

STORAGE NAME: h0917.lgva.doc
DATE: March 13, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 917
RELATING TO: Palm Beach County/Building Code
SPONSOR(S): Representative Bucher
TIED BILL(S): None.

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) FISCAL POLICY & RESOURCES (FRC)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill revises an existing special act governing the adoption and enforcement of building codes in Palm Beach County. The stated purpose of the act is to provide for a system to advise the Palm Beach County Board of County Commissioners and local governments regarding the uniform implementation, interpretation, and enforcement of the Florida Building Code. The bill revises the special act to replace references to the model codes with references to the Florida Building Code and to delete provisions relating to the adoption of the model building codes that will be obsolete upon the implementation of the Florida Building Code.

The bill also amends provisions governing the Building Code Advisory Board of Palm Beach County (Board) to reflect the implementation of the Florida Building Code. The bill authorizes the Board to act as the countywide compliance review board to review any amendment to the Florida Building Code challenged by a substantially affected party. The Board's current authority to issue advisory evaluation and compliance reports for products and systems is revised to reflect the implementation of the Florida Building Code and to replace specific provisions governing policies and procedures necessary to conduct evaluation efforts with the authority for the board to establish such policies and procedures.

The attached "Economic Impact Statement" indicates the overall fiscal impact of the bill is positive in that it streamlines enforcement related to building codes.

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill. (See II.C. "EFFECT OF PROPOSED CHANGES:" section.)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

Palm Beach County Building Code Special Act

Section 1 of Chapter 90-445, L.O.F., grants the Board of County Commissioners of Palm Beach County the authority to adopt, for all municipalities and unincorporated areas of Palm Beach County, more recent editions and revisions of the Standard Building, Gas, Mechanical, and Plumbing Codes, as promulgated by the Southern Building Code Congress International, in addition to the National Electrical Code, as promulgated by the National Fire Protection Association. The section provides that these codes shall be adopted by ordinance, based on the advice of the Building Code Advisory Board of Palm Beach County.

Section 2 of Chapter 90-445, L.O.F., defines terms used in the special act.

Section 3 of Chapter 90-445, L.O.F., addresses enforcement of the model codes adopted pursuant to section 1 of the act.

Section 4 of Chapter 90-445, L.O.F., addresses code enforcement personnel qualifications.

Section 5 of Chapter 90-445, L.O.F., addresses violations of the adopted model codes and exempts state buildings from compliance with the adopted model codes.

Section 6 of Chapter 90-445, L.O.F., repeals all laws, ordinances, or resolutions now in existence in the unincorporated areas of Palm Beach County or in any municipality in Palm Beach County in conflict with this act.

Section 7 of Chapter 90-445, L.O.F., prohibits enactment of standards lower than those in the model codes by units of local government, and authorizes units of local government to adopt amendments to modify or improve the model codes, provided such amendments are in compliance with s. 553.73, F.S.

Section 8 of Chapter 90-445, L.O.F., addresses the availability of the model codes to the public.

Section 9 of Chapter 90-445, L.O.F., addresses interpretations of the model codes by the Building Code Advisory Board's Code Interpretation Committee.

Section 10 of Chapter 90-445, L.O.F., addresses appointments to the Building Code Advisory Board of Palm Beach County (Board). The Board is to be composed of 16 members, appointed by the Board of County Commissioners, composed of 7 building officials, 1 from each commission election district, appointed from nominees submitted by the Building Official's Association of Palm Beach County; 7 members appointed from nominees submitted by the Construction Industry Management Council of Palm Beach County; 1 member who shall be a registered architect appointed from nominees submitted by the Palm Beach Chapter of the American Institute of Architects; and 1 member who shall be a professional engineer appointed from nominees submitted by the Palm Beach Chapter of the Florida Engineering Society.

Section 10 also addresses the purposes of the Board. Such purposes include advising units of local governments regarding:

- Future editions of the model codes and subsequent recommendation to the board of county commissioners concerning countywide adoption.
- Recommendations on the adoption of amendments to the model codes based on local conditions.
- How construction code enforcement can be improved and standardized.
- How to prevent the recurrence of disputes.
- Evaluation of new and innovative materials, products, systems, or methods of construction for compliance with the model codes adopted pursuant to section 1, and any amendments or revisions thereto.

Section 11 of Chapter 90-445, L.O.F., addresses product and system evaluation. The section grants Palm Beach County and each unit of local government within Palm Beach County the option to direct inquiries concerning new or existing products or systems to the board. The Board must act as a clearing house for new or different products or systems, by evaluating them based on the current model codes and any amendments or revisions, being recommended for adoption by the Board. The Board may issue evaluation and compliance reports for products and systems found to be in compliance. Recommendations of the Board concerning new products or systems are advisory in nature.

Subsection (2) of section 11 of Chapter 90-445, L.O.F., addresses standards for the evaluation of new and innovative materials, products, systems, or methods of construction and requires such standards to be based on the model codes and any amendments to such codes.

Subsection (3) of section 11 of Chapter 90-445, L.O.F., addresses application procedures for evaluation and compliance determinations. The subsection authorizes the employment of consultants and the establishment of policies and procedures for processing requests.

Subsections (4) and (5) of section 11 of Chapter 90-445, L.O.F., addresses fees and the disposition of fees and expenses.

Subsection (6) of section 11 of Chapter 90-445, L.O.F., addresses applications recommended for disapproval, and subsection (7) addresses revocation of recommendations. Subsection (8) addresses renewal of evaluation and compliance reports.

The Florida Building Code

1998 Legislation

Chapter 98-287, L.O.F., provides for the creation of a unified Florida Building Code. Generally, chapter 98-287, L.O.F., provides that:

- The Board of Building Codes and Standards is reconstituted as the Florida Building Commission;
- The newly created Florida Building Commission is required to submit to the Legislature, before the 2000 regular session, for review and approval or rejection, the Florida Building Code as adopted by the Commission;
- The Commission is required to prepare a list of recommendations of revision to the Florida Statutes necessitated by the adoption of the Florida Building Code, if the code is approved by the Legislature;
- The Department of Insurance is required to adopt the Florida Fire Prevention Code and the Life Safety Code;
- Upon initial adoption, the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are deemed adopted by all local jurisdictions; with some restrictions, local governments may adopt more stringent requirements to the codes;
- Beginning January 1, 2001, local governments shall assume expanded responsibilities for permitting, plans review and inspection of facilities that are currently reviewed by state agencies;
- The Florida Building Commission may create and administer a statewide product evaluation system;
- There will be a building code training program developed which will become part of current continuing education requirements for occupations related to construction and construction regulation;
- There will be disciplinary consequences related to material code violations for state-certified and registered contractors;
- The Department of Business and Professional Regulation is required to implement an automated information system which tracks disciplinary actions taken against construction-related occupations on a statewide basis;
- There will be new continuing education requirements for registered engineers and registered landscape architects;
- The powers of the Department of Insurance and the Office of the State Fire Marshal are conformed with the reconstituted powers of the Florida Building Commission; and
- Similar processes for code adoption, update and promulgation of the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are provided.

The act also repeals some of the current statutes applicable to building codes effective January 1, 2001. The effective date of repeal of the relevant sections of chapter 553, F.S., is subject to Legislative approval of the statewide unified building code as developed by the Florida Building Commission.

2000 Legislation

The 2000 Legislature enacted chapter 2000-141, L.O.F., to, effective July 1, 2001, provide for the adoption of the Florida Building Code, a unified building code for the State of Florida. The act directs the Florida Building Commission (Commission) to continue the process to adopt the Florida Building Code (Code) as an administrative rule, subject to specific legislative direction. In addition, the act directs the Commission to recommend a statewide product approval system to the Legislature prior to the 2001 Legislative Session.

The act delegates to local governments the enforcement of state agency construction regulations, which are to be included in the Code (with limited exceptions). The act clarifies the Commission's authority to interpret the Code, hear appeals of local interpretations, and amend the code on a yearly basis.

