

**STORAGE NAME:** h1307s1z.lgva.doc  
**DATE:** July 1, 2002

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
**CHAPTER #:** 2002-293, Laws of Florida

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

**BILL #:** CS/HB 1307, 2ND ENG.  
**RELATING TO:** Building Code Development  
**SPONSOR(S):** Council for Smarter Government; Representatives Cantens and Arza  
**TIED BILL(S):** None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
- (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
- (3)
- (4)
- (5)

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**I. SUMMARY:**

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill addresses a variety of issues relating to building code development and administration. The bill authorizes a property owner to use a private provider to review plans and make building code inspections, provides qualifications for private providers, and specifies requirements, duties, and responsibilities of the private provider and the local building official.

The bill also changes the regulatory framework of the Department of Business and Professional Regulation's Bureau of Elevator Safety. The bill removes the last on-demand service provided by the department -- inspections for temporary use of elevators during construction -- and eliminates annual mandatory collection and analysis of elevator service maintenance contracts. The bill requires annual inspections of all non-exempt elevators, requires that registered elevator companies certify that elevator construction plans meet applicable codes prior to receiving a permit to construct an elevator from the bureau, and provides technical corrections and clarifications for changes made in the last two years.

The bill directs the Florida Building Commission (Commission) to develop a rehabilitation code; provides that if an applicant for a waiver under statutory provisions relating to accessibility by handicapped persons demonstrates economic hardship in accordance with federal law, a waiver must be granted; limits an exemption from the Florida Building Code (Code) for farm buildings; exempts modular structures used as a temporary office from the Code; addresses product approval to clarify that local building officials may accept the certification mark or listing of an approved certification agency without submittal of additional test reports or documents; revises the membership of the Commission; directs the Commission to establish an informal process for rendering nonbinding interpretations of the Code; and adds additional criteria for the adoption of local amendments to the Code. The bill also delays from March 1 to June 1, 2002, implementation of the requirement for residential property insurance rate filings to include discounts and reductions for fixtures and construction techniques demonstrated to reduce loss in a windstorm.

This bill increases the workload of the Commission and creates a new responsibility for local building departments by requiring each local building code enforcement agency to develop and maintain a

**STORAGE NAME:** h1307s1z.lgva.doc

**DATE:** July 1, 2002

**PAGE:** 2

process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

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 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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: This bill authorizes a property owner to use a private provider to review plans and make building code inspections as an alternative to such activities being performed by a local building official. By doing so, the bill supports the principle of "less government." On the other hand, the bill places an additional responsibility on local governments by requiring each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

The bill also places additional responsibilities on the Florida Building Commission, and reduces elevator inspection responsibilities of the Florida Department of Business and Professional Regulation.

B. PRESENT SITUATION:

**The Florida Building Code (Background)**

Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity; mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, and exit systems; safe materials; energy efficiency; and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promote innovation and new technology, and help ensure economic viability through the availability of safe and affordable buildings and structures.

The reform of Florida's building codes system has been an issue within the construction industry for many years. It was not until Florida endured back-to-back natural disasters - Hurricane Andrew in August 1992, the "Storm of the Century" in March 1993, Tropical Storms Alberto and Beryl in the Summer of 1994, and Hurricanes Erin and Opal during the 1995 Hurricane Season - that the building code system's effectiveness took on statewide significance for the construction industry and all of the stakeholders in the building codes system, including local governments, the banking and real estate industries, the insurance industry, labor unions, state agencies, manufacturers, and Florida's citizens. While it was fortunate that these storms set no records with respect to loss of life, they (particularly Andrew) did break all records for insured losses. This was a direct cause of Florida's insurance crisis in the 1990's, which essentially affected every homeowner in the state.

In 1996, Governor Lawton Chiles established a Building Codes Study Commission to evaluate Florida's building codes system and develop recommendations to reform and improve it. The

Governor appointed 28 members to the study commission, representing diverse stakeholders in the system, including building officials, local government officials, banking and real estate interests, the disabled, the design and construction industries, building owners, state agencies, and the general public. In 1998, the study commission issued its findings and proposed a building codes system with the following characteristics:

- A single, statewide building code that would govern all technical requirements for Florida's public and private buildings and take into account appropriate local variations such as the following: climatic conditions, soil types, termites, weather-related events, and risks associated with coastal development;
- Local enforcement of the statewide building code, with updates and amendments accomplished by a newly constituted state-level entity;
- State review of decisions of local officials or boards of appeal, and state authority to issue binding interpretations to ensure statewide consistency;
- Strengthened enforcement and compliance to ensure accountability through expanded education and training of all participants involved in building construction, clear and precise definition of roles and responsibilities, and discipline; and
- A strong product evaluation and approval process which is responsible, streamlined, and affordable, and which promotes innovation and new technology.

The 1998 Legislature considered the findings and recommendations of the study commission and enacted major legislation reflecting a majority of its proposals. Chapter 98-287, L.O.F., implemented many of the study commission's recommendations, to include the development of a statewide unified building code and the renaming of the Board of Building Codes and Standards as the Florida Building Commission (Commission).

On February 14, 2000 the Commission adopted the Florida Building Code (Code) as an administrative rule and submitted it, together with proposed conforming amendments to the Florida Statutes, to the 2000 Legislature for consideration. The Commission also adopted the South Florida Building Code for application in Miami-Dade and Broward Counties.

In response, the Legislature directed the commission to incorporate specific changes to the adopted Code, and directed the Commission to recommend a statewide product approval system to the Legislature by February 2001. [Chapter 2000-141, L.O.F.]

In the 2001 session, the Legislature delayed implementation of the Code from July 1, 2001, to January 1, 2002. In addition, it adopted recommendations of the Commission providing for a state product approval system and other issues relating to the Code. [Chapter 2001-186, L.O.F.]

In the 2001 special session "C", the Legislature enacted ch. 2001-372, L.O.F., to delay the effective date of the Code to March 1, 2002.

### **Membership of the Florida Building Commission**

Section 553.74(1), F.S., establishes the Florida Building Commission (Commission). The Commission is composed of 23 members, consisting of the following:

- One architect registered to practice in this state and actively engaged in the profession;

- One structural engineer registered to practice in this state and actively engaged in the profession;
- One mechanical contractor certified to do business in this state and actively engaged in the profession;
- One electrical contractor certified to do business in this state and actively engaged in the profession;
- One member from fire protection engineering or technology who is actively engaged in the profession;
- One general contractor certified to do business in this state and actively engaged in the profession;
- One plumbing contractor licensed to do business in this state and actively engaged in the profession;
- One roofing, sheet metal, or air-conditioning contractor certified to do business in this state and actively engaged in the profession;
- One residential contractor licensed to do business in this state and actively engaged in the profession;
- Three members who are municipal or district codes enforcement officials, one of whom is also a fire official;
- One member who represents the Department of Insurance;
- One member who is a county codes enforcement official;
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state;
- One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry;
- One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession;
- One member who is a representative of a municipality or a charter county;
- One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry;
- One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management;
- One member who is a representative of the insurance industry;

- One member who is a representative of public education; and
- One member who shall be the chair.

All appointments are made by the Governor for terms of 4 years, except that of the chair who serves at the pleasure of the Governor. Any member who, during his or her term, ceases to meet the qualifications for the original appointment, through ceasing to be a practicing member of the profession indicated or otherwise, must forfeit membership on the Commission.

