to the provider of inspection services. Providing requirements for department rules regarding the schedule of fees and inspection requirements for certain custom manufactured buildings. This section also reinstates local jurisdiction for one-of-a-kind prototype manufactured buildings inadvertently deleted in 2008.

**Section 29** amends s. 553.375, F.S., to specify that a relocated manufactured building previously approved by the DCA only requires recertification if the new location has a higher design wind speed than the previous location.

**Section 30** amends s. 553.509, F.S., to delete certain requirements for alternate power sources for elevators in high-rise residential multi-family dwellings, that are 75 feet or taller.

**Section 31** amends s. 553.512, F.S., to require the Florida Building Commission to establish by rule, a fee for waiver requests from Building Code requirements.

**Section 32** amends s. 553.721, F.S., effective October 1, 2010, to provide a surcharge at the rate of 1.5 percent of all permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32, F.S. Stating that the minimum amount collected on any issued permit shall be \$2. Providing for funds to be remitted to the department electronically beginning not later than December 31, 2010, for the preceding quarter and continuing each third month thereafter.

This section also states that unit of government responsible for collecting permit fees shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code promulgation processes and to provide education related to enforcement of the Florida Building Code. The proceeds from this surcharge must be used exclusively for the duties of the Florida Building Commission and the Department of Community Affairs.

This section deletes obsolete provisions in subsection (2) of s. 55.721, F.S., which provides for funds transferred from the Operating Trust Fund to the Grants and Donations Trust Fund of the

DCA for the 2008-2009 year to be used for regional planning councils, civil legal assistance, and the Front Porch Florida Initiative.

**Section 33** amends s. 553.73, F.S., to authorize the Commission to amend the Building Code using Ch. 120, F.S., rule adoption procedures to address equivalency of standards, the needs of state agencies facing federal requirements on design criteria for public educational facilities, and inconsistencies with federal and state law. This section removes a requirement for model standards to have been available to the public for six months before adoption in the Building Code.

This section also authorizes counties and municipalities to adopt by ordinance administrative or technical amendments in order to implement to the National Flood Insurance Program or incentives. This provision, unlike other subsections of s. 553.73, F.S., is not limited to exclude the adoption of provisions relating to personnel management and professional qualification requirements.

This section further provides that family mausoleums not exceeding 250 square feet and temporary prisoner housing provided by the Department of Corrections shall be exempt from the Building Code, and that any agency or local government, may not require existing roof-mounted mechanical equipment to be installed in compliance with the Building Code until the mechanical equipment is replaced.

Subsection (16) is created within s. 553.73, F.S., to require that the Florida Building Code contain certain requirements so that the illumination in classroom units is designed to provide and maintain an average of 40 foot-candles of light at each desktop. Also requiring public education facilities to consider using light-emitting diode lighting (LED) before considering other lighting sources.

**Section 34** amends s. 553.74, F.S., to provide that a member of any of the Commission's advisory committees or workgroups may represent clients before the commission or the commission's committees or workgroups. This section also provides that this does not constitute as a conflict of interest, but that no member, acting in his capacity as a member, may take part in discussions or actions in any matter which he or she has a direct financial interest.

**Section 35** amends s. 553.76, F.S., to authorize the Florida Building Commission to adopt rules related to consensus-building decision making, including the adopting of supermajority voting requirements for amending or adopting the Building Code.

**Section 36** amends s. 553.775, F.S., to permit the commission to charge a fee for filing requests for declaratory statements and for nonbinding interpretations of the Building Code, capped at \$125.

**Section 37** amends s. 553.79, F.S., to provide that inspection services not requiring performance by a state agency under a federal delegation of responsibility, or by a state agency under the Florida Building Code, must be performed under the alternative plans review and inspection process, or by a local government entity with authority to enforce the Building Code.

**Section 38** reenacts s. 553.80(1), F.S., relating to the enforcement of the Florida Building Code, to incorporate the amendments made to s. 553.79, F.S., in a reference thereto.

This section also amends s. 553.80, F.S., to state that facilities subject to the provisions of Part IV, of ch. 400, F.S., may have facility plans reviewed and construction surveyed by the authorized state agency. The CS also provides that local building code enforcement agencies may not grant exemptions to single-family residences located in mapped flood hazard areas, unless the agency determines that the work does not constitute as substantial improvement.

