

STORAGE NAME: h1667s1.sgc.doc
DATE: March 4, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 1667
RELATING TO: Building Construction
SPONSOR(S): Council for Smarter Government and Representative Benson
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 7 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 14 NAYS 0
 - (3)
 - (4)
 - (5)
-

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.

CS/HB 1667 revises membership requirements of the Florida Building Commission (Commission) and directs 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. The bill also revise an existing exemption of nonresidential farm buildings from the Florida Building Code to limit the exemption to any building or support structure used by a farm operation that is not used as a residential dwelling and is located on land classified as agricultural land for purposes of ad valorem taxes.

The bill also amends statutory provisions governing the inspection of elevators to:

- Delete a requirement that the department review service maintenance contracts and determine whether they ensure safe operation of the elevator.
- Provide that inspections for temporary elevator use are to be conducted by a private inspector, not a state elevator inspector.
- Require that a certified elevator inspector file a copy of an elevator inspection report within 5 days after the inspection and subject the inspector to discipline for failure to do so.
- Require an annual inspection for all elevators.
- Require local governments to use certified elevator inspectors, and allow a local government that assumes elevator inspection duties to hire private inspector to conduct inspections.
- Require the department to maintain a separate account within the Hotel and Restaurant Trust Fund for elevator inspection program revenue.

The bill assigns new responsibilities to the Commission that will increase the Commission's workload. The bill has no direct fiscal impact on local governments. To the extent that elevator funds have been used to subsidize hotel and restaurant regulation, there will have to be decreases in hotel and restaurant regulation or increases in collection of revenue related to this regulation.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

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

The bill assigns new responsibilities to the Florida Building Commission that will increase the Commission's workload.

B. PRESENT SITUATION:

The Florida Building Code (Background)

1998 Legislation

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

- The Board of Building Codes and Standards is reconstituted as the Florida Building Commission;
- The newly created Florida Building Commission is required to submit to the Legislature, before the 2000 regular session, for review and approval or rejection, the Florida Building Code as adopted by the Commission;
- The Commission is required to prepare a list of recommendations of revision to the Florida Statutes necessitated by the adoption of the Florida Building Code, if the code is approved by the Legislature;
- The Department of Insurance is required to adopt the Florida Fire Prevention Code and the Life Safety Code;
- Upon initial adoption, the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are deemed adopted by all local jurisdictions; with some restrictions, local governments may adopt more stringent requirements to the codes;
- Beginning January 1, 2001, local governments shall assume expanded responsibilities for permitting, plans review and inspection of facilities that are currently reviewed by state agencies;
- The Florida Building Commission may create and administer a statewide product evaluation system;

- There will be a building code training program developed which will become part of current continuing education requirements for occupations related to construction and construction regulation;
- There will be disciplinary consequences related to material code violations for state-certified and registered contractors;
- The Department of Business and Professional Regulation is required to implement an automated information system which tracks disciplinary actions taken against construction-related occupations on a statewide basis;
- There will be new continuing education requirements for registered engineers and registered landscape architects;
- The powers of the Department of Insurance and the Office of the State Fire Marshal are conformed with the reconstituted powers of the Florida Building Commission; and
- Similar processes for code adoption, update and promulgation of the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are provided.

2000 Legislation

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

2001 Legislation

The 2001 Legislature enacted ch. 2001-186, L.O.F, to delay implementation of the Code and the Florida Fire Prevention Code from July 1, 2001, to January 1, 2002. In addition, the act provided for a state product approval system. In addition to other changes, the act directed the Commission to research the issue of adopting a rehabilitation code for the state and to report to the Legislature before the 2002 Regular Session regarding the feasibility of adopting such a code. The Commission was required to review the rehabilitation codes adopted by other states as part of its research.

2001 Special Session C Legislation

Chapter 2001-372, L.O.F., postponed the effective date of the Code from January 1, 2002, until March 1, 2002.

Rehabilitation Code: 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.

Elevator Inspections

The 2001 Legislature enacted chapter 2001.186, Laws of Florida, which created the "Elevator Safety Act." This act created the Elevator Safety Technical Advisory Committee; provided regulatory standards for elevators and similar equipment; provided for permits for conveyance construction or alteration; provided for certification of elevator companies and certificates of competency for elevator mechanics and elevator inspectors; and provided for fees and penalties. The bill also revised the third party inspection statutory language passed by the 2000 Legislature.

Section 509.072, F.S., creates the Hotel and Restaurant Trust Fund to be used by the Division of Hotels and Restaurants (the division) of the Department of Business and Professional Regulation for expenses of administration and operation and carrying out all laws and rules relating to public lodging and public food services establishments and inspection of elevators. All funds collected by the division and the amounts paid for licenses and fees are to be deposited into the trust fund.

C. EFFECT OF PROPOSED CHANGES:

This bill revises membership requirements of the Florida Building Commission (Commission), and revises an existing exemption of nonresidential farm buildings from the Florida Building Code to limit the exemption to any building or support structure used by a farm operation that is not used as a residential dwelling and is located on land classified as agricultural land for purposes of ad valorem taxes.

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. Rehabilitation codes in other jurisdictions have encouraged the use and reuse of existing buildings, as well as offset the negative effects of urban blight. To the extent the development and implementation of a rehabilitation code in Florida achieves similar results, the bill will assist in the redevelopment of blighted areas. In addition, the bill may assist in making housing affordable to Floridians.