Section 553.73(4)(b)7., F.S., provides, effective July 1, 2001, that:

"Each county and municipality desiring to make local technical amendments to the Florida Building Code shall by interlocal agreement establish a countywide compliance review board to review any amendment to the Florida Building Code, adopted by a local government within the county pursuant to this paragraph, that is challenged by any substantially affected party for purposes of determining the amendment's compliance with this paragraph. If the compliance review board determines such amendment is not in compliance with this paragraph, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines such amendment to be in compliance with this paragraph, any substantially affected party may appeal such determination to the commission. Actions of the commission are subject to judicial review pursuant to s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide."

Section 136 of chapter 2000-141, L.O.F., provides, in part, that the act is intended as a comprehensive revision of the regulation by counties and municipalities of the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings. Therefore, the section states, any sections or provisions of any special act governing those activities by any general purpose local government is hereby repealed.

C. EFFECT OF PROPOSED CHANGES:

This bill revises an existing special act governing the adoption and enforcement of building codes in Palm Beach County. The stated purpose of the act is to provide for a system to advise the Palm Beach County Board of County Commissioners and local governments regarding the uniform implementation, interpretation, and enforcement of the Florida Building Code. The bill revises the special act to replace references to the model codes with references to the Florida Building Code and to delete provisions relating to the adoption of the model building codes that will be obsolete upon the implementation of the Florida Building Code.

The bill also amends provisions governing the Building Code Advisory Board of Palm Beach County (Board) to reflect the implementation of the Florida Building Code. The Board's current authority to issue advisory evaluation and compliance reports for products and systems is revised to reflect the implementation of the Florida Building Code and replace specific provisions governing policies and procedures necessary to conduct evaluation efforts with the authority for the board to establish such policies and procedures.

Finally, the bill authorizes the Board to act as the countywide compliance review board, pursuant to section 553.73(4)(b)7., F.S., notwithstanding the requirements contained therein to establish such review board by interlocal agreement. As a result, the bill creates an exemption from general law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Chapter 90-445, L.O.F., is amended as follows:

Section 1 is amended to provide that, as provided in section 553.80(1), F.S., each local government and each legally constituted enforcement district with statutory authority shall regulate building construction and, where authorized in the state agency's enabling legislation, each state agency shall enforce the Florida Building Code, as revised or amended by the state or applicable local government, required on all public or private buildings, structures, and facilities unless such responsibility has been delegated to another unit of government pursuant to section 553.79(9), F.S.

The section provides that the purpose of this act is to provide for a system to advise the Palm Beach County Board of County Commissioners and local governments regarding the uniform implementation, interpretation, and enforcement of the Florida Building Code. Current language in section 1 is repealed.

Section 2 of chapter 90-445, L.O.F., which provides definitions, is amended to revise existing definitions to reflect the July 1, 2001, repeal of the model building codes and the creation of the Florida Building Code.

Section 3 of chapter 90-445, L.O.F., which addresses enforcement, is amended to reflect the July 1, 2001, repeal of the model building codes and the creation of the Florida Building Code.

Section 4 of chapter 90-445, L.O.F., relating to code enforcement personnel qualifications, is repealed.

Section 5 of chapter 90-445, L.O.F., relating to violations of the model codes and exemption of state buildings from compliance with the adopted model codes, is repealed.

Section 6 of chapter 90-445, L.O.F., which repeals all laws, ordinances, or resolutions now in existence in the unincorporated areas of Palm Beach County or in any municipality in Palm Beach County in conflict with this act, is renumbered section 4.

Section 7 of chapter 90-445, L.O.F., relating to enactment of lower standards than those in the model codes, is repealed.

Section 8 of chapter 90-445, L.O.F., relating to the availability of the model to the public, is repealed.

Section 9 of chapter 90-445, L.O.F., relating to interpretations of the model codes, is renumbered as section 5, and amended to replace references to the model codes with reference to the Florida

Building Code, and to delete plans examiners and inspectors from the list of individuals who may ask for an opinion from the board's Code Interpretation Committee. The section is further amended to allow for such a procedure to be conducted by other electronic means, in addition to the telephone.

Section 10 of chapter 90-445, L.O.F., relating to appointments to the Building Code Advisory Board of Palm Beach County, is amended to delete obsolete language requiring appointments by January 1, 1991, and to make the language gender neutral.

Current language in section 10 of chapter 90-445, L.O.F., relating to the purposes of the Building Code Advisory Board, is moved to a new section 7, entitled "Authority," and is amended to authorize the Board to advise units of local governments regarding:

- Adoption of administrative or technical amendments to the Florida Building Code based on local conditions.
- How construction code enforcement can be improved and standardized.
- How to prevent the recurrence of disputes.
- Evaluation of new and innovative materials, products, systems, or methods of construction for compliance with the Florida Building Code, and any amendments or revisions thereto.

The new section 7 also adds new language authorizing the Building Code Advisory Board to act as the countywide compliance review board, pursuant to section 553.73(4)(b)7., F.S., notwithstanding the requirements contained therein to establish such review board by interlocal agreement.

Section 11 of chapter 90-445, L.O.F., relating to product and system evaluation is renumbered as section 8 and substantially amended to authorize the Building Code Advisory Board to evaluate new or existing products or systems and to issue evaluation and compliance reports for products and systems found to be in compliance, as provided by policies established by the Board. Current language providing that recommendations of the Board concerning new products or systems shall be advisory in nature is retained.

Existing subsection (2) of section 11 of chapter 90-445, L.O.F., which is renumbered as section 8, relating to standards for product and system evaluation, is amended to replace references to the model codes with references to the Florida Building Code.

Existing subsection (3) of section 11 of chapter 90-445, L.O.F., which is renumbered as section 8, relating to application procedures, is amended to grant the Board the authority to establish policies and procedures necessary to conduct evaluation efforts, such as, but not limited to, applications, fees, renewals, and revocations. Current language specifically addressing procedures, fees, disposition of fees and expenses, disapproval, revocation, and renewal is deleted, and current language addressing the employment of consultants is clarified.

Section 2. This section provides that if any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 3. An effective date of upon becoming law is provided.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

February 4, 2001

WHERE? The Palm Beach Post, West Palm Beach, Palm Beach County

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Technical Concerns

As discussed in the "Present Situation" section of the analysis, Section 136 of chapter 2000-141, L.O.F., provides, in part, that the act is intended as a comprehensive revision of the regulation by counties and municipalities of the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings. Therefore, the section states, any sections or provisions of any special act governing those activities by any general purpose local government is hereby repealed. As a result, it appears that chapter 90-445, L.O.F., was repealed by chapter 2000-141, L.O.F.

To address this situation, it is recommended that the directory language of section 1 of the bill be amended to provide that notwithstanding chapter 2000-141, L.O.F., chapter 90-445, L.O.F., is reenacted and amended.

Department of Community Affairs

First, the bill conflicts with section 136 of chapter 2000-141 which, arguably, repealed the special act this bill attempts to amend. The effect of amending a repealed act is unclear but most likely does not reenact the repealed law. If reenactment is sought, the sponsor should seek advice from House Bill Drafting Services. Second, assuming that the bill amends a current law, the bill conflicts with the recommendations of the Florida Building Commission regarding a uniform statewide product approval system which are set forth in CS for SBs 190 and 336. The Senate bill contains specified procedures applicable to both local and state approval of products which would be

preempted by this act. That bill authorizes local governments to conduct product approval directly only on specified classes of products and this bill should be amended to limit the County's activities consistent with the commission's recommendations. Further, if the County wishes to apply for approval as an evaluation entity through the state system, the requirements in this bill may be submitted to the state for processing. Finally, the effective date of the bill should be revised to reflect the effective date of the Florida Building Code; otherwise, the County will have a special act in effect which references a code that does not exist.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith