

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1375 Florida Building Code  
**SPONSOR(S):** Reagan  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government &amp; Veterans' Affairs</u>	_____	<u>Nelson</u>	<u>Highsmith-Smith</u>
2) <u>Finance &amp; Tax</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

This bill amends current law regarding the Florida Building Code, requiring review of all proposed code amendments for sufficiency by Florida Building Commission staff; restricting the use of building code fee revenues; restructuring the product evaluation process and deleting the commission's authority to adopt certain rules; and providing for an expedited adoption and implementation of the proposed state existing building code.

The fiscal impact on state and local governments is indeterminate.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

#### B. EFFECT OF PROPOSED CHANGES:

##### 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 code 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 broke all records for insured losses, and were a direct cause of Florida's insurance crisis in the 1990s.

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 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, Laws of Florida, implemented many of the study commission's recommendations, including the development of a statewide unified building code and the renaming of the Board of Building Codes and Standards as the Florida Building Commission.

On February 14, 2000, the Commission adopted the Florida Building 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 to recommend a statewide product approval system to the Legislature by February 2001. See, ch. 2000-141, Laws of Florida.

In the 2001 session, the Legislature delayed implementation of the Code from July 1, 2001, to January 1, 2002. Additionally, it adopted recommendations of the Commission providing for a state product approval system and other issues relating to the Code. See, ch. 2001-186, Laws of Florida. During the 2001 special session "C," the Legislature enacted ch. 2001-372, Laws of Florida, to further delay the effective date of the Code to March 1, 2002.

In the 2002 regular session, the Legislature enacted ch. 2002-293, L.O.F., to, among other, things:

- Require the Florida Building Commission to develop building Code provisions to facilitate rehabilitation and use of existing structures;
- Amend ch. 399, F.S., to transfer from DBPR to the private sector the responsibility for inspecting elevators for temporary use while it is being installed or under alteration; to allow a local government that assumes elevator inspection duties to hire a private inspector to conduct inspections; to require an annual inspection for all elevators, regardless as to whether they are under service maintenance contracts; to restrict the use of elevator inspection program revenue to program uses; and to make a number of technical changes and clarifications;
- Require the Commission to establish an informal process of rendering non-binding interpretations of the Code; and
- Prescribe an alternative method for the use of private professionals to perform building Code inspection services, and prescribes requirements for private professionals, duties of local officials, and procedures for review and appeal of private Code inspection services.

### **The Florida Building Commission**

Section 553.74(1), F.S., establishes the Florida Building 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.

The Commission is located within the Department of Community Affairs for administrative purposes, and is responsible for the development of the Code and the other elements of the system which support its implementation.

### **Amending the Florida Building Code**

Section 553.73(6), F.S., requires the Commission to update, by rule, the Code every three years. The Commission must consider changes made for any model Code incorporated into the Code, and may then modify the Code for use in this state.

Section 553.73(7) (a), F.S., authorizes the Commission to approve technical amendments to the Code once each year for statewide or regional application upon finding that the amendment:

- Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
- Strengthens or improves the Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
- Does not degrade the effectiveness of the Florida Building Code.

In addition, the Commission may approve technical amendments to the Code once each year to incorporate into the Code its own interpretations of the Code which are embodied in its opinions and declaratory statements. A proposed amendment must include a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement is established pursuant to rule by the Commission and must include the impact to local government

relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance.

The Commission may not approve any proposed amendment that does not accurately and completely address all requirements for amendment which are set forth above.

### **Local 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 Florida Building Code. However, such amendments may not be adopted more than once every six months, and the amendment must impose more stringent requirements than those specified in the Florida Building 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 Florida Building 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 Florida Building Code for the protection of life and property.

Section 14 of ch. 2002-293, Laws of Florida, amended s. 553.73(4)(b), F.S., to require that when local governments adopt local amendments to the Florida Building Code, 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 Florida Building Code beyond the needs or regional variation addressed by the Florida Building 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.

In addition, the local government adopting the amendment, if challenged before the compliance review board or the commission, must bear the burden of proving that the amendment complies with these conditions.

### **Non-Binding Interpretations of the Florida Building Code**

The 2002 Legislature provided an additional mechanism for guidance on interpreting the Code. See, s. 16, ch. 2002-193, Laws of Florida. It authorized the Commission to recognize an outside entity to consult with Code officials and industry, and to issue non-binding advisory opinions. These advisory opinions were to be developed by licensed Code enforcement officials.

The Commission selected the Building Officials Association of Florida (BOAF) as the entity to work with toward this end. The Association met the criteria of law and had an established service for issuing advice to local Code officials and industry. The BOAF was selected in May, and negotiations on expansion of the service and standards for its operation were completed and approved by the Commission in July.

Requests for opinions are received through the Commission's Web site, and are then forwarded to BOAF and its experts on varied subject matters from industry and local building departments. The advice of these experts is directed to an experienced building official who drafts a response and forwards it to a select group of licensed and active Building Code Enforcement Officials familiar with the subject matter as assigned by BOAF.

