

STORAGE NAME: h1223a.br.doc
DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1223
RELATING TO: Commercial Building Construction
SPONSOR(S): Representative(s) Cantens

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 10 NAYS 0
- (2) LOCAL GOVERNMENT & VETERAN AFFAIRS
- (3) SMARTER GOVERNMENT COUNCIL
- (4)
- (5)

I. SUMMARY:

This bill requires the Board of Professional Engineers and the Board of Architecture and Interior Design to establish qualifications, by rule, for certifying engineers and architects as "commercial building inspectors." Inspectors qualified by these boards would not be required to be licensed by the Board of Building Code Administrators and Inspectors. The bill allows professional engineers and licensed architects certified as commercial building inspectors to perform building code inspection services relating to commercial buildings and provide construction plans review for commercial projects.

The bill provides for inspection records, certificates of compliance, dispute resolution procedures, requirements for local enforcement agencies, and certain minimum liability coverage.

The bill is not anticipated to have a significant fiscal impact on state or local government though rules are required to be adopted for the respective certification program for inspectors by the Board of Professional Engineers and the Board of Architecture and Interior Design. Fees for the certification programs could be expected to be a part of the requirements adopted by the respective boards.

The Committee on Business Regulation adopted a strike everything amendment that is traveling with the bill. The amendment creates a ten member Building Construction Permitting and Inspection Task Force to study and make recommendations on alternative processes for plans review, inspection, and permitting of building construction. A task force report is due by January 1, 2002. Task force members serve on a voluntary basis at their own expense.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less government – The bill exempts the licensure of commercial building inspectors from the requirements of the Board of Building Code Administrators and Inspectors. However, the certification programs to be adopted by the Board of Professional Engineers and Board of Architects and Interior Design could be anticipated to be similar to the current requirements for inspectors. The result appears to be a shift of government, not necessarily a reduction in government.

Lower taxes – The bill exempts the licensure of commercial building inspectors from the requirements of the Board of Building Code Administrators and Inspectors and respective fees. However, the certification programs to be adopted by the Board of Professional Engineers and Board of Architecture and Interior Design could be anticipated to be similar to the current requirements for inspectors. The result appears to be a shift of fees, not necessarily a reduction in these costs.

B. PRESENT SITUATION:

Part XII of chapter 468, F.S., provides for the regulation of building code administrators and inspectors by the Board of Building Code Administrators and Inspectors within the Department of Business and Professional Regulation (DBPR). The statute provides for various types and levels of mandatory certification of building code administrators and inspection personnel. The program is funded by license fees and one-half of 1% surcharge on every building permit (local governments retain up to 10% of the surcharge, then the DBPR-projected funding needs of the board are subtracted, and the remainder goes to the Construction Industries Recovery Fund, established under part I of chapter 489, F.S.).

A building code administrator supervises enforcement of building code regulation, including plans review, enforcement, and inspection. A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner reviews plans submitted for building permits to determine compliance with construction codes.

There are several categories of inspector and plans examiner certificates, relating to the scope of the activities the licensee may perform (e.g., building inspector, commercial or residential electrical inspector, mechanical inspector, building plans examiner, plumbing plans examiner, etc.). Part XII sets forth the requirements for licensure for the various types and categories of certificate holders, including credentials from specified private organizations or specified experience (or a combination of education and experience) and an examination.

Section 468.607, F.S., provides that no person may be employed by a state agency or local government to perform the duties of building code administrator, plans examiner, or inspector after October 1, 1993, without possessing a proper valid certificate issued in accordance with the provisions of part XII of chapter 468, F.S.

Engineers are licensed and regulated by the Board of Professional Engineers, under the DBPR, pursuant to chapter 471, F.S. Engineers perform consultation, planning, and design of engineering systems. Chapter 471, F. S., provides for testing, licensure, and discipline of engineers.

Architects are licensed and regulated by the Board of Architecture and Interior Design, under the DBPR, pursuant to part I of chapter 481, F.S. Architecture is performing services in connection with the design and construction of a structure having the principal purpose of human habitation or use. Regulatory provisions include testing, licensure and discipline of architects.

Prior to 1998, architects and engineers were often asked to perform plans review or building inspection duties by local jurisdictions who were experiencing a temporary shortage of inspectors or plan reviewers. It was a common practice to perform these duties by contract without being forced to obtain licensure as a building inspector.

Currently, sections 471.045 and 481.222, F.S., enacted in 1998, allow engineers and architects to perform building inspection duties, upon the request of a local government department or state agency, without having to obtain licensure as a building inspector. The licensed professionals' respective board not the Board of Building Code Administrators and Inspectors retains disciplinary authority. Plans review may not be performed for projects conducted by the engineer or architect or an associated firm. There is no similar authority for these professionals to provide inspection services without additional licensure unless affiliated with a government client.