The bill also amends statutory provisions governing the inspection of elevators to:

- Delete a requirement that the department review service maintenance contracts and determine whether they ensure safe operation of the elevator.
- Provide that inspections for temporary elevator use are to be conducted by a private inspector, not a state elevator inspector.
- Require that a certified elevator inspector file a copy of an elevator inspection report within 5 days after the inspection and subject the inspector to discipline for failure to do so.
- Require an annual inspection for all elevators.

- Require local governments to use certified elevator inspectors, and allow a local government that assumes elevator inspection duties to hire private inspector to conduct inspections.

Require the department to maintain a separate account within the Hotel and Restaurant Trust Fund for elevator inspection program revenue.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. 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 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 2. 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 3. 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 4. 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 5. 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. This section also requires that a report on service maintenance contracts be filed at least annually.

Section 6. 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 7. 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 8. Section 300.106, F.S., is amended to make a technical correction.

Section 9. 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 10. 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 11. Section 509.072, F.S., is amended to require the department to maintain a separate account within the trust fund for funds collected for inspection of elevators. It requires that, to the maximum extent possible, the department directly charge all expenses to the account for elevator inspections. "Direct charge expenses" include, but are not limited to, costs for investigations, examinations, or legal services. The department is to proportionately allocate expenses that cannot be directly charged among the accounts of expenses incurred by the department. The department is required to maintain adequate records to support its allocation of expenses. The bill prohibits using elevator inspection funds to pay for hotel and restaurant regulation expenses. It prohibits transfer of the funds to any other trust fund.

Section 12. Effective May 1, 2003, subsection (1)(c) of s. 553.74, F.S., is amended to require that one member of the Florida Building 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.

Section 13. Section 604.50, F.S., is amended to revise an existing exemption of nonresidential farm buildings from the Florida Building Code. The section amends the definition of "nonresidential farm building" to limit the definition to include any building or support structure used by a farm operation that is not used as a residential dwelling and is located on land classified as agricultural land pursuant to s. 193.461, F.S.

Section 14. This section directs the Commission to develop building code provisions that may be added to the Florida Building 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 15. Except as otherwise expressly provided in this act, the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

To the extent that elevator funds have been used to subsidize hotel and restaurant regulation, there will have to be decreases in hotel and restaurant regulation or increases in collection of revenue related to this regulation. Details as to any past subsidization and the effects of this bill on other regulatory programs were unavailable at the time of drafting.

2. Expenditures:

The bill assigns new responsibilities to the Florida Building Commission that will increase the Commission's workload.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Elevator Inspections

To the extent that elevator funds have been used to subsidize hotel and restaurant regulation, there will have to be decreases in hotel and restaurant regulation or increases in collection of revenue related to this regulation.

Rehabilitation Code

As is discussed in the "Present Situation" section, the Florida Building Commission concluded that implementation of rehabilitation codes in other jurisdictions has encouraged the use and reuse of existing buildings, as well as offset the negative effects of urban blight. To the extent a rehabilitation code reduces the cost of rehabilitating existing structures, the owners of such structures will benefit from this bill.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of counties and municipalities to raise total aggregate revenues.

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

This bill does not reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

As discussed below, on February 26, 2002, the Council for Smarter Government considered HB 1667, adopted two amendments, and passed the bill as a council substitute. One of the two amendments adopted by the council was the substance of CS/HB 990, which revises provisions in ch. 399, F.S., governing the regulation of elevators. In reviewing the amendment, the House Bill Drafting Office identified several technical deficiencies. These included mistakes in the title amendment, duplicating language from the current statute, and references to licenses when, as amended, ch. 399, F.S., no longer provides for licensure. These deficiencies were corrected by House Bill Drafting in preparing CS/HB 1667.

One identified deficiency was not corrected. CS/HB 1667 amends s. 399.07, F.S., to extend the period of validity of a certificate of operation from one to two years. However, new language inserted into new subsection (1) refers to an "annual renewal fee." It is unclear what is intended by this language, and the bill should be amended to clarify the intent.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 26, 2002, the Council for Smarter Government considered HB 1667, adopted two amendments, and passed the bill as a council substitute. CS/HB 1667 incorporates the two amendments adopted by the Committee on Local Government & Veterans Affairs at its February 21, 2002, committee meeting as well as the two amendments adopted by the council. CS/HB 1667 includes the following provisions not included in HB 1667:

- CS/HB 1667 revises, effective May 1, 2003, two statutory provisions governing the composition of the Florida Building Commission. The amendment revises s. 553.74(1)(c), F.S., which requires one member of the Commission to be a mechanical contractor, to require that one member be an air-conditioning or mechanical contractor. The amendment revises s. 553(1)h), F.S., which requires one member of the Commission to be a roofing, sheet metal, or air-conditioning contractor, to require one member to be a roofing or sheet metal contractor.
- CS/HB 1667 revises an existing exemption of nonresidential farm buildings from the Florida Building Code to limit the exemption to any building or support structure used by a farm operation

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that is not used as a residential dwelling and is located on land classified as agricultural land for purposes of ad valorem taxes.

- Modifications to statutory provisions governing the regulation of elevators.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Council Director:

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Don Rubottom