

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 317 w/CS Florida Building Code
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government & Veterans' Affairs	11 Y, 0 N w/CS	Nelson	Highsmith-Smith
2) Commerce			
3) State Administration			
4)			
5)			

SUMMARY ANALYSIS

This bill w/CS authorizes the Florida Building Commission to engage in chapter 120 rulemaking regarding Florida Building Code provisions governing existing structures. The bill provides that the initial adoption of such provisions will not be subject to existing laws and commission rules relating to Building Code amendments, modifications or updates. The bill also adds a certified elevator inspector to the Elevator Safety Technical Advisory Committee.

According to the Department of Community Affairs' fiscal analysis, there will be costs to the state associated with administration of Section 1 of the bill. These costs are detailed in Section II.A.. of this analysis. In addition, the proposed existing buildings code provides clarifications, details, and new compliance methods that will make renovation of existing buildings more practical. This should have a positive fiscal impact on the private sector that is indeterminate.

Section 2 of the bill appears to have no fiscal impact on state or local government.

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:

This bill w/CS authorizes the Florida Building Commission to engage in ch. 120 rulemaking regarding Florida Building Code provisions governing existing structures which were recommended to the Legislature in the Commission’s 2002 report. The bill provides that the initial adoption of such provisions will not be subject to ss.553.73 and 533.77, F.S., or commission rules relating to Building Code amendments, modifications or updates. The bill also adds an additional member to the Elevator Safety Technical Advisory Committee who is a certified elevator inspector from a private inspection service.

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 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. In addition, 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.

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. Sections 553.76 and 533.77, F.S., contain the general and specific powers of the Commission.

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 shall be established by 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. Section 553.73 requires, among other things, the publication of proposed amendments on the Commission's website for a minimum of 45 days.

The Florida Building Commission Report to the 2002 Legislature

During the 2001 legislative session, the Florida Legislature directed the Florida Building Commission to provide recommendations on a number of issues, including the feasibility of developing and adopting a "rehabilitation code" for existing buildings. In its 2002 report, the Commission concluded that

development of requirements specific to the rehabilitation of existing buildings was feasible, and that the benefits warranted developing such a code. The Commission recommended that:

- the new Florida Building Code and building rehabilitation related issues be evaluated for one year;
- 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;
- the Legislature endorse the development and implementation of a one and two family dwelling rehabilitation code immediately, separate from a rehabilitation code, in order to preserve and enhance homestead properties; and
- 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.

The 2002 Legislature, in turn, directed 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 established two committees to work with its Code Administration Technical Advisory Committee in developing 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 which was submitted to the Legislature in the Commission’s 2003 report. 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. The extent to which new construction standards apply increases as the amount of area being worked on increases.

Elevator Inspections

Chapter 399, F.S., is known as the “Elevator Safety Act.” The stated purpose of the chapter is to provide for the safety of life and limb and to promote public safety awareness. The chapter establishes the minimum standards for elevator personnel. Elevator personnel performing work covered by the Florida Building Code must possess documented training or experience or both and be familiar with the operation and safety functions of the components and equipment. Training and experience includes, but is not limited to, recognizing the safety hazards and performing the procedures to which they are assigned in conformance with the requirements of the Florida Building Code.

The Elevator Safety Technical Advisory Committee was created within the Department of Business and Professional Regulation, Division of Hotels and Restaurants, by the 2002 Legislature to provide technical assistance in support of protecting the health, safety, and welfare of the public, and to give the division the benefit of the committee members’ knowledge and experience concerning the industries and individual businesses affected by the laws and rules administered by the division. The Committee consists of seven members appointed by the Secretary of the Department of Business and Professional Regulation to include: one representative from a major elevator manufacturing company or its authorized representative; one representative from an elevator servicing company; one representative from a building design profession; one representative of the general public; one representative of a local government in this state; one representative of a building owner or manager; and one representative of labor involved in the installation, maintenance and repair of elevators.

While the Florida Department of Business and Professional Regulation once performed all elevator inspection services, current law provides that the Department may enter into contracts with municipalities or counties under which these local governments issue construction permits and certificates of operation and inspect elevators and enforce the applicable provisions of the Florida Building Code.

C. SECTION DIRECTORY:

Section 1: Provides that the Legislature has reviewed and approved the Florida Building Code revision recommendations pertaining to existing buildings contained in the Florida Building Commission's 2002 report.

Directs the Commission to adopt these recommendations as part of the Florida Building Code pursuant to s. 120.54, F.S., and provides that adoption of such provisions will not be subject to the requirements of ss. 553.73 and 553.77, F.S., or commission rules relating to Building Code amendments, modifications or updates.

Section 2: Adds an eighth member to the Elevator Safety Technical Advisory Committee who is a certified elevator inspector from a private inspection service.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Department of Community Affairs' fiscal analysis, funding sources include general revenue, State Transportation Trust Fund, and other sources.

2. Expenditures:

FY 03-04: \$25,000 (recurring)
FY 04-05: \$12,500 (recurring)
FY 05-06: \$12,500 (recurring)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed Florida Existing Building Code (Rehab) provides clarifications, details, and new compliance methods that will make renovation/alteration of existing buildings more practical.

According to the Department of Community Affairs' fiscal analysis, a comparison of New Jersey cities with a concentration of its oldest buildings indicate an increase from approximately \$300 million each year to \$500 million-plus after the adoption of its existing code. There should be a positive fiscal impact on the private sector, but there is no way to determine the impact at this time.

D. FISCAL COMMENTS:

None.

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:

Drafting Issues

Section 1 of the bill refers to the Florida Building Commission's 2002 report, which does not provide recommendations to be adopted as part of the Florida Building Code. The draft for the "Florida Existing Buildings Code" is contained as an appendix to the Commission's 2003 report, and the bill should be amended to reflect this fact.

Other Comments

Industry interests have expressed concern about current Code requirements for existing buildings, as have been addressed to some extent in glitch amendments. However, the topic of building rehabilitation is significant enough that the Commission recommends special treatment of it through the adoption of the proposed Existing Buildings Code. The standard ch. 120, F.S., administrative 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 recommends that adoption and implementation be expedited by legislative authorization to waive the procedures of s. 533.73, 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 new Existing Buildings Code provisions to be included in ch. 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.¹

Legal Counsel for the Department of Community Affairs² affirmed that section 1 of this bill w/CS is important to the Department because it allows for accelerated adoption of the Florida Building Commission's recommendations to the Florida Building Code.

¹ The Florida Building Commission Report to the 2003 Legislature, page 9.

² Jim Richmond, Attorney, Department of Community Affairs.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Local Government & Veterans' Affairs adopted an amendment at its meeting on 4/21/03 which adds an additional member to the Elevator Safety Technical Advisory Committee. This member must be a certified elevator inspector from a private inspection service.