These officials make the final determination of the response, which subsequently is forwarded to the questioner and posted on both the BOAF site and in the Commission's Building Code Information System. The electronic information system can be queried for advisory opinions and Declaratory Statements by subject area for any section of the Code.

## Product Approval

Product performance standards are integral to the scheme used by building Codes to establish minimum building safety and performance standards. Traditionally, products are evaluated for compliance by engineering groups, which are independent of the manufacturers, then their evaluations are provided to the authority having jurisdiction for general approval or acceptance of the product. The use of a product for a specific building is also evaluated by the building designer or builder and approved during plan review and inspection of the building.

The reforms to the building Code system enacted by ch. 98-287, Laws of Florida, specifically address how products' compliance with the Code are to be established and approved for use in Florida. The Commission was given the authority to complete the product approval system by administrative rule but was unable to achieve consensus on system specifics prior to the 2000 Legislative session. Consequently, the Commission recommended delaying implementation of the new state system, the continuation of the current system of local approvals until a consensus system is adopted by rule, and that a transition period is provided for implementation of the system after the rules are established.

The 2000 Legislature reviewed the Commission's recommendations and through ch. 2000-141, Laws of Florida, suspended rule adoption authority and directed the Commission to make consensus recommendations to the 2001 Legislature for their review and action. In addition, ch. 2000-141, Laws of Florida, enhanced the existing intent language of the law by requiring the system to use private sector evaluations that indicate compliance with the Code and ensure that there is an effective government oversight, prior to approving a product's acceptance in Florida.

Section 30 of ch. 2001-186, Laws of Florida, significantly rewrote the product approval provisions in s. 553.842, F.S., consistent with the Commission's recommendations, as presented in its February 2001 report to the Legislature. 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 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. Manufacturers are also required to operate quality assurance programs to ensure approved products continue to comply with the requirements of the Code.

Rule 9B.72, F.A.C., codifies the Commission's recommendation on product approval. The rule provides that all products must comply with standards established by the Code and their use must be approved by a building official. Alternatively, certain new products and panel walls, external doors, roofing, skylights, windows, shutters and certain structural components may obtain approval by the Commission for statewide use as appropriate.

The rule has uniform requirements for product evaluation and approval which will rely upon national and international consensus standards for demonstrating compliance with the Code. The Commission will approve product evaluation entities testing laboratories, certification agencies, and quality assurance entities which will have the responsibility of determining products, methods and systems compliance with the Code and certifying compliance to the Commission. Once a product, method or system has received Commission approval based on such certification, it can be used statewide as appropriate without further evaluation. A local building official may deny the use of a product if he does so in writing substantiating the fact that the product application is inconsistent with the statewide approval. That denial is reviewable by a local board of appeal (if one exists), and then by the Commission. The Commission's statewide approval is also subject to review. A product may be approved for local use only by a local jurisdiction.

Staff of the Commission indicates that they plan to amend the rule to decrease costs to industry, and defer to local product approval processes to a greater extent. The Department of Community Affairs is working to expand capabilities of the current Building Code Information System for all applications for product approval to be conducted over the Internet. The capability for applications for entity approval went online in early fall of 2002 and the ability to process applications for product approval online is scheduled for early spring of 2003.

## State Existing Building Code

Chapter 2001-186, Laws of Florida, directed the commission to research the feasibility of adopting a rehabilitation code for existing buildings. In its report to the 2002 Legislature, the commission advised that such requirements were feasible and that developing such a code was warranted. It further recommended that the Legislature endorse development of a rehabilitation code for one and two family dwellings and that the model codes are considered as the basis of this new state code.

Chapter 2002-293, L.O.F., in turn, directed the commission to “develop building code provisions that may be added to the code to facilitate the rehabilitation and use of existing structures.” Lawmakers further directed the Commission 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.” The Legislature provided that the commission could modify the selected model codes to meet the specific needs of Florida and that it should seek consensus with fire safety professionals, building officials, land use planners, advocates for persons with disabilities, the construction industry and other interested parties.

The commission established two committees to work with its Code Administration Technical Advisory Committee to develop draft provisions for the rehabilitation of one and two family dwellings and all other buildings. The International Existing Buildings Code promulgated by the International Code Council was selected as the foundation for these new building requirements. With this as a guide, the commission then spent several months deliberating the model code provisions and determining appropriate modifications. Their work was facilitated by the Florida Conflict Resolution Consortium and resulted in a proposed draft code. The code’s formula-based approach is based on the ratio of the area of a building being worked on to the total area of the building.

Industry interests have expressed concern about current code requirements for existing buildings, as have been addressed to some extent in technical amendments. However, the topic of building rehabilitation is significant enough that the commission recommended special treatment of it through the adoption of the proposed Existing Buildings Code.