### **Exemptions from the Florida Building Code**

Section 553.73(8), F.S., provides that the following buildings, structures, and facilities are exempt from the Code as provided by law.

- Buildings and structures specifically regulated and preempted by the Federal Government.
- Railroads and ancillary facilities associated with the railroad.
- Nonresidential farm buildings on farms.
- Temporary buildings or sheds used exclusively for construction purposes.
- Mobile homes used as temporary offices, except that the provisions of part V relating to accessibility by persons with disabilities shall apply to such mobile homes.
- Those structures or facilities of electric utilities, as defined in s. 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
- Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.
- Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Code.
- Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

Section 604.50, F.S., provides that a non-residential farm building means any building or structure located on a farm that is not used as a residential dwelling. Both this provision and s. 553.73(8)(c), F.S., exempt "nonresidential farm buildings on farms" from the requirements of the Code. Section 553.73(8)(i), F.S., grants the Department of Agriculture and Consumer Services the authority to adopt by rule, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. To date, the department has not adopted such a rule.

The Attorney General was recently asked whether building permits were required for nonresidential farm buildings in light of s. 604.50, F.S. He responded as follows:

The plain language of sections 553.73(7)(c) and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm. (AGO 01-71)

### **Waivers of Accessibility Requirements**

Section 553.512, F.S., directs the Commission to provide by regulation criteria for granting individual modifications of, or exceptions from, the literal requirements of part V of ch. 553, F.S., relating to accessibility by handicapped persons, upon a determination of unnecessary, unreasonable, or extreme hardship, provided such waivers shall not violate federal accessibility laws and regulations and shall be reviewed by the Accessibility Advisory Council. The Commission may not consider waiving any of the requirements of s. 553.5041, F.S., relating to parking spaces, unless the applicant first demonstrates that she or he has applied for and been denied waiver or variance from all local government zoning, subdivision regulations, or other ordinances that prevent compliance therewith. Further, the Commission may not waive the requirement of s. 553.5041(5)(a) and (c)1. governing the minimum width of accessible routes and minimum width of accessible parking spaces.

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

Section 553.73(4)(b), F.S., allows local governments to adopt amendments to the technical provisions of the Code. However, such amendments may not be adopted more than once every 6 months, and the amendment must impose more stringent requirements than those specified in the Code. To adopt such amendments, the local government must determine, following a public hearing, that there is a need to strengthen the requirements of the Code. This determination must be based upon a review of local conditions which demonstrates that local conditions justify more stringent requirements than those specified in the Code for the protection of life and property.

### **Rehabilitation Code**

Currently, the Code contains provisions that pertain to the alteration, modification, and repair of all public and private buildings in the state. Section 3401.5 provides that the provisions of the technical codes within the Code relating to the alteration, repair, restoration or moving of buildings or structures shall not be mandatory of existing buildings or structures identified as qualified historic buildings when such buildings are judged by the building official to be safe and in the public interest or health, safety and welfare regarding any proposed alteration, repair, restoration, relocation or mobbing of buildings within fire districts. Section 3401.5.2 lists the criteria for qualifying historic buildings that may be exempted from the requirements of the code.

Section 3401.7.1 addresses additions to existing buildings:

- When additions, or alterations increasing floor area, are made to an existing building, and the addition and existing buildings are separated by a firewall, the addition must conform to all the requirements of the Code applicable to a building of the area of the addition.
- Where the existing building and the addition are not separated by a firewall and the area of the addition is 25 percent or more of the area of the existing building, the existing building and the addition must comply with all requirements of the Code.

- Where the existing building and the addition are not separated by a fire wall and the area of the addition is less than 25 percent of the area of the existing building, the addition must conform to all requirements of the Code, and the existing building must conform to the requirements of this Code applicable to facilities for means of egress and automatic fire-extinguishing systems.

Section 3401.7.2 addresses repairs and alterations to existing buildings:

- Structural repairs and alterations, the cost of which does not exceed 25 percent of the value of the existing building, must comply with the requirements for new buildings except that minor structural alterations, with the approval of the building official, may be made of the same material and degree of fire-resistivity of which the building is constructed.
- Non-structural repairs and alterations exclusive of fixtures and furniture, the cost of which does not exceed 25 percent of the value of the existing building and which does not affect egress or fire-resistivity, may be made of the same material or which the building or structure is constructed.
- Repairs and alterations amounting to over 25 percent but not exceeding 50 percent of the value of the existing building may be made during any 12 month period without making the entire existing building comply provided such repairs and alterations comply with the requirements of the Code for a building or like area, height and occupancy.
- When repairs and alterations amounting to more than 50 percent of the value of the existing building are made during any 12-month period, the entire building must be made to comply with the requirements for a new building or be entirely demolished.

### **Report of the Florida Building Commission**

As directed by ch. 2001-186, L.O.F., the Commission submitted its report to the Legislature regarding the adoption of a rehabilitation code for Florida. The following is taken from this report.

#### Identification and Research of Issues

The Rehabilitation Code Ad Hoc Committee, appointed by Chairman Rodriguez, was charged with identifying and researching issues critical to the feasibility of developing a rehabilitation code. The committee identified and researched other states' experience with rehabilitation codes. The states included in the study were Maryland, Rhode Island, New Jersey, and Massachusetts. Other regulatory entities and documents were also included in the research: the U.S. Department of Housing and Urban Development; the International Existing Building Code; Chapter 34, Existing Buildings, of the Florida Building Code; and the Florida Fire Prevention code.

The committee then identified and considered in the research, other issues involved in the development of a rehabilitation code. Those areas considered included:

- Commercial and residential structures;
- Technical scope of a rehabilitation code;
- Affordable housing;
- Urban blight;
- Aging Infrastructure;
- Redevelopment;



- Cost versus benefits;
- Historic preservation;
- Insurance;
- Code enforcement.

The research showed that numerous other states and local jurisdictions have realized the benefits of developing and adopting a rehabilitation code. It was discovered that rehabilitation codes encourage the use and reuse of existing buildings, as well as offset the negative effects of urban blight. Rehabilitation codes promote community redevelopment and promote the rehabilitation of affordable housing.

#### Rationale for Feasibility of Developing a Rehabilitation Code

The Ad Hoc committee's rationale for feasibility of developing a rehabilitation code is based on the predictability and proportionality of the alteration projects; defining scopes of work more concisely including renovation, alteration, and reconstruction by levels of alteration, using the percentage of the altered area as criteria. Egress and hazardous levels were also considered. It was determined that low-income housing and urban blight are critical elements in the need for a rehabilitation code. A code should facilitate the ability to rehabilitate existing buildings.

#### Recommendations

The Florida Building Commission concluded that development of a rehabilitation code is feasible and considers the benefits warrant developing such a code.

The Commission recommends:

- That the new Florida Building Code and building rehabilitation related issues be evaluated for one year.
- That a summary be provided to the Legislature regarding the effectiveness of appropriate sections of the Florida Building Code and that changes be made as needed based on the evaluation.
- That the Legislature endorse the development and implementation of a one and two family dwelling code immediately, separate from a rehabilitation code, in order to preserve and enhance homestead properties.

That it investigate rehabilitation thresholds and compare the Florida Building Code to the International Residential Code and other appropriate model codes as part of the evaluation and development of a rehabilitation code.