C. EFFECT OF PROPOSED CHANGES:

This bill requires the Board of Professional Engineers and the Board of Architecture and Interior Design to establish qualifications, by rule, for certifying engineers and architects as "commercial building inspectors." Inspectors qualified by these boards would not be required to be licensed by the Board of Building Code Administrators and Inspectors. The bill allows professional engineers and licensed architects certified as commercial building inspectors to perform building code inspection services relating to commercial buildings and provide construction plans review for commercial projects.

The bill creates s. 553.791, F.S., to authorize an engineer or architect to provide commercial building inspection services by contract with a client. The services are limited to plans review or building code inspection. The bill prohibits these services if a structure is designed by the inspector or by the inspector's firm. The bill allows the engineer or architect inspector to authorize a representative to perform the actual inspection. The bill requires the certified inspector to prepare the inspection report and to sign and seal the documents.

The bill allows plans review to determine compliance with applicable codes. The inspector is required to prepare a certificate of compliance when the work product meets appropriate standards. The plans and the certificate are required to be submitted to the local enforcement agency for further review. The local agency is required to issue a building permit within two business days unless the documents or findings are contested.

The bill authorizes a commercial building inspector to provide inspection services to determine construction compliance with building code standards for which permitting is required by a local

enforcement agency. The inspection records and a certificate of compliance are required to be submitted to the local enforcement agency for further review. The local agency is required to issue a certificate of occupancy within two business days unless the documents or findings are contested.

To perform building code inspection services, the bill requires the inspector to maintain professional and comprehensive general liability insurance with minimum policy limits of \$1 million per occurrence. Tail coverage is also required for a minimum of five years. (Tail coverage is liability insurance that extends beyond the end of the policy period of a liability insurance policy written on a claims made basis).

The bill requires contested inspection results between the inspector and the local enforcement agency to be submitted to the local board of rules and appeals if the parties cannot resolve disagreements informally. The bill establishes response timelines of two days for the local agency as a means to prompt resolution of any disagreements. The bill specifies the building permit or certificate of occupancy will be issued automatically if the timelines are not complied with by the agency. The local agency may issue a stop work order if the contested noncompliance threatens the public safety and welfare.

The bill authorizes a client to continue construction during proceedings of a contested inspection if a stop work order has been issued. Any work completed would be subject to a demolition order of the board of rules and appeals.

The local board of rules and appeals is authorized to issue decisions in relation to contested findings. If accord cannot be achieved, the issue may be appealed to the Florida Building Commission. If the local enforcement agency determines sufficient cause exists, the agency is authorized to file a complaint with the respective engineer or architecture board against an inspector.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 471.015, F.S., to authorize the Board of Professional Engineers to adopt rules to establish qualifications for certifying engineers as commercial building inspectors.

Section 2. Amends s. 471.045, F.S., to allow commercial building inspectors qualified by the board to be exempt from licensure by the Board of Building Code Administrators and Inspectors; to allow professional engineers certified as commercial building inspectors to perform building code inspection services relating to commercial buildings and provide construction plans review for commercial projects under specified circumstances.

Section 3. Amends s. 481.213, F.S., to authorize the Board of Professional Engineers to adopt rules to establish qualifications for certifying engineers as commercial building inspectors.

Section 4. Amends s. 481.222, F.S., to allow commercial building inspectors qualified by the board to be exempt from licensure by the Board of Building Code Administrators and Inspectors; to allow architects certified as commercial building inspectors to perform building code inspection services relating to commercial buildings and provide construction plans review for commercial projects under specified circumstances.

Section 5. Creates s. 553.791, F.S., to provide for inspection records, certificates of compliance, dispute resolution procedures, requirements for local enforcement agencies, and certain minimum liability coverage.

Section 6. Provides the act shall take effect October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

Not anticipated to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An economic impact on the private sector would be a factor resulting from the opportunity to negotiate inspector services with a private client rather than incurring any direct costs associated with a local government inspector or government contract inspector who is licensed as an engineer or architect.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Florida Building Commission to adopt rules regarding the contents and format of the "certificate of compliance." The bill authorizes the use of the form when a commercial building inspector approves construction plans or the completion of various phases of construction. A verification of the inspection of a particular phase of construction must also be recorded on a form adopted by rule of the Florida Building Commission.

This bill requires the Board of Professional Engineers and the Board of Architecture and Interior Design to establish qualifications, by rule, for certifying engineers and architects as "commercial building inspectors." The bill specifies a certified engineer or certified architect is not required to meet any standards other than those adopted by rule of the respective board. The bill further authorizes the respective board to adopt rules specifying the minimum qualifications of authorized representatives of certified inspectors in order to perform inspection services for a certified inspector.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 3, 2001, the Committee on Business Regulation adopted a strike everything amendment that is traveling with the bill. The amendment creates a ten member Building Construction Permitting and Inspection Task Force to study and make recommendations on alternative processes for plans review, inspection, and permitting of building construction. A task force report is due by January 1, 2002. Task force members serve on a voluntary basis at their own expense.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Alan W. Livingston

Paul Liepshutz