The standard Ch. 120, F.S., rule adoption procedures, coupled with the special procedures for code development and implementation of s. 553.73, F.S., and the commission’s rules of procedure for amending the Florida Building Code, would result in the new Existing Buildings Code not taking effect until July 2004. Therefore, the commission recommended that adoption and implementation be expedited by legislative authorization to waive the procedures of s. 553.73, F.S., and apply only the standard procedures of ch. 120, F.S. This expedited approach would provide for implementation to proceed in the summer of 2003. The commission maintains that the new Existing Buildings Code provisions to be included in Chapter 34 of the Florida Building Code, will improve clarity and consistency in application of the code while providing flexibility for better tailoring of requirements to rehabilitation projects. They will also facilitate greater rehabilitation and reuse of existing structures, including historic buildings.

### C. SECTION DIRECTORY:

Section 1: Amends s. 553.73(7)(c), F.S., to provide that all proposed amendments and information submitted with proposed amendments to the Florida Building Code be reviewed by commission staff prior to consideration by the commission. Proposed amendments rejected by the staff may not be considered by the commission or any technical advisory committee.

Section 2: Amends s. 553.77(1)(i), F.S., to restrict the commission’s authority to evaluate and approve products for statewide use, and limit the evaluation and approval of products to s. 553.842, F.S.

Section 3: Amends s. 553.79(14), F.S., to state that a truss placement plan is not required to be signed and sealed by an engineer or architect.

Section 4: Creates s. 553.80 (7), F.S. to restrict the use of building code fee revenues. Governing bodies of local governments are authorized to provide a schedule of reasonable fees for the enforcement of the code. The fees and any fines or investment earnings related to the fees are to be used solely for carrying out the local government's responsibilities in enforcing the code. Any unexpended balance must be carried forward to fund allowable activities or be refunded.

The term "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, re-inspections, building permit processing, and building code enforcement; and enforcement against unlicensed contractor activity to the extent not funded with other user fees. This section also specifies what the term does not include, in part, any land-use-related activities; environmental regulation and enforcement; and any other building or general government activity that does not directly pertain to such activities in enforcing the Florida Building Code.

Local governments are required to work with local building industries to create a review process to assist in implementing and overseeing budgetary procedures and reports for revenue and expenditures relating to building permit fees and assist in offering suggestions or recommendations on the use and amount of building permit fees and the level and type of service provided to the local building industry.

Section 5: Amends s. 553.842, F.S., to establish a product evaluation process that would have the commission approve the evaluation entities, testing labs, and certification agencies, and to remove the commission's current authority to approve specific products. Changes to the product approval system include the following:

- Reliance on demonstration of compliance with national and international consensus standards, as adopted by the code.
- While the statewide product approval system will grant approvals of products for use, the local building official must determine whether the product, method, or system of construction is used according to its limitations and conditions of use.
- Products, methods, or systems of construction which have specific standardized testing or comparative or rational analysis methods established in the code are approved for statewide use, without further evaluation, if they comply with the standards in the code through currently approved methods.
- Products, methods, or systems of construction without specific standardized testing or comparative or rational analysis methods established in the code must demonstrate compliance with the intent of the code through currently prescribed methods.
- Products that are specifically addressed in the code through prescriptive provisions may be approved for use in accordance with the building plan review and inspection process.
- Structural components comprised of materials or products assembled or placed in the field are subject to standardized field testing procedures contained in the code.
- The commission is required to adopt rules to approve product evaluation entities, testing laboratories, certification agencies, and quality assurance agencies, and the commission is required to approve the International Code Council Evaluation Service to conduct product evaluation services.
- Local jurisdictions are precluded from requiring further testing, test reports, evaluations, or submission of other evidence of using the product if the product is being used in a consistent manner with the conditions of its approval.

This product evaluation approval system will become effective October 1, 2003.

Section 6: Allows the commission to expedite the adoption and implementation of the state existing building code as part of the Florida Building Code.

Section 7: Requires that before the 2004 regular session, the commission must submit to the Legislature the Florida Building Code adopted by the commission, with a list of recommendations for



revisions to the Florida Statutes necessitated by adoption of the code, should the Legislature approve the code.

In addition, this section specifies that when the Florida Building Code is approved by the Legislature, all existing local technical amendments to any building code adopted by any local government are repealed. However, local governments may readopt such amendments if the amendments comply with the applicable provisions of this act.

Section 8: Provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

Indeterminate.

#### **2. Expenditures:**

Indeterminate.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

Indeterminate.

#### **2. Expenditures:**

Indeterminate.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The proposed product evaluation system may reduce the cost to manufacturers to have their products approved for use in this state.

### **D. FISCAL COMMENTS:**

Section 553.80, F.S., of the bill restricts the use of building fee revenues in that these fees may only be used for carrying out the local government's responsibilities in enforcing the Code.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

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

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Florida Building Commission is authorized by the Florida Legislature to promulgate rules. See, s. 553.76(4), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Sponsor intends to offer a strike all amendment which is intended to reflect language agreed to by the interested parties.