#### Plans Review and Building Inspections

Chapter 553, F.S., grants local governments (or a specified local board or agency), unless otherwise specified, the authority and responsibility to provide for plans review and building inspections. (Sections 553.71(2) and 553.73(1)(e), F.S.) Section 553.79(2), F.S., prohibits enforcing agencies from issuing building permits "until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code."

In some cases, non-public professionals may conduct building inspections. Section 553.79(5), F.S., requires the use of private "special inspectors" to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. "Special inspector" is defined in s. 553.71(9), F.S., as a licensed architect or registered engineer who is certified under ch. 471, F.S., or ch. 481, F.S., to conduct inspections of threshold buildings. Threshold buildings are defined in s. 553.71(7), F.S., as "any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."

In addition, local governments may exempt "industrial construction" from local review of plans and inspections on sites where design, construction, and fire-safety are supervised by appropriate design and inspection professionals, and which contain adequate in-house fire departments and rescue squads, provided that building owners certify that applicable codes and standards have been met and that they supply appropriate approved drawings to local building and fire-safety inspectors. [s. 553.79(2), F.S.]

Sections 104.3.2 and 104.5.2 of the Code authorize local governments to issue building permits based upon plan review by a registered architect or engineer. In such situations, the building official must require that the architect or engineer supervise the construction, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official a written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. The building official must ensure that any person conducting plans review is qualified as a plans examiner under part XII of chapter 468, F.S., and that any person conducting inspections is qualified as a building inspector under Part III of chapter 468, F.S. [see s. 109(5) of ch. 2000-141, L.O.F.]

In August 2001, Miami-Dade County adopted a formal process for issuing permits based on private plans review and inspections, certified by registered architects and engineers. This option is available in the unincorporated area of the county and in municipalities choosing to participate. The certifying architect or engineer must be registered with the county, must maintain an active state license, and must have "professional errors and omissions" insurance coverage of not less than \$1 million per occurrence for residential construction, and \$2 million per occurrence for commercial construction.

Not all construction subject to the Code is subject to the local plans review and building inspection. Section 553.77(5), F.S., specifically authorizes the Commission to provide by rule for plans review and approval of prototype buildings owned by public and private entities to be replicated throughout the state. The review and approval of plans for prototype buildings may be performed by a public or private entity with oversight by the commission. However, the construction or erection of such prototype buildings is subject to local permitting and inspections. Section 553.79(3), F.S., exempts the construction of manufactured homes, as defined by federal law, from local government plans review and building inspection.

Finally, s. 553.77(1)(o), F.S., grants the Commission the authority to develop recommendations for local governments to use when pursuing partial or full privatization of building department functions.

### **Building Code Officials, Plans Reviewers, and Inspectors**

Part XII of ch. 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 ch. 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 and Architects**

Engineers are licensed and regulated by the Board of Professional Engineers, under the DBPR, pursuant to ch. 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 ch. 41, 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, ss. 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 perform such functions without additional licensure unless affiliated with a government client.

### **Building Construction Permitting and Inspection Task Force**

Section 41 of ch. 2001-186, L.O.F., created the Building Construction Permitting and Inspection Task Force to recommend a procedure by which the public could elect to engage an engineer or architect to perform plans review and inspection for the construction, alteration, repair, or

improvement of real property, and the appropriate role of the local building official in such an alternative plans review and inspection procedure and in the resulting issuance of a building permit and certificate of occupancy. The section provided for the task force to be composed of 11 members, appointed as follows:

- Four members appointed by the Building Officials Association of Florida;
- One member appointed by the Associated General Contractors of Florida;
- One member appointed by the Florida Home Builders Association;
- One member appointed by the Florida Engineering Society;
- One member appointed by the Florida Association of the American Institute of Architects;
- Two members appointed by the Florida Building Commission, one member to be a building official or inspector, and one to be a contractor, architect, or engineer;
- One member appointed by the Florida Insurance Council.

The section required the task force to meet at least four times prior to January 1, 2002, and directed it to examine the various processes used by local building officials throughout the state in conducting plans review for the construction, alteration, repair, or improvement of real property, and approving building permit applications, as well as those processes used by local building officials in conducting required inspections for construction, alteration, repair, or improvement of real property, and issuing certificates of occupancy. The task was required to make recommendations on the following:

- A procedure by which the public could elect to engage an engineer or architect to perform plans review and inspection for the construction, alteration, repair, or improvement of real property; and
- The appropriate role of the local building official in such an alternative plans review and inspection procedure and in the resulting issuance of a building permit and certificate of occupancy.

The section directed the task force to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by January 1, 2002, a report presenting the task force's recommendations and findings.

The task force met five times with meetings held in Winter Park, Fort Lauderdale, Jacksonville, and Fort Myers, and via conference call. The task force found that in a certain number of jurisdictions, unreasonable delays caused by local building departments in building construction permitting and inspection result in a financial loss for owners and contractors, and lead to temporary unemployment of construction workers. While the Code allows for the use of private plan reviewers and inspectors, authority to allow use of such private plan reviewers and inspectors is made at the discretion of the local jurisdictions. To address this limitation, the task force recommended the statutes be amended to allow the owner of a construction project, without specific local government authorization, to use private providers for plan review and inspection services. The task force presented its report on December 28, 2001.

### Recommendations

The Building Construction Permitting and Inspection Task Force recommends that the following procedure be adopted by statute. Additionally, it is recommended that a long-term study be conducted to arrive at an organizational structure that will facilitate permitting by concentrating all appropriate functions under the permitting agency.

#### *Plan Review / Building Permit Issuance*

Allow a construction project owner, at his/her discretion, to engage a private provider of plan review services. The private provider, and any designated representative, should be licensed as an engineer under Florida Statutes, Chapter 471 - Engineering, licensed as an architect under Florida Statutes, Chapter 481: Part I - Architecture, Interior Design, and Landscape Architecture, or licensed pursuant to Florida Statutes, Chapter 468: Part XII - Building Code Administrators and Inspectors.

Upon submittal of a completed building permit application, and affidavit from the private provider, the building department should issue the building permit within 30 business days. The building official will have the option to review the plans within the 30 business day period, and approve or reject the plans if needed due to identified code violations. Upon resubmittal of the plans, 5 days should be added to the days remaining from the initial 30-day period. Should the time expire, the building permit should be issued the next business day.

#### *Required Inspections*

Allow a construction project owner, at his/her discretion, to engage a private provider of construction inspection services. The private provider, and any designated representative, should be licensed as an engineer under Florida Statutes, Chapter 471 - Engineering, licensed as an architect under Florida Statutes, Chapter 481 - Architecture, Interior Design, and Landscape Architecture, or licensed pursuant to Florida Statutes, Chapter 468: Part XII - Building Code Administrators and Inspectors.

For quality assurance purposes, the private provider should notify the local building official of any scheduled inspection required by the applicable building code on the business day prior to the scheduled inspection. This notification should occur prior to the cut-off time designated by the local building department for scheduling inspections. The building department should be able to send a building inspector to participate in the inspection, but should not be able to delay the inspection if an inspector is not available.

Upon conclusion of each required inspection, the private provider should post the results of the inspection at the project site immediately, and must report the results of the inspection to the local building department within two business days. Records of each completed required inspection should be maintained at the project site at all times.

Upon completion of all required inspections, the private provider should submit a certificate of compliance to the local building department.

Upon receipt of a completed application for a certificate of occupancy, the building department should have two business days to issue the certificate, or provide written notice detailing deficiencies.

#### *Building Official Authority and Responsibility*

The Building Official should be able to deny a building permit or certificate of occupancy if the Building Official determines that the plans or construction do not comply with applicable building codes.

The Building Official should be able to visit the project site as often as necessary to verify that all required inspections are being conducted. Further, the Building Official should be able to issue a stop-work order on any project, or portion thereof, deemed to be an immediate threat to public safety.

The local jurisdiction and all its employees should be held harmless for any and all claims that arise from the direct or indirect role of the private provider in performing plan review and inspection services.

The Building Official should develop and maintain a quality assurance process to audit construction projects in which private providers are utilized for plan review and inspection services.

#### *Dispute Resolution*

In order to resolve or discuss noted code violations, the Building Official should meet with the private provider within two business days after providing written notice rejecting a building permit or certificate of occupancy application, or issuing a stop work order.

In the event the dispute cannot be resolved, the permit holder should be able to appeal the decision of the Building Official to the local Board of Appeals. The local Board of Appeals should address the appeal at their next scheduled meeting. The permit holder should be able to appeal any decision of a local Board of Appeals to the Florida Building Commission. The Florida Building Commission should address the appeal at their next scheduled meeting. In jurisdictions with no Board of Appeals, the permit holder should be able to appeal the decision of the Building Official to the Florida Building Commission, and the Florida Building Commission should address the appeal at their next scheduled meeting.

#### *Insurance Requirements*

Private providers should carry professional and comprehensive general liability with minimum policy limits of one million dollars per occurrence, from an "A" rated carrier, with minimum tail coverage of five years.

#### *Exemption Procedure*

Building departments with a history of timely plan review and inspection service should have a procedure whereby they may receive an exemption from the alternative process identified herein. This procedure should allow a building department to certify meeting the statutory time limits for plan review and inspection. The local chapters of two of the following entities should endorse this certification: the Florida Associated General Contractors, Florida Home Builders Association, and Florida Chapter of the American Institute of Architects.

The task force also submitted draft legislation to implement its recommendations.

#### **Product Approval**

Approval of products is a multi-step process. First, manufacturers have samples of their products evaluated for compliance by approved testing laboratories, evaluation entities or Florida registered

engineers or architects. The evaluation is based on testing and/or rational analysis. Next, manufacturers submit reports on the evaluation to the approving authority for validation and approval. The approving entity issues an approval subject to conditions established by the evaluation. Typically, manufacturers have quality assurance programs that monitor production to ensure continued compliance and in some instances these programs are required as a condition of approval. The final step in approval is the determination that the product is being used consistent with the conditions of approval. This final step is always performed by the code enforcement official. The most extensive private sector programs for verifying product compliance with standards are administered by "certification agencies." These organizations test products to evaluate compliance, conduct production monitoring programs to ensure continued compliance, and certify compliance to specific standards. The most widely recognized of these is Underwriters Laboratories (UL) which certifies and labels electrical products. The product approval system established by s. 553.842, F.S., stipulates that validation is not required where compliance is certified by recognized entities.

In its 2001 report to the Legislature, the Commission recommended that either state or local approval be required for all products for which the Code establishes standards. Approval of a product by the state would be voluntary and at the manufacturer's discretion. Approval is based on the evaluation of a product's compliance with the standards established by the Code and validation of the information supporting compliance presented to the approving entity. The Commission recommended that approval also require manufacturers operate quality assurance programs to ensure that approved products continue to comply. The Commission's recommendations for implementing the system incorporated specified evaluation methods and recognized the differences between local approval processes and state/Commission approval processes.

Chapter 2001-186, L.O.F., substantially amends s. 553.842, F.S., to reflect the Commission's product approval recommendations. These changes provide for either state or local approval for all products for which the code establishes standards. Approval of a product by the State is voluntary and at the manufacturer's discretion. Approval is based on the evaluation of a product's compliance with the standards established by the Code and validation of the information supporting compliance presented to the approving entity. Manufacturers are also required to operate quality assurance programs to ensure approved products continue to comply with the requirements of the Code.

The act requires the Commission to adopt by rule a product evaluation and approval system that applies statewide, and authorizes the Commission to enter into contracts to provide for administration of the system. The system must provide "product evaluation entities, quality-assurance agencies, certification agencies, and validation entities", as well as independent, third party qualified and accredited testing and laboratory facilities, as required in current law. The act stipulates that state and local approvals of products are valid until the requirements of the code on which the approval is based change, the product changes, or the approval is revoked.

The act provides that products or methods or systems of construction "that require approval under s. 553.77," that have standardized testing or comparative or rational analysis methods established in the Code, and that are certified by an approved product evaluation entity, testing laboratory, or certification agency as complying with the standards specified in the code shall be approved for local or statewide use by one of the established methods without further evaluation.

The first method through which local officials approve products or methods or systems of construction is that through building plans review and inspection, local building officials may determine whether such products or methods or systems of construction comply with the prescriptive standard established in the code. However, this method does not apply to the following

categories of products: structural components as established by the commission by rule, panel walls, exterior doors, roofing, skylights, windows and shutters. In addition, local building officials may approve products or methods or systems of construction under the same methods required to be used by the state.

The act establishes a method of approving products by the state and an alternative method for approval by local building officials. One of these methods must be used in the approval of the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters and structural components, as established by the Commission by rule.

Products for which the Code establishes standardized testing or comparative or rational analysis methods must be approved by submittal and validation of one of the following reports or listings indicating the product or method or system of construction was evaluated to be in compliance with the Code and the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Code:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity; or
- A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, signed and sealed by a professional engineer or architect, licensed in this state, who has no conflict of interest, as established by Commission rule.

Products, methods or systems of construction for which there are no specific standardized testing or comparative or rational analysis methods established in the code may be approved by submittal and validation of one of the following:

- A product evaluation report, which is based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity. The report must indicate the product or method or system of construction was evaluated to be in compliance with the intent of the Code and the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Code.
- A product evaluation report, which is based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state. The report must indicate the product or method or system of construction was evaluated to be in compliance with the intent of the Code and the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Code.

### **Residential Property Insurance Rate Filings**

Section 627.0629, F.S., requires a rate filing for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The fixtures or construction techniques must include, but not be limited to, fixtures or construction techniques which enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection,



and window, door, and skylight strength. Credits, discounts, or other rate differentials for fixtures and construction techniques which meet the minimum requirements of the Code must be included in the rate filing. In addition, the section requires all insurance companies to make a rate filing which includes the credits, discounts, or other rate differentials by December 31, 2002.

### **Elevator Inspections**

Chapter 399, F.S., provides that the Department of Business and Professional Regulation (DBPR) is responsible for the administration and operation of all laws and rules relating to the inspection of elevators. Before the chapter was amended in the 2000 and 2001 Legislative Sessions, DBPR performed all elevator inspection services required by law, and elevator and inspection companies were required, regardless of the number of their employees, to have only one person certified to construct and inspect elevators.

Sections 24 through 27 of ch. 2000-141, L.O.F., amended ch. 399, F.S., to allow the private inspectors, with DBPR oversight, limited authority to provide periodic inspections of elevators. Sections 5 through 17 of ch. 2001-186, L.O.F., created the Elevator Safety Act in ch. 399, F.S., which, among other things, expanded professional certification categories and authorized private inspectors to provide final inspections on new construction, alterations, or modifications of elevators. The law also created the Elevator Safety Technical Advisory Committee. DBPR retained the responsibility for inspecting and granting temporary operation permits for elevators in buildings under construction or renovation.

Section 399.01, F.S., provides definitions for the Elevator Safety Act. It specifies what constitutes an elevator, to include escalators, and establishes various categories of permits and professional certifications required to construct, install, inspect, maintain and repair elevators.

Section 399.02, F.S., provides for general requirements of the act. Paragraph (5)(c) requires elevator owners to report to DBPR whether they have a service maintenance contract on their elevators. DBPR is required to "determine whether the provisions of the service maintenance contract and its implementation ensure the safe operation of the elevator."

Section 399.03, F.S., governs the design, installation and alteration of elevators. Subsection (1) states the elevators may not be erected, constructed, installed, or altered within buildings or structures unless a permit has been obtained from the department before the work is commenced. Subsection (5) requires that new elevator installations must be performed by a person to whom a license to install or service an elevator has been issued. After installation, the licensed person, firm, or company must certify compliance with the applicable sections of this chapter and the Florida Building Code. Before any elevator is used, except those in a private residence, it must be inspected by a licensed inspector not employed or associated with the elevator construction permit-holder and certified as meeting the safety provisions of the Code. Subsection (7) requires permit-holders to notify DBPR, in writing, at least 7 days before completion of the work and must, in the presence of a licensed elevator inspector not associated with or employed by the installing company or contractor, subject the newly installed, relocated, or altered portions of the elevator to tests required to show that the elevator meets the applicable provisions of the Code.

Upon successful inspection, the owner or lessee must apply to the department for a certificate of operation. Subsection (6) requires that certificates of operation be annually renewed, provided that each elevator has a current satisfactory inspection. These certificates must be clearly displayed on or in each elevator or in the machine room for use by and for the benefit of inspectors and code enforcement personnel.

Section 399.049, F.S., provides DBPR with the authority to suspend or revoke professional licenses or certificates of competency, and to impose administrative penalties for specific violations.

Section 399.061(1), F.S., requires all elevators be subject to annual inspections by a certified elevator inspector or by a municipality or county under contract with DBPR. However, if the elevator is maintained pursuant to a service maintenance contract continuously in force, it only needs to be inspected once every 2 years. However, DBPR has the authority to inspect an elevator whenever necessary to ensure its safe operation or when a third-party inspection service is not available for a routine inspection. Subsection (2) authorizes DBPR to employ state elevator inspectors to conduct the inspections and to charge an inspection fee for each inspection in an amount sufficient to cover the costs of that inspection, as provided by rule. Each state elevator inspector is required to hold a certificate of competency issued by DBPR.

Section 399.07, F.S., provides for certificates of operation and temporary operation permits. Paragraph (1)(a) states that a certificate of operation may not be issued until the elevator company supervisor signs an affidavit stating that the elevator company supervisor directly supervised construction or installation of the elevator. Certificates of operation are valid for 1 year unless sooner suspended or revoked. DBPR is required to adopt by rule a fee schedule for the renewal of certificates of operation. The certificate of operation must be posted in a conspicuous location on the elevator and must be framed with a transparent cover. All fees must be deposited into the Hotel and Restaurant Trust Fund.

Subsection (2) authorized DBPR to issue a temporary operation permit authorizing the temporary use of an elevator during installation or alteration to an elevator company or general contractor acting as a general agent of an elevator company. Temporary operation permits are limited to 30 days, with renewal at the discretion of the department. Temporary permits, and a notice bearing a statement that the elevator has not been finally approved by a state elevator inspector, must be conspicuously posted in the elevator. DBPR is authorized to charge a fee, set by rule, in an amount not greater than \$100, for each permit. All fees must be deposited in the Hotel and Restaurant Trust Fund.

Section 399.105, F.S., provides for administrative fines for violations of this chapter. Subsection (2) provides that "no fine may be imposed under this subsection for commencing installation without a construction permit if such permit is issued within 60 days after the actual commencement of installation."

Section 399.106, F.S., provides for the establishment of an Elevator Safety Technical Advisory Committee.

Section 399.125, F.S., requires that within 5 working days after any accident or incident occurring in or upon any elevator, the certificate of operation holder must report the accident or incident to the division on a form prescribed by the division. Failure to timely file this report is a violation of this chapter and will subject the certificate of operation holder to an administrative fine, to be imposed by the division, in an amount not to exceed \$1,000.

Section 399.13, F.S., authorizes DBPR to enter into contracts with municipalities or counties to issue construction permits, temporary operation permits, and certificates of operation; to provide inspection of elevators; and to enforce the applicable provisions of the Code, as required by this chapter. Each such agreement must include a provision that the municipality or county will maintain for inspection by DBPR copies of all applications for permits issued, a copy of each inspection report issued, and proper records showing the number of certificates of operation issued. Each permit must include a provision that each required inspection be conducted by the holder of a

certificate of competency issued by DBPR, and may include such other provisions as deemed necessary by DBPR.

Currently, Miami-Dade and Broward Counties, the cities of Miami and Miami Beach, and Reedy Creek Improvement Districts contract with DBPR to inspect elevators in their respective jurisdictions.

**C. EFFECT OF PROPOSED CHANGES:**

The bill addresses a variety of issues relating to building code development and administration.

**Membership of the Florida Building Commission (Section 15)**

The bill changes the membership of the Florida Building Commission (Commission). The mechanical contractor member is changed to require either an "air-conditioning or" mechanical contractor. The roofing, sheet metal, or air-conditioning contractor member is changed to delete the air-conditioning contractor option. Notwithstanding this change in membership designation, any person serving in these two member positions "who has served less than two full terms is eligible for reappointment to the Commission regardless of whether he or she meets the new qualifications."

**Exemptions from the Florida Building Code (Sections 1 and 19)**

The bill exempts from the Florida Building Code (Code) modular structures used as temporary offices, except that the provisions of part V of ch. 553, F.S., relating to accessibility by persons with disabilities, shall apply to such modular structures. The bill also narrows the definition of non-residential farm buildings, which are exempt from the requirements of the Code.

**Waivers of Accessibility Requirements (Section 13)**

The bill provides that if an applicant for a waiver, under statutory provisions relating to accessibility by handicapped persons, demonstrates economic hardship in accordance with 28 C.F.R. 36.403(f)(1), a waiver must be granted;

**Interpretations of the Florida Building Code (Section 16)**

The bill direct the Commission to by rule establish an informal process of rendering nonbinding interpretations of the Code. The Commission is specifically authorized to refer interpretive issues to organizations that represent those engaged in the construction industry. The Commission is directed to immediately implement the process prior to the completion of formal rulemaking. The revision states legislative intent that the Commission create a process to refer questions to a small, rotating group of individuals licensed under part XII of chapter 468, F.S., to which a party can pose questions regarding the interpretation of code provisions. Further legislative intent is provided that the process provide for the expeditious resolution of the issues presented and publication of the resulting interpretation on the Code Information System. Such interpretations are to be advisory only and nonbinding on the parties or the Commission.

**Local Technical Amendment to the Florida Building Code (Section 14)**

The bill requires that when local governments adopt local technical amendments, their review of local conditions must demonstrate "by evidence or data" that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Code beyond the needs or regional variation addressed by the Code; the local need is addressed by the proposed local

amendment; and the amendment is no more stringent than necessary to address the local need. The bill provides that a local technical amendment shall not become effective until 30 days after the amendment has been received. If challenged, a local technical amendment shall not become effective until time for filing an appeal has expired or, if there is an appeal, until the Commission issues its final order determining the adopted amendment is in compliance with this subsection. The bill requires any appeal to be filed with the Commission within 14 days of the local board's written determination, and requires the Commission to promptly refer the appeal to the Division of Administrative Hearings for the assignment of an administrative law judge, who must conduct the required hearing within 30 days, and must enter a recommended order within 30 days of the conclusion of such a hearing. The Commission is required to enter a final order within 30 days thereafter. The bill provides that the provisions of ch. 120, F.S., and the uniform rules of procedure shall apply to such proceedings, and states that the local government adopting the amendment that is challenged has the burden of proving that the amendment complies with this paragraph in proceedings before the local compliance review board and the Commission.

### **Rehabilitation Code (Section 2)**

This bill requires the Commission to develop building code provisions to facilitate the rehabilitation and use of existing structures. The bill requires the Commission to identify legislative changes required to implement such code provisions and to report to the Legislature.

### **Plans Reviews and Building Inspections (Section 17)**

This bill authorizes a property owner to use a private provider licensed as an engineer or an architect to review plans and make building code inspections. The bill authorizes certified building code officials and inspectors to perform inspections as private providers for additions and alterations that are limited to 1000 square feet or less to residential buildings. The bill specifies requirements, duties, and responsibilities of a private provider and the local building official. The bill also provides procedures for approval or denial of a certificate of compliance or a building permit. The bill prohibits local entities from adopting or enforcing laws, rules, procedures, or standards more stringent than those specified in the bill. The bill also requires a private provider to maintain liability insurance, and subjects private providers to applicable disciplinary provisions. The bill provides that a private provider, and any duly authorized representative, may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification, and prohibits a private provider from providing building code inspection services or plans review upon any building designed or constructed by the private provider or the private provider's firm. Finally, the bill requires local building code enforcement agencies to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction. The bill requires the Commission to report on the implementation of this section to the Legislature on or before January 1, 2004, as part of the report required by s. 553.77(1)(b), F.S.

### **Product Approval Section (Section 18)**

This bill revises statutory provisions governing product approval to clarify that local building officials may accept the certification mark or listing of an approved certification agency without submittal of additional test reports or documents.

### **Residential Property Insurance Rate Filings (Section 20)**

The bill delays from March 1 to June 1, 2002, implementation of the requirement for residential property insurance rate filings to include discounts and reductions for fixtures and construction techniques demonstrated to reduce loss in a windstorm. The actuarial studies necessary to determine the amount of discounts have not been completed but will be completed in time to affect rate filings after June 1, 2002.

### **Elevators (Sections 3 – 12)**

The bill also changes the regulatory framework of the Department of Business and Professional Regulation's Bureau of Elevator Safety from on-demand service provider. The revisions free resources to allow: verification of private inspector and service provider qualifications and continuing education; a system of oversight and monitoring of private sector activity and quality; focus of bureau activities on better assuring compliance with existing elevator safety provisions. The bill removes the last on-demand service provided by the department, which is the performance of inspections for temporary use of elevators during construction. The bill eliminates mandatory collection and analysis of elevator service maintenance contracts annually by the bureau. The bill requires annual inspections of all non-exempt elevators, requires that registered elevator companies certify that elevator construction plans meet applicable codes prior to receiving a permit to construct an elevator from the bureau, and provides technical corrections and clarifications for changes made in the last two years. The bill also requires local governments to use certified elevator inspectors, and allows a local government that assumes elevator inspection duties to hire private inspectors to conduct inspections.

#### **D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Paragraph (e) of subsection (8) of s. 553.73, F.S., is amended to exempt from the Code (Code) modular structures used as temporary offices, except that the provisions of part V of ch. 553, F.S., relating to accessibility by persons with disabilities shall apply to such modular structures.

**Section 2.** This section directs the Commission to develop building code provisions that may be added to the Code to facilitate the rehabilitation and use of existing structures. The Commission is directed to select from available national or international model codes or the codes or code provisions adopted by another state to form the foundation for the code provisions required by this section. The Commission is directed to seek consensus with fire safety professionals, advocates for persons with disabilities, representatives of the construction industry, land-use planners, building officials, and others identified by the Commission as having an interest in building code provisions. The Commission is authorized to modify the selected model codes and standards as needed to accommodate the specific needs of Florida.

In conjunction with its code development activities, the Commission is required to identify legislative changes required to implement the code provisions developed under this act, and is required to report the activities undertaken in response to the requirements of this act to the Legislature on or before January 1, 2003, as a part of the required annual report. The section provides for recommended code provisions and the legislative changes required for implementation to be attached as appendices to the annual report.

**Section 3.** Section 399.01, F.S., providing definitions for the Elevator Safety Act is amended to delete the definition of 'certificate of competency,' as this term is being replaced by "elevator certificate of competency." The definition of "escalator" at current subsection (8) is deleted, as existing subsection (7)(b) also defines this term. The definition of "certified elevator inspector" is amended to use the credentials of the American Society of Mechanical Engineers as opposed to the National Association of Elevator Safety Authorities. The definition of "elevator certificate of

competency” is amended to provide further qualifications to obtain an elevator certificate of competency.

**Section 4.** Section 399.02, F.S., is amended to delete a requirement that the department review service maintenance contracts and determine whether they ensure safe operation of the elevator. The section also makes each elevator owner responsible for inspections after a certificate of operation has been issued.

**Section 5.** Section 399.03, F.S., is amended to transfer modified provisions for temporary operation inspections to this section from s. 399.07(2), F.S., with the required inspection done by a private inspector, not a state elevator inspector. As these were the last inspections required of state elevator inspectors, this completes the privatization of elevator inspections. The section also requires that an original inspection report be filed with the department within 5 days of the inspection and provides additional requirements for application for elevator permits.

**Section 6.** Section 399.049, F.S., is amended to revise the grounds for suspension or revocation of certification or registration. New grounds include failure of a certified elevator inspector to file a copy of an elevator inspection report within 5 days of the inspection and fraud, misrepresentation, or bribery in the practice of the profession. The ground of a failure to notify the department and the certificate of operation holder of an elevator that is out of compliance with the elevator safety code is deleted.

**Section 7.** Section 399.061, F.S., is amended to delete the current exception to the requirement for annual inspections that allows inspections every two years for elevators that are subject to service maintenance contracts, thereby requiring an annual inspection for all elevators. The section is amended to require that a report on service maintenance contracts be filed at least annually. The section is further amended to authorize the division to employ state elevator inspectors to inspect an elevator whenever necessary to ensure its safe operation and to revise existing language authorizing the division to employ inspectors to perform inspections and charge fees for such inspections.

**Section 8.** Section 399.07, F.S., is amended to extend the period of validity of a certificate of operation from one to two years. The provisions on certificates of operation in paragraph (1)(d) are reorganized and moved to newly designated subsection (1). The section also deletes the provisions on temporary use permits, which are modified and transferred to s. 399.03, F.S. Among the modifications is requiring inspection by a private inspector, not a state elevator inspector. As the state is no longer conducting these inspections, an inspection fee provided in current paragraph (2)(d) is not contained in the new provisions in s. 399.03, F.S.

**Section 9.** Section 399.105, F.S., is amended to delete a restriction on issuance of a fine for commencing installation of an elevator without a construction permit, to shorten the time for correction of a violation from 60 days to 30 days, with discretion to extend the time for good cause shown, and to subject an elevator owner who continues to operate an elevator after it has been sealed by the department to civil fine.

**Section 10.** Section 300.106, F.S., is amended to make a technical correction.

**Section 11.** Section 399.125, F.S., is amended to delete a requirement that an “incident” occurring in or upon any elevator be reported to the division, with “accidents” still to be reported.

**Section 12.** Section 399.13, F.S., is amended to require that agreements between the department and municipalities and counties provide for all inspections to be conducted by a certified elevator

inspector rather than a holder of a certificate of competency. The section is further amended to allow a local government that assumes elevator inspection duties to hire private inspectors to conduct inspections.

**Section 13.** Subsection (1) of s. 553.512, F.S., is amended to provide that notwithstanding any other provision of s. (1) of s. 553.512, F.S., if an applicant for a waiver under part V of ch. 553, F.S., relating to accessibility by handicapped persons, demonstrates economic hardship in accordance with 28 C.F.R. 36.403 (f)(1), a waiver must be granted.

**Section 14.** Paragraph (b) of subsection (4) of s. 553.73, F.S., as amended by s. 2 of ch. 2001-372, L.O.F., is amended to revise provisions governing the adoption of technical amendments to the Code by local governments. The section is amended to require that when local governments adopt local technical amendments, their review of local conditions must demonstrate "by evidence or data" that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Code beyond the needs or regional variation addressed by the Code; the local need is addressed by the proposed local amendment; and the amendment is no more stringent than necessary to address the local need. The paragraph is amended to provide that a local technical amendment shall not become effective until 30 days after the amendment has been received. The section is further amended to provide that if challenged, a local technical amendment shall not become effective until time for filing an appeal pursuant to subparagraph (8) has expired or, if there is an appeal, until the Commission issues its final order determining the adopted amendment is in compliance with this subsection.

Current language governing appeals of local compliance review board determinations is placed under a new subparagraph 8 and amended to require any appeal to be filed with the Commission within 14 days of the local board's written determination, and to require the Commission to promptly refer the appeal to the Division of Administrative Hearings for the assignment of an administrative law judge, who must conduct the required hearing within 30 days, and must enter a recommended order within 30 days of the conclusion of such a hearing. The Commission is required to enter a final order within 30 days thereafter. The subparagraph is amended to provide that the provisions of ch. 120, F.S., and the uniform rules of procedure shall apply to such proceedings, and to state that the local government adopting the amendment, that is challenged has the burden of proving that the amendment complies with this paragraph in proceedings before the local compliance review board and the Commission.

**Section 15.** Effective May 1, 2003, subsection (1)(c) of s. 553.74, F.S., is amended to require that one member of the Commission be an air-conditioning or mechanical contractor, and subsection (1)(h) is amended to require one member to be a roofing or sheet metal contractor. Notwithstanding this change in membership designation, any person serving in these two member positions "who has served less than two full terms is eligible for reappointment to the Commission regardless of whether he or she meets the new qualifications."

**Section 16.** A new paragraph (7) is added to s. 553.77, F.S., to direct the Commission to by rule establish an informal process of rendering nonbinding interpretations of the Code. The Commission is specifically authorized to refer interpretive issues to organizations that represent those engaged in the construction industry. The Commission is directed to immediately implement the process prior to the completion of formal rulemaking. The revision states legislative intent that the Commission create a process to refer questions to a small, rotating group of individuals licensed under part XII of chapter 468, F.S., to which a party can pose questions regarding the interpretation of code provisions. Further legislative intent is provided that the process provide for the expeditious resolution of the issues presented and publication of the resulting interpretation on the Code

Information System. Such interpretations are to be advisory only and nonbinding on the parties or the Commission.

**Section 17.** Section 553.791, F.S., is created to provide an alternative plans review and inspection process. Subsection (1) defines the following terms: "Applicable codes," "Building," "Building code inspection services," "Duly authorized representative," "Local building official," "Permit application," "Private provider," and "Request for certificate of occupancy or certificate of completion"

Subsection (2) provides that notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. The subsection requires all such services to be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner. In addition, the subsection provides that notwithstanding any other provision of law, the fee owner may elect to use a private provider to provide both plans review and required building inspections or to use the local enforcement agency for one or both of such purposes. The section authorizes a local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, to require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

Subsection (3) provides that a private provider, and any duly authorized representative, may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under ch.s 481, 471, or 468, F.S. The subsection also prohibits a private provider from providing building code inspection services or plans review pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

Subsection (4) requires a fee owner using a private provider to provide building code inspection services to notify the local building official at the time of permit application on a form to be adopted by the Commission. The subsection specifies the information that must be included on the form, including an acknowledgment statement from the fee owner. The subsection also requires that if the fee owner makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner must, within 1 business day after any change, update the notice to reflect such changes.

Subsection (5) requires a private provider performing plans review under this section to review construction plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider must prepare an affidavit or affidavits on a form adopted by the Commission certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

- The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.
- The plans comply with the applicable codes.

Subsection (6) requires that within 30 business days after receipt of a permit application, the local building official issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit application will be deemed approved, as a matter of law and the permit must be issued by the local building official on the next business day. If the local building official provides a written notice of plan deficiencies to the permit



applicant within the prescribed 30-day period, the 30-day period will be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit revisions to correct the deficiencies. If the permit applicant submits revisions, the local building official has the remainder of the tolled 30-day period plus 5 business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit must be issued by the local building official on the next business day. If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

Subsection (7) requires a private provider performing required inspections under this section to inspect each phase of construction as required by the applicable codes. The private provider must be permitted to send a duly authorized representative to the building site to perform the required inspections, provided all required reports and certifications are prepared by and bear the signature of the private provider. The subsection provides that the contractor's contractual or legal obligations are not relieved by any action of the private provider.

Subsection (8) requires a private provider performing required inspections under this section to provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2:00 p.m. local time, or by any later time permitted by the local building official in that jurisdiction. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections.

Subsection (9) provides that upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. These inspection records must reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, must post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. Records of all required and completed inspections must be maintained at the building site at all times and made available for review by the local building official. The private provider must report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

Subsection (10) requires upon completion of all required inspections the private provider to prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The subsection provides the form the statement required of the private provider must follow.

Subsection (11) provides that within 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official must issue the certificate of occupancy or certificate of completion or provide a notice to the applicant

identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion will be deemed granted and the certificate of occupancy or certificate of completion must be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit a corrected request for a certificate of occupancy or certificate of completion.

Subsection (12) provides that if the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof, if the official determines that such noncompliance poses a threat to public safety and welfare, subject to the following:

- The local building official must be available to meet with the private provider within 2 business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion.
- If the local building official and private provider are unable to resolve the dispute, the matter must be referred to the local enforcement agency's board of appeals, if one exists, which must consider the matter at its next scheduled meeting or sooner. Any decisions by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the Commission pursuant to s. 553.77(1)(h), F.S.
- Notwithstanding any provision of this section, any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists. Any decision by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the Commission pursuant s. 553.77(1)(h), F.S., which shall consider the matter at the Commission's next scheduled meeting.

Subsection (13) provides that for the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the facsimile number listed for that person or entity in the permit application or revised permit application, or, if no facsimile number is stated, when actually received by that person or entity.

Subsection (14) prohibits any local enforcement agency, local building official, or local government from adopting or enforcing any laws, rules, procedures, or standards more stringent than those prescribed by this section.

Subsection (15) provides that a private provider may perform building code inspection services under this section only if the private provider maintains insurance for professional and comprehensive general liability with minimum policy limits of \$1 million per occurrence relating to all services performed as a private provider, including tail coverage for a minimum of 5 years subsequent to the performance of building code inspection services.

Subsection (16) provides that when performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under ch. 468, F.S., ch. 471, F.S., or ch. 481, F.S. In addition, the subsection provides that all private providers are subject to the disciplinary guidelines of s.

468.621(1)(c)-(h), F.S. The subsection requires that any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services be conducted by the applicable professional board.

Subsection (17) requires each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

Subsection (18) provides that the local government, the local building official, and their building code personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.

Subsection (19) requires the Commission to report on the implementation of this section to the Legislature on or before January 1, 2004, as part of the report required by s. 553.77(1)(b), F.S.

**Section 18.** Paragraph (a) of subsection (6) of s. 553.842, F.S., is amended to provide that a product evaluation report or a certification mark or listing of an approved certification agency which demonstrates that the product or method or system of construction complies with the Code for the purpose intended shall be equivalent to a test report and test procedure as referenced in the Code.

**Section 19.** Section 604.50, F.S., is amended to narrow the definition of non-residential farm buildings, which are exempt from the requirements of the Code. Under this provision, a non-residential farm building means: "any building or support structure that is used for agricultural purposes, is located on a farm that is not used as a residential dwelling, and is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S.

**Section 20.** Subsection (1) of s. 627.0629, F.S., is amended to delay from March 1, 2002, to June 1, 2002, implementation of the requirement for residential property insurance rate filings to include discounts and reductions for fixtures and construction techniques demonstrated to reduce loss in a windstorm.

**Section 21.** Except as otherwise expressly provided in the bill, an effective date of upon becoming a law is provided.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the Commission to develop building code provisions to facilitate rehabilitation and use of existing structures. The bill also provides for the Commission to hear appeals relating to the alternative plans review and inspection provisions included in the bill. These provisions will increase the Commission's workload.

This bill relieves DBPR of the responsibility for inspecting elevators for temporary use, transferring such responsibilities to the private sector.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The use of private providers to perform plans review and inspections should reduce the workload of some local building departments. The bill creates a new responsibility for local building departments by requiring each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill gives the fee owner of a building the opportunity to contract with a private provider to perform plans review and inspection services. Such voluntary contracts will involve cost for the fee owner, but may avoid delays in obtaining permits and certificates of occupancy that entail costs for the fee owner.

The bill requires the Commission to develop building code provisions to facilitate rehabilitation and use of existing structures. To the extent a rehabilitation code reduces the cost of rehabilitating existing structures, the owners of such structures will benefit from this bill.

The bill privatizes inspections for temporary elevator use, thereby creating new opportunities for private sector business.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The requirement for each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction will require cities and counties to spend money in order to implement. As a result, the bill constitutes a mandate as defined in Article VII, Section 18(a) of the Florida Constitution:

No county or municipality shall be bound by any general law requiring such County or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature...

Article VII, Section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section

18 of the Florida Constitution, the term “insignificant” has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents.

The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms. However, under the bill’s provisions local governments should experience a corresponding decrease in expenditures for plans reviews and inspections and the overall fiscal impact on counties and municipalities should be insignificant. As a result, the bill is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties and municipalities.

**V. COMMENTS:**

**A. CONSTITUTIONAL ISSUES:**

N/A

**B. RULE-MAKING AUTHORITY:**

N/A

**C. OTHER COMMENTS:**

None.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

**House Floor Amendments on 3<sup>rd</sup> Reading**

On March 20, 2002, CS/HB 13071<sup>st</sup> ENG., was read a third time, amendments were adopted, and the bill was passed. Amendment # 491095, by Representative Bennett, inserted a provision relating to an exemption from the Code for modular buildings used as temporary offices.

Amendment #214171, by Representative Cantens, revised the definition of “private provider” for purposes of the alternative plans review and inspections provisions of the bill. The amendment added certified building code officials and inspectors to the definition for purposes of performing inspections as private providers for additions and alterations that are limited to 1000 square feet or less to residential buildings.

Amendment # 162627, by Representative Cantens, added provisions governing product approval to the bill.

Amendment #153011, by Representative Cantens, added a requirement that the Commission report to the Legislature regarding the implementation of the alternative plans review and inspections provisions of the bill before January 1, 2004.

## **House Floor Amendments on 2<sup>nd</sup> Reading**

On March 13, 2002, CS/HB 1307 was read a second time, and an amendment was adopted.

Amendment #703277, by Representative Cantens, was a strike-everything amendment that added provisions relating to the development of a rehabilitation code, elevator inspections, local technical amendments to the Code, the membership of the Commission, non-binding interpretations of the Code, the exemption of farm buildings from the Code, and the delay in the effective date of provisions pertaining to rate filings for residential property insurance. The amendment also revised provisions relating to alternative plans review and inspections.

Three amendments to amendment #703277 were considered and adopted on 2<sup>nd</sup> reading. Amendment #121231, by Representative Cantens, deleted a revision to s. 509.072, F.S., that was inadvertently included in the amendment. Amendment #582141, by Representative Bennett, revised provisions in the amendment relating to adoption of local technical amendments to the Code. Amendment #843039, by Representative Benson, inserted provisions relating to waivers under part V of ch. 553, F.S., relating to accessibility by handicapped persons. The House approved amendment #703277 as amended.

## **Differences Between CS/HB 1307 and HB 1307**

On February 26, 2002, the Council for Smarter Government adopted a strike-everything amendment to HB 1307, and passed the bill as a council substitute. CS/HB 1307 incorporates amendments 1 and 2 adopted by the Committee on Local Government & Veterans Affairs at its February 21, 2002, meeting. Amendment #1 corrected a bill drafting error that inadvertently included landscape architects and interior designers in the definition of "private provider." Amendment #2 corrected a bill drafting error that inadvertently included landscape architects and interior designers in the definition of "duly authorized representative." Additional differences between CS/HB 1307 and HB 1307 include:

- CS/HB 1307 includes language providing that a private provider, and any duly authorized representative, may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification.
- CS/HB 1307 adds language to the required acknowledgment statement from the fee owner providing that the fee owner agrees to indemnify, defend, and hold harmless not only the local government and the local building official, but also their building code enforcement personnel.
- CS/HB 1307 clarifies that notice of change in a private provider from the owner to the building official must be given within one business day instead of 24 hours.
- CS/HB 1307 revises the timing of the notice of scheduled inspections from the private provider to the local building official from one full business day to 2:00 p.m. on the prior business day, or at any later time permitted by the local building official.
- CS/HB 1307 revises language requiring a local government to develop and maintain an audit process to delete reference to a quality assurance process.
- CS/HB 1307 deletes language included in HB 1307 allowing a local government to be exempted from this act under specified conditions.

- CS/HB 1307 adds language providing that the local government, the local building official, and their building code personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.
- CS/HB 1307 has an effective date of October 1, 2002, rather than upon becoming a law.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan High smith-Smith

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Council Director:

Thomas L. Hamby, Jr.

Don Rubottom

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:**

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith