

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 518

SPONSOR: Comprehensive Planning Committee, Regulated Industries Committee and Senator Constantine

SUBJECT: Florida Building Code/Elevators

DATE: April 21, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.	Cooper	Yeatman	CP	Fav/CS
3.			BI	
4.			ATD	
5.			AP	
6.				

## I. Summary:

This Committee Substitute for the Committee Substitute (CS) changes the following statutory provisions relating to the Florida Building Code:

- Includes hospice residential and inpatient facilities in the Florida Building Code (code);
- Clarifies that all existing local technical amendments to any building code were repealed upon adoption of the Florida Building Code in 2000;
- Includes legislative intent language relating to the triennial adoption of the Florida Building Code;
- Includes Florida Building Commission (commission) final orders and interpretations of hearing officer panels, as created in this bill, in the types of technical amendments the commission may adopt and incorporate into the code;
- Requires commission staff to review all proposed amendments for sufficiency;
- Amends s. 553.74, F.S., to revise the appointment of members to the Florida Building Commission;
- Requires master keys for elevators in buildings that are six or more stories to allow for emergency elevator access;
- Authorizes, rather than requires, the Florida Building Commission to determine the types of products to be approved for local or statewide use;
- Creates a new system of building code administrator panels to review appeals of decisions by local building officials, with authority to issue binding interpretations, subject to appeal to the commission;

- Clarifies that a truss placement plan is not required to be signed and sealed by an engineer or architect unless prepared by an engineer or architect or specifically required by the Florida Building Code;
- Authorizes a fee owner's contractor, rather than only the fee owner, to use a private building code inspector;
- Allows private providers of building code inspection services an additional option for insurance coverage;
- Restricts the use of building code fee revenues to fund only those services necessary to enforce the Florida Building Code;
- Provides an expedited adoption and implementation of the State Existing Building Code (Rehab Code) as part of the Code as provided under ch. 120, F.S.;
- Allows the hearing officer panels created in this act to conduct proceedings, notwithstanding certain requirements of ch. 120, F.S.;
- Privatizes the staff of the Florida Building Commission through the newly created Florida Construction Council;
- Expands the Elevator Safety Technical Advisory Committee to include a certified elevator inspector from a private inspection service;
- Amends s. 553.841, F.S., to change the administration of the Florida Building Code Training Program;
- Establishes a penalty for use of pyrotechnic devices in an indoor facility without a fire-suppression system or without a permit from the local fire marshal; and
- Delays the administrative rule implementing the Florida Building Commission's product approval system until at least until January 1, 2004, and requires the commission to conduct a review of the cost/benefit of the rule, or any other similar rule, and report their findings to the Legislature in 2004; In addition, it restrict the implementation of any such rule unless it has a positive cost and benefit to the public.

This bill amends the following sections of the Florida Statutes: 120.80, 399.106, 553.73, 553.74, 553.77, 553.79, 553.791, 553.80, 553.841, and 633.171.

The bill also creates s. 553.775, F.S., and several unnumbered sections of the Florida Law.

## **II. Present Situation:**

### **Building Code**

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 to 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) by 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 Florida Building Code, and directed the commission to recommend a statewide product approval system to the Legislature by February 2001. [Ch. 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 Florida Building Code. [Ch. 2001-186, L.O.F.]

In the 2001 special session “C”, the Legislature enacted ch. 2001-372, L.O.F., to further delay the effective date of the Florida Building 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.

### **Hospice Residential & Inpatient Facilities**

Section 553.73(2), F.S., requires the code contain provisions or requirements for:

public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements.

In addition, the code must include standards and criteria for residential swimming pool barriers, pool covers, latching devices, and door and window exit alarms.

However, the code does not specifically include hospice residential and inpatient facilities. The standards for these facilities are contained in the administrative rules of the Department of Elder Affairs.

### **Revising the Florida Building Code**

Section 553.73(6), F.S., requires the commission to update, by rule, the code every 3 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.

**Amending the Florida Building Code**

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.

However, 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 6 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, L.O.F., 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.