**Section 39** amends s. 553.841, F.S., to delete a provision requiring that the Department of Community Affairs maintain, update, develop, or cause to be developed a core curriculum as a prerequisite to the advanced module coursework and to inform construction professionals of technical and administrative responsibilities under the Building Code.

**Section 40** amends s. 553.842, F.S., to provide that the rules of the Commission relating to product evaluation and approval may provide for the payment of fees directly to the commission's contract administrator, which shall only be used for funding the product evaluation and approval system. Stating that the commission may authorize by rule, editorial revisions relating to long term approvals and charge a fee therein.

This section also states that an application for state approval of a product must be approved by the DCA after commission staff or a designee verifies, within 10 business days of receipt of the application, that the application and related documentation are complete. Providing that upon department approval, the product must be immediately added to the list of state-approved products. Departmental product approvals must be reviewed and ratified by the commission's program oversight committee; unless there is a showing of good cause that review by the full commission is necessary.

This section amends subsection (8) of s. 553.842, F.S., to remove the International Conference of Building Officials Evaluation Services, the Building Officials and Code Administrators International Evaluation Services, and the Southern Building Code Congress International Evaluation Services from the list of approved evaluation entities.

This section also removes a requirement for the commission to perform an annual review of approved evaluation entity list, in order to recommend in its annual report to the Legislature additional evaluation entities that should be included in the list of state-approved evaluation entities or to recommend criteria to be adopted by the Commission rule that would allow the commission to approve evaluation entities.

**Section 41** amends s. 553.844, F.S., to provide, notwithstanding other provisions of law, that exposed mechanical equipment or appliances that are fastened to rated stands, platforms, curbs, slabs, the ground or the roof, are deemed to comply with the wind resistance requirements of the 2007 Florida Building Code. Stating that this provision will expire on the effective date of the 2010 Florida Building Code.

**Section 42** amends s. 553.885, F.S., to extend the requirement for buildings to contain an operational carbon monoxide alarm to be applicable to both separate buildings and additions to

existing buildings that contain any feature that omits carbon monoxide as a byproduct of combustion. The CS provides that this requirement does not apply to existing buildings undergoing alterations or repairs other than additions- defined as “an extension or increase in floor area, number of stories, or building height”. The CS also states that such alarms may be hard-wired or battery power carbon monoxide alarms; or hard-wired or battery-powered combination carbon monoxide and smoke alarms.

**Section 43** amends s. 553.9061, F.S., to expand the list of energy efficiency options and elements that are available to meet thermal efficiency standards, to include:

- Energy-efficient water heating systems;
- Energy-saving devices and features installed within duct systems;
- Energy-saving quality installation procedures for replacement of air-conditioning systems, including but not limited to, equipment sizing analysis and duct inspection;
- Shading devices, sunscreening materials, and overhangs;
- Weather-stripping, caulking, and sealing of exterior openings and penetrations; and
- Energy-efficient centralized computer data centers in office buildings.

**Section 44** amends s. 553.909, F.S., to provide minimum energy requirements for commercial and residential pool pumps and/or water motors manufactured on or after July 1, 2011. Requiring these residential swimming pool filtration pumps and pump motors to have a total horsepower of 1HP or more. Further stating that the residential filtration pool pump motor control must operate at a minimum of two speeds, with a low speed override capability being for a temporary period not to exceed one normal cycle or 24 hours, whichever is less.

**Section 45** amends s. 553.912, F.S., providing legislative intent that all replacement air-conditioning systems should be installed using energy-saving, qualify installation procedures, including, but not limited to, equipment sizing analysis and duct inspection.

**Section 46** amends s. 627.711, F.S., to eliminate the requirement that a uniform mitigation verification form be certified by the Department of Financial Services and to eliminate a provision that authorizes a hurricane mitigation inspector certified by the My Safe Florida Home Program to sign a valid uniform mitigation verification form adopted by the Financial Services Commission for the calculation of insurance discounts related to windstorm mitigation. This section also states that an insurer may, but is not required, to accept forms from any other person possessing qualifications and experience acceptable to the insurer.

The CS creates a new subsection (3) to require the inspector to personally perform the inspection in order to sign a mitigation verification form.

The CS creates a new subsection (4) to prohibit an individual or entity that signs a mitigation form from committing misconduct or performing uniform mitigation inspections that cause financial harm to a customer or their insurer or jeopardizes a customer’s health or safety. This section also defines the term “misconduct” for purposes of performing an inspection and completing the mitigation verification form.

The CS creates a new subsection (5) to provide for sanctions in instances of misconduct.

The CS creates a new subsection (6) to provide that evidence of fraud be reported to the Division of Insurance Fraud, which upon probable cause of misconduct, shall investigate the report and send a copy to the licensing agency.

Current subsection (3) of s. 627.711, F.S., is renumbered as subsection (7).

**Section 47** amends s. 633.021, F.S.; to provide additional definitions for “fire equipment dealers” for classes A-D, and revise the definition of the term “pre-engineered systems” to state that only those chapters within the National Fire Protection Association standards pertaining to servicing, recharging, repairing, installing, hydro-testing, or inspecting pre-engineered fire extinguishing systems may be used. Further stating that pre-engineered systems consists of and include all of the components and parts providing fire suppression protection, but do not include the equipment being protected.

**Section 48** amends s. 633.0215, F.S., to provide a process by which the State Fire Marshal is to issue expedited declaratory statements interpreting the Fire Code, providing the following guidelines:

- Petitions for a declaratory statement may only be filed by an owner of the disputed project (or the owner’s representative).
- Petitions must be:
  - Related to an active project under construction or submitted for a permit,
  - Cite a specific provision of the Fire Code in dispute, and
  - Limited to a single question answerable by a “yes” or “no” response.
- Defective petitions must be denied, without prejudices- but shall not affect the right of the petitioners as a substantially affected person to seek a declaratory statement under s. 633.01(6), F.S.
- A declaratory statement shall be issued in accordance with ch. 120.565, F.S., except that a final decision must be issued by the State Fire Marshal within 45 days after the division’s receipt of a petition seeking an expedited declaratory statement.
- The State Fire Marshal shall publish notice in the next available Florida Administrative Weekly after the declaratory statement is issued.

This section also exempts condominiums that are one or two-stories in height with an exterior means of egress from requirements to install a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted by the Florida Fire Prevention Code.

**Section 49** amends s. 633.0245, F.S., to conform cross-references.

**Section 50** amends s. 633.025, F.S., to provide that notwithstanding the provisions of subsection (9), a local government may not require a property owner to install fire sprinklers in any residential property based on the use, change in use, or reclassification of that property as a rental property.

**Section 51** amends s. 633.026, F.S., to state that it is the intent of the legislature that the Florida Fire Prevention Code be interpreted by fire officials and local enforcement agencies in a manner



that reasonably and cost-effectively protects the public safety, health, and welfare; and ensures uniform interpretations throughout the state providing for expeditious processes for resolving disputes which interpretation shall be published on the Division of State Fire Marshal's website.

Amending subsection (1) of s. 633.026, to provide that the Division may contract with and refer interpretative issues to a third party that is selected based on cost-effectiveness, quality of services to be performed, and other performance-based criteria. Further providing for the Division to establish a Fire Code Interpretation Committee composed of seven members and seven alternates that equally represent each area of the state.

Amending subsection (2), to provide the membership requirements for the Fire Code Interpretation Committee.

Amending subsection (3), to require that each non-binding interpretation be provided within 10 business days after receipt of the request, the response time of which may only be waived upon the written consent of the requesting party and the Division.

Amending subsection (4), to allow the Division to authorize payments to be made directly to the non-profit organization under contract pursuant to subsection (1).

Amending subsection (5), to require parties that disagree with the issued non-binding interpretation, to request a formal interpretation from the State Fire Marshal.

Amending subsection (6), to require the Division to adopt a form by rule that must be published on its website, which must obtain certain minimum information.

Amending subsection (7), to require the Division to immediately send copies of the petition to the Fire Code Interpretation Committee and to publish the petition and any response thereof on its website.