**Membership of the Florida Building Commission**

Section 553.74(1), F.S., establishes the Florida Building Commission (Commission). Effective October 1, 2003, the Commission will be composed of the following 23 members:

- 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 air-conditioning or 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 or sheet metal 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.

**Non-Binding Interpretations of the Florida Building Code<sup>1</sup>**

The 2002 Legislature provided an additional mechanism for guidance on interpreting the code.<sup>2</sup> 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. 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 then 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.

**Alternative Plans Review and Inspections**

Section 17 of Ch. 2002-293, L.O.F, created s. 553.791, F.S., to establish a procedure by which the public could choose to hire an engineer or architect to perform plans review and building inspection services for structures for which building permits are required.

Section 553.791(2), F.S., authorizes the fee owner of a building to use and pay a private provider to offer building code inspection services, subject to a written contract between these parties. The fee owner may use a private provider to offer both plans review and required building inspections or to use the local enforcement agency for one or both of these purposes.

Subsection (15) authorizes a private provider to 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, and including tail coverage for a minimum of 5 years subsequent to the performance of building code inspection services.

**Building Inspection Fees**

Section 553.80(1), F.S., authorizes local governments to assess fees to fund the enforcement of the code. Use of fee revenues is restricted. This section provides that fees may "be used solely for carrying out the local government's responsibilities in enforcing the code."

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<sup>1</sup> [http://www.floridacommunitydevelopment.org/fbc/information/building\\_commission.htm#evaluation](http://www.floridacommunitydevelopment.org/fbc/information/building_commission.htm#evaluation)

<sup>2</sup> s. 16, ch. 2002-193, L.O.F.

Concerned over local government's compliance with the fees provision of s. 553.80, F.S., several different local builders association's requested the Florida Home Builders Association to conduct a study. The study found the following problems among twelve different local governments:

- Local governments not tracking and restricting the cumulative fund balance of building permit and inspection activities.
- There is no clear distinction between costs associated with enforcing the building code and costs incurred in the planning and zoning departments, engineering departments, and other functions performed in the growth management division.
- Other non-enforcement costs are included in the same department and the costs are being subsidized by building permit fees and other fees.
- Some local governments, after subsidizing non-enforcement costs, are accumulating fund balances that could be considered unreasonable amounts.
- Local government overhead is not being applied consistently.
- Local governments in general have in place adequate accounting and reporting practices for the full range of their financial management and reporting activities but in most instances, they simply and inexplicably do not appear to apply these tracking systems and accounting practices so that they comply with the Florida Statutes relative to building inspection fees.
- Many local governments have not established any type of public input process, which allows the building community to express their views on the appropriate level of service that they require and are paying for.

### **Building Code Training**

In 1998, the Legislature created s. 553.841, F.S., to establish the Building Code Training Program. This section:

- Directs the commission to implement, by rule, a core curriculum and advanced module courses relating to the Florida Building Code;
- Directs the commission to develop the training program in consultation with various agencies;
- Allows the commission to enter into contracts with various providers to administer the program;
- Requires that, among other things, the program shall be accessible, affordable, meaningful, and financially self-sufficient;
- Requires that the commission develop, with DCA, DOI, and DBPR, a core curriculum and a set of advanced module course work;
- Specifies the information to be contained in the core curriculum and identifies the license categories impacted;
- Requires the commission to develop, with DBPR and respective licensing boards, an equivalency test for the core curriculum, for each category of license;
- Requires the commission, with DBPR, develop for use as continuing education units core module work for superintendents, journeyman and residential designers; and
- Requires the respective state boards and the State Fire Marshal to require specialized or advanced core modules as part of a continuing education program.



**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.<sup>3</sup>

The reforms to the building code system enacted by 98-287, L.O.F., specifically address how products' compliance with the code are to be established and approved for use in Florida.<sup>4</sup> 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, L.O.F., 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, L.O.F., 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, L.O.F., 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

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<sup>3</sup> Information taken from [http://www.floridacommunitydevelopment.org/fbc/index\\_page/FULL%20Report%20and%20Cover%20-%20Legislature%202003-021303.pdf](http://www.floridacommunitydevelopment.org/fbc/index_page/FULL%20Report%20and%20Cover%20-%20Legislature%202003-021303.pdf)

<sup>4</sup> Information taken from [http://www.floridacommunitydevelopment.org/fbc/information/building\\_commission.htm#evaluation](http://www.floridacommunitydevelopment.org/fbc/information/building_commission.htm#evaluation)

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 (DCA) 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.

### **Rehabilitation Code**

Section 22 of ch. 2001-186, L.O.F., 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 endorsed 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.

Section 2 of ch. 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 Chapter 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.

#### **Elevator Safety Technical Advisory Committee**

Section 399.106, F.S., provides for the establishment of an Elevator Safety Technical Advisory Committee within the Department of Business and Professional Regulation (DBPR), Division of Hotels and Restaurants. The committee consists of seven members, appointed by the secretary of the DBPR, with one representative from the following:

- A major elevator manufacturing company or its authorized representative;
- An elevator servicing company;
- A building design profession;
- From the general public;
- A local government in this state;
- A building owner or manager; and
- From labor involved in the installation, maintenance, and repair of elevators.

#### **Universal Keys for Elevators**

Section 33 of ch. 2001-186, L.O.F., required the commission to research the issue of requiring all primary elevators in buildings with more than five levels to operate with a universal key, which allows access and operation of elevators by emergency personnel.

In s. 943.0312, F.S., the legislature states that there is a need to develop and implement a statewide strategy to address preparation and response efforts by federal, state, and local law enforcement agencies, emergency management agencies, fire and rescue department, first responder personnel and others in dealing with potential or actual terrorist acts within or affecting the state. Regional domestic security task forces were established in each of the Department of Law Enforcement's 7 operational regions. According to the Division of State Fire Marshals, there is a strain on harnessing emergency access to elevators in most of the regions due to the multitude of different fire departments within each region.

According to the Department of Business and Professional Regulation (department), uniformity of elevator key switches is not currently prescribed or regulated by state law. The department is the enforcement authority for ch. 399, F.S., the Florida Elevator Safety Act, and rules related to elevator construction, installation, permitting, inspection, and maintenance are promulgated in concert with the Florida Building Commission.

### **Pyrotechnic Devices**

Section 633.0215, F.S., requires the State Fire Marshal to adopt, by rule, the Florida Fire Prevention Code. The code must contain the most recent editions of National Fire Prevention Association Standard 1 and the Life Safety Code, Pamphlet 101. These provisions in the rule contain standards for use of pyrotechnics ‘proximate’ to the audience – or in front of or in an enclosed area, such as a building. To use such pyrotechnics, the rule requires that persons must obtain a permit from the state or local fire marshal. In most cases, a fire marshal must also be present when these pyrotechnics are used. The penalty for using pyrotechnics without obtaining a permit is a misdemeanor.

## **III. Effect of Proposed Changes:**

### **Revising and Amending the Florida Building Code**

**Section 1** amends s. 553.73(2), F.S. to specifically apply the Florida Building Code to hospice residential and inpatient facilities. By including them specifically in the code, it provides clarification for local building departments and fire officials that the structures should conform to the code.

In addition, subsection (4) is amended to clarify that all existing local technical amendments to any building code were repealed upon adoption of the Florida Building Code in 2000.

Subsection 553.73(6) is amended to include legislative intent language relating to the triennial adoption of the Florida Building Code. This section declares that it is the intent of the Legislature that the Florida Building Code be maintained to be up-to-date with national consensus standards, and that the code be maintained to reflect Florida-specific needs and conditions affecting its built environment. When updating the code the commission must consider:

- New editions of national model codes and consensus standards incorporated into the Florida Building Code;
- Successor national model codes and consensus standards where such national model codes or consensus standards are no longer maintained by their promulgating organizations;
- Existing approved and adopted Florida-specific modifications;
- Such interpretations, declaratory statements and appellate decisions of the commission;
- Local amendments reviewed pursuant by the commission; and
- Such Florida-specific amendments first approved by the commission pursuant in the first edition of the Florida Building Code and considered essential to maintaining the Florida Building Code requirements appropriate to the State of Florida.

Subsection 553.73(7)(a) is amended to include final orders of the commission and interpretations of panels under s. 553.775(3)(c), F.S. (which is proposed in section 5 of this bill) in the technical amendments that the commission may incorporate into the code each year.

Subsection 553.73(7)(c) is amended to provide that all proposed amendments and information submitted with proposed amendments be reviewed by commission staff prior to consideration by any technical advisory committee. These reviews are for sufficiency only. The staff members must reject any proposed amendment that fails to include a fiscal impact statement providing information that is responsive to the criteria identified. Proposed amendments rejected by the staff may not be considered by the commission or any technical advisory committee.

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

**Section 2** amends s. 553.74, F.S., to revise the appointment of members to the Florida Building Commission. The Governor is required to choose member candidates from lists submitted by respective professional organizations, or any other persons otherwise qualified according to this section. In addition, this section is amended to allow for re-appointment of all commission member, rather than only the air-conditioning and mechanical contractor member and roofing and sheet-metal contractor member, regardless of whether they meet the qualification set by this section.

### **Elevators**

**Section 3** creates an unnumbered section of Florida Law to require that each building with six or more stories on which construction is begun after June 30, 2003, or each building with six or more stories substantially renovated after June 30, 2003, must be keyed with one master key for elevators. Compliance for existing buildings six or more stories is required by July 1, 2006. However, any building operated by an independent special district or airport that has 24-hour emergency response services is exempt from these requirements.

This master key must provide emergency elevator access to all elevators in each of the seven state emergency response regions. The key would be issued to the fire department as well as elevator owners, owners' agents, elevator contractors, state certified inspectors, and state agency representatives. The key may not be duplicated for anyone other than authorized fire-department personnel.

Local fire marshals are authorized to allow substitute emergency measures for buildings which technically or physically cannot comply with the provisions of the section. The bill also gives the Division of the State Fire Marshal authority to enforce the provisions of the section.

### **Binding Arbitration**

**Section 4** deletes certain provisions of s. 553.77, F.S. regarding the commission's authority to hear appeals of the decisions by local officials or local boards of appeal. These powers are transferred to s. 553.775, F.S., which is Section 5 of this CS. This new provision provides for panels to hear requests to review decisions of local building officials, with authority to issue binding interpretations, subject to appeal to the commission.

**Section 5** creates s. 553.775, F.S. to set forth procedures for the commission to review decisions of local building officials and local enforcement agencies regarding interpretations of the code.

Local agencies retain the primary responsibility for interpreting the Florida Building Code, consistent with declaratory statements and interpretations by the commission. While anyone may petition the commission to issue a declaratory statement, review of local interpretations of the code must be appealed through the following system.

First, the commission is directed to coordinate with the Building Officials Association of Florida (BOAF) Inc., a statewide organization of municipal and county codes enforcement officials to designate panels composed of five hearing officers to hear requests to review decisions of local building officials. These hearing officers must be members of a statewide organization of codes enforcement officials and licensed as building code administrators and have experience interpreting and enforcing provisions of the code.

The requests to review a decision of a local building official interpreting of the code may be initiated by any substantially affected person. Request for review or petitions must be submitted to the commission, who then forwards the information to a panel of hearing officers and to the local building official, and posts the petition on the Building Code Information System. The local building official then provides a written response to the panel. The petitioner then replies to the hearing officers addressing the information provided by the local building official. The panel must then conduct a proceeding to resolve the issues and publishes its interpretation. The panel has 21 days after the date the petition is filed to complete the review.

The petitioner may then file an appeal of the decision to the commission. The burden of proof in any proceeding is on the party who initiated the appeal.

Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this process. These local decisions may not be appealed to the commission if the local governing body finds that there is an immediate danger to the health and safety of the public.

The commission only has advisory powers with respect to any decision of the State Fire Marshal made under ch. 633, F.S.

The commission may also establish an informal process of rendering non-binding interpretations of the Florida Building Code. The commission may also refer interpretive issues to organizations that represent those engaged in the construction industry.

### **Trusses**

**Section 6** 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 unless specifically required by the code. Currently only Miami-Dade and Broward Counties require that truss placement plans be signed and sealed by an engineer or architect. This language clarifies that the code does not require this process for trusses.

### **Alternative Plans Review and Inspections**

**Section 7** amends s. 553.791, F.S. to allow a fee owner's contractor, upon written authorization from the fee owner, to choose a private provider to conduct building inspection services. The fee

owner's contractor would be under the same obligation to notify the local building official at the time of permit application.

Subsection (15) is amended to allow private providers of building code inspection services an additional option for insurance coverage.

### **Fees**

**Section 8** amends s. 553.80, 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.

### **Rehabilitation Code**

**Section 9** allows the commission to expedite the adoption and implementation of the State Existing Building Code (Rehabilitation Code) as part of the Florida Building Code.

### **Exemptions from ch. 120, F.S.**

**Section 10** creates paragraph (17)(c) of s. 120.80, F.S., to exempt the commission and hearing officer panels appointed by the commission from provisions of ss. 120.565, 120.569., and 120.57, F.S., while conducting reviews of decisions by local building officials related to the Florida Building Code.

### **Privatization**

**Section 11** creates and unspecified section of Florida Law to establish the Florida Construction Council, a public-private partnership to provide administrative, technical, interpretive and code-development services to the commission. This entity would replace existing staff of the commission, who are currently employees of the Department of Community Affairs. The council is authorized to hire staff and must:

- Receive, hold, and administer property and make only prudent expenditures directly related to the responsibilities of the commission, according to their contract;
- Operate under the state fiscal year;
- Have a five-member board of directors, consisting of the Secretary of Community Affairs or his or her designee, two members appointed by the Florida Building Commission, one member appointed by the Department of Community Affairs who is a layperson not performing work within the construction industry, and one member appointed by Florida State University.
- Select its officers in accordance with its bylaws.
- Operate under an annual written contract, as specified in this section, with DCA or the responsible budgeting entity;

- Adopt a rule to provide the procedures the council must follow to ensure that all product and proprietary information is secure while under the responsibility of the council and that there is an appropriate level of protection and monitoring during any review or code-development activities.

The Florida Building Commission is charged to review this provision and make recommendation to the Legislature regarding its implementation before January 1, 2004.

#### **Elevator Safety Technical Advisory Committee**

**Section 12** amends s. 399.106, F.S., to add a member to the Elevator Safety Technical Advisory Committee. This new member must be a representative who is a certified elevator inspector from a private inspection service.

In addition, this section deletes obsolete language of the meeting dates for the committee.

**Section 13** amends s. 553.841, F.S., to change the administration of the Florida Building Code Training Program. The Florida Building Commission is required to offer voluntary accreditation of advance module courses relating to the code and its enforcement. Obsolete provisions relating to the development of the program are deleted. Provisions relating to equivalency test relating to the code for persons licensed by the Department of Business and Professional Regulation are deleted.

**Section 14** amends s. 553.842(9), F.S., to include the International Code Council Evaluation Services as one of the evaluation entities the commission is charged to specifically approve as product evaluation entities that meet the criteria for approval.

**Section 15** amends s. 633.171, F.S., to establish a penalty for use of pyrotechnic devices in an indoor facility without a fire-suppression system or without a permit from the local fire marshal.

**Section 16** delays the administrative rule implementing the Florida Building Commission's product approval system until at least until January 1, 2004, and requires the commission to conduct a review of the cost/benefit of the rule, or any other similar rule, and report their findings to the Legislature in 2004. In addition, it restricts the implementation of any such rule unless it has a positive cost and benefit to the public.

**Section 17** provides that the CS will take effect upon becoming a law, except as otherwise provided.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.



C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

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

B. Private Sector Impact:

Elevator manufacturers and existing building owners will be subject to costs of design, installation and retrofitting of elevator key switches to operate on a uniform master key.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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