Amending subsection (8), to require the committee to conduct proceedings as necessary with due regard to the petition, facts, specific code sections cited, and any statutory implications affecting the Florida Fire Prevention Code. The committee's interpretation must be issued within 10 days after the petition was filed which shall be provided to the petitioner along with a notice of his or her right to receive a formal interpretation. The committee's interpretation must also be published on the Division's website and the Florida Administrative Weekly.

**Section 52** amends s. 633.061, F.S.; to authorize a person who holds a valid fire equipment dealer license to maintain inactive license status during which time he or she may not engage in any work under the definition of license held. Stating that an inactive status license shall be void after two years or at the time the license is renewed, whichever is first. Providing for a biennial renewal fee for an inactive status license in the amount of \$75. Prohibiting an inactive status license from being reactivated unless certain continuing education requirements are met.

This section also requires each licensee or permittee to successfully complete at least 16 hours of continuing education course(s) for fire equipment technicians during the biennial licensure period, and during each renewal period. Requiring applicants to also provide proof of experience to the State Fire Marshal.

**Section 53** amends s. 633.081, F.S., to clarify that the State Fire Marshal, or his or her agents, may conduct inspections when the *State Fire Marshal* has reasonable cause to suspect a fire code violation.

This section directs the Division of State Fire Marshal and the Florida Building Code Administrators and Inspectors Board to enter into a reciprocity agreement jointly recognizing continuing education recertification hours for licensed building code inspectors, plan examiners or administrators and firesafety inspectors.

This section also requires the Division to establish minimum training, education and experience levels for firesafety inspectors with fire code management responsibilities and to develop by rule, an advanced training and certification program consistent with specified national standards for those firesafety inspections.

**Section 54** amends s. 633.082, F.S., to provide exceptions to the requirement that fire protection systems and fire hydrants installed in public and private properties must be inspected following the procedure established in nationally-recognized inspection, testing, and maintenance standards publications NFPA-24 and NFPA-25 as set forth in the edition adopted by the State Fire Marshal. Stating that:

- Public fire hydrants owned by a governmental entity shall be inspected following the procedures established in the inspection, testing, and maintenance standards adopted by the State Fire Marshal or equivalent standards contained in the latest edition of the American Water Works Association's Manual M17, "Installation Field Testing, and Maintenance of Fire Hydrants."
- County, municipal, and special district utilities may perform fire hydrant inspections required by this section using designated employees that do not need to be certified under this chapter. However, those counties, municipalities, or special districts are responsible for ensuring that these designated employees are qualified to perform such inspections.

The CS also amends subsection (3), of s. 633.082, F.S., to state that equipment which requires periodic testing or operation to ensure its maintenance shall be tested or operated as specified in the Fire Prevention Code, Life Safety Code, National Fire Protection Association standards, or as directed by the applicable agency. Providing however, that such agency shall not require a sprinkler system that is not required by such codes/standards, to be removed regardless of its condition.

**Section 55** amends s. 633.352, F.S., to provide that certified firefighters employed full-time as certified firesafety inspectors or instructors, do not need to retake the practical examination to be recertified, regardless of employment status. This section also corrects a cross reference to the Florida Administrative Code.

**Section 56** amends s. 633.521, F.S., regarding certification requirements for contractors of fire protection services as follows:

- Applicants passing the required examination who do not complete the remaining qualifications within one year must reapply, pay the relevant fees, retake the examination and successfully complete prescribed training.
- Applicants for certification as Contractor I:
  - Must be at least 18 years of age, be of good moral character and possess four years proven experience in the employment of fire protection system Contractor I in both water-based and chemical fire suppression systems.
- Applicants for certification as Contractor II:
  - Must meet the requirements for contractor I and have four years experience in the employment of fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in water-based fire suppression systems.
- Applicants for certification as Contractor III:
  - Must meet the requirements for contractor I and have four years experience in the employment of fire protection system as a Contractor I or Contractor II, or a combination of equivalent education and experience in chemical fire suppression systems.
- Applicants for certification as Contractor IV:
  - Must be at least 18 years old, be of good moral character, be licensed as a certified plumbing contractor under ch. 489, F.S., and successfully complete at least 40 hours in a training program, as approved by the State Fire Marshal regarding the applicable installation standard used by the Contractor IV as described in NFPA 13D.
- The State Fire Marshal may adopt rules to administer this section.

This section also allows the Division of State Fire Marshal to develop an alternative training program.

**Section 57** amends s. 633.524, F.S., to authorize the State Fire Marshal to enter into contracts for examination services and provide for the direct payment of examination fees to contract providers.

**Section 58** amends s. 633.537, F.S., relating to continuing education requirements for permit-holders, to add equivalent training and education programs adopted by the State Fire Marshal.

**Section 59** amends s. 633.72, F.S., to extend the term limitation for members of the Florida Fire Code Advisory Council from one term to two consecutive terms.

**Section 60** repeals s. 718.113(6), F.S., which requires condominium buildings taller than three-stories to be inspected every five years.

**Section 61** directs the Florida Building Commission to conform provisions of the Florida Building Code to the revisions made by this act to s. 399.02, F.S.

**Section 62** requires the Department of Management Services to consider the energy efficiency of all materials that are used in the construction, alteration, repair, or rebuilding of a building or

facility that is owned or operated by a state agency. Further stating, that when feasible, the Department shall lease a building or facility that has high-efficiency lighting.

This section also requires the Department to adopt rules which would require state agencies to install high-efficiency lamps when replacing existing lamps or installing new lamps in buildings that are owned by a state agency.

**Section 63** provides that except as otherwise expressly provided in this CS, this act shall take effect July 1, 2010.

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

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

None.

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

None.

##### **C. Trust Funds Restrictions:**

None.

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

##### **A. Tax/Fee Issues:**

The CS authorizes the Florida Building Commission to collect the following fees:

- For nonbinding interpretations of the Florida Building Code, capped at \$125.
- For waiver requests from Florida Building Code requirements, of an unspecified amount.
- For editorial revisions to long-term product approvals, of an unspecified amount.

The CS provides that the rate and base of the surcharge be changed to 1.5 percent of the permit fees associated with enforcement of the Florida Building Code, with a minimum of a \$2 fee. The CS also authorizes the State Fire Marshal to charge a \$75 fee for the biennial renewal of an inactive fire equipment dealer license.

The Revenue Estimating Conference has provided the following proposed fiscal impact for CS/SB 648:

State Impact: All Funds	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
General Revenue	0.5	0.5	0.6	0.8	0.9

State Trust	5.5	5.5	7.1	8.7	10.1
Total State Impact	6.0	6.0	7.7	9.5	11.0
Total Local Impact	0	0	0	0	0
Total Impact	6.0	6.0	7.7	9.5	11.0

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### B. Private Sector Impact:

Building owners will experience a decrease in compliance costs associated with elevator alternative power, retrofitting and emergency regional access requirements. The industry estimates that the emergency generated power requirement for elevators would entail approximately \$4,000 to \$6,000 in engineering costs per location, in addition to the costs to purchase a generator.

The building industry may benefit from expedited product approvals which may also result in more approved products.

The State Fire Marshal reports that requirements to replace existing regional emergency elevator access lock boxes may have a fiscal impact on building owners. Although the actual fiscal impact is unknown, the division reports that the price for these lock boxes vary from \$40 for basic boxes to several hundred dollars for boxes that are electronically interconnected to fire alarm systems.<sup>61</sup>

Condominium associations may experience cost savings associated with the repeal of the five-year inspection requirement.<sup>62</sup>

### C. Government Sector Impact:

The State Fire Marshal reports that there would a significant fiscal impact if existing regional emergency elevator access lock boxes are required to be replaced with lock boxes meeting the requirements of the CS; as this would require the state to buy back master keys that have already been distributed.<sup>63</sup>

<sup>60</sup> Revenue Estimating Conference, *PCS/SB 648 Fiscal Analysis* (April 2, 2010) (on file with the Senate Committee on Community Affairs).

<sup>61</sup> Department of Financial Services, *Senate Bill 648 Analysis* (Jan. 26, 2010)(on file with the Senate Committee on Community Affairs).

<sup>62</sup> This information was obtained from the House Military and Local Affairs Policy Committee, *Bill Analysis on CS/HB 663* (March 15, 2010)(on file with the Senate Committee on Community Affairs) (The provisions of CS/HB 663 are similar to CS 648).

<sup>63</sup> Department of Financial Services, *Senate Bill 648 Analysis* (Jan. 26, 2010)(on file with the Senate Committee on Community Affairs).

The Department of Business and Professional Regulations states that there will be an indeterminate fiscal impact as a result of the requirement for continuing education reciprocity between the Division of the State Fire Marshal, the Building Code Administrators, and the Inspectors Board.<sup>64</sup>

This CS also provides additional rulemaking authority to: the Department of Community Affairs, the Florida Building Commission, the Division of State Fire Marshal, and the Department of Business and Professional Regulation.<sup>65</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. 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 April 7, 2010:**

This committee substitute (CS) revises various laws related to building safety.

The CS provides that the expiration, lapse, non-renewal, or revocation of a building permit issued to the property owner after a 3 year period provided to commence repair or rebuilding constitutes abandonment of the property as homestead.

The CS delays applicability of home inspector and mold assessor licensure and regulation until July 1, 2011, names home inspector and mold assessor licensing programs, amends licensure requirements, and provides guidelines for practicing home inspectors and mold assessors to be licensed under a grandfather provision.

Regarding elevator safety, the CS:

- States that the Division may enter and have reasonable access to all buildings and rooms or spaces which an existing or newly installed conveyance or equipment are located, authorizing the Division to grant variances for undue hardship.
- Exempts elevators issued certificates of operation before July 1, 2008 from any updates to the Elevator Safety Code concerning modifications for Phase II Firefighter Services until July 1, 2015 or until it is replaced or modified.
- Permits the use of a lock box to provide regional emergency elevator access.
- Repeals emergency alternative power requirements for high-rise residential multi-family dwellings.

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<sup>64</sup> Florida Department of Business and Professional Regulation, *Senate Bill Analysis 648* (Jan. 14, 2010) (on file with the Senate Committee on Community Affairs).

<sup>65</sup> *Id.*

Regarding the Florida Building Code, the CS:

- Authorizes distance learning courses as an alternative to continuing education requirements for certain licenses.
- Revises the surcharge for the Building Code Administrators and Inspectors Fund.
- Authorizes the Department of Community Affairs to contract for administration of the inspection and certification of manufactured buildings and reinstates local jurisdiction over prototype buildings.
- Amends authority of the Florida Building Commission to allow fees for nonbinding interpretations of the Building Code and amendments to the Florida Building Code addressing equivalency of standards, needs of state agencies facing federal mandates, and inconsistencies in federal and state law.
- Requires state agencies to contract for inspection services under the alternative plans review and inspection process or with a local governmental entity.
- Exempts certain mausoleums and prisoner housing from the Building Code.
- Revises requirements related to: carbon monoxide alarms, residential pool filtration pumps and motors, energy-saving devices, air conditioner installation, ground and roof-mounted mechanical equipment, windstorm mitigation, and classroom and public building illumination.

Relating to Fire Prevention and Safety, the CS:

- Prohibits a local government from requiring a property owner to install fire sprinklers in any residential property based on the use, change in use, or reclassification of that property as a rental property.
- Provides guidelines for the State Fire Marshal to follow when issuing expedited declaratory statements.
- Establishes a process for the Division and the Fire Code Interpretation Committee to issue nonbinding interpretations of the Florida Fire Prevention Code.
- Requires continuing education reciprocity between the Division of the State Fire Marshall and the Building Code Administrators and Inspectors Board.
- Amends certification requirements for fire protection service contractors, fire equipment dealers and certain firefighters.
- Revises continuing education licensure requirements.
- Prohibits agencies from requesting certain fire sprinkler systems to be removed.

The CS also directs that public fire hydrants owned by a governmental entity be inspected following standards adopted by the State Fire Marshal or equivalent standards.

Additionally, the CS provides that county, municipal, and special district utilities may perform fire hydrant inspections with employees that have not been certified by the State Fire Marshal. However, the fore mentioned utilities are responsible for ensuring that the designated employees are qualified to perform such inspections.

The CS repeals the 5-year inspection requirement concerning the maintenance, useful life, and replacement cost of common elements for certain condominiums.

**B. Amendments:**

None.

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

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