

# 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/SB 494

SPONSOR: Regulated Industries Committee and Senator Bennett

SUBJECT: Building Safety

DATE: December 11, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>BI</u>	_____
4.	_____	_____	<u>ATD</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill:

- Increases the membership of the Elevator Safety Technical Advisory Committee, which is within the Department of Business and Professional Regulation, Division of Hotels and Restaurants, from seven to eight members by adding one member who is a certified elevator inspector from a private inspection service.
- Includes hospice residential facilities and inpatient facilities in the Florida Building Code.
- Includes hospice residential and inpatient facilities within the meaning of health care facilities.
- Provides procedures for gubernatorial appointments of members of the Florida Building commission.
- Includes final orders and interpretations of hearing officer panels in the types of technical amendments the Commission may adopt and incorporate into the Code.
- Provides that the Commission shall require all proposed amendments and information submitted with proposed amendments to be reviewed by staff for sufficiency only. Rejected proposed amendments by staff may not be considered by the Commission or any technical advisory committee.
- Provides for elevators in buildings in the state that are six or more stories be keyed with a master key to allow for emergency elevator access. 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.
- Provides for binding and nonbinding interpretation of the Code
- Excludes the requirement of an engineer or architect signature and seal for truss placement plans.

- Provides procedures for the Commission to review decisions of local building officials and local enforcement agency regarding the interpretations of the Code.
- Provides for a fee owner's contractor, rather than only the fee owner, to use a private provider for building Code inspection services.
- Provides for a schedule of reasonable fees for governing bodies of local governments. It specifies that the fees are to be used solely for carrying out the local government's responsibilities in enforcing the Code.
- Include the International Code Council Evaluation Service as one of the entities that the Commission shall specifically approve along with architects and engineers that are specifically qualified.
- Provides an expedited adoption and implementation of the State Existing Building Code as part of the Code as provided under ch. 120, F.S.
- Creates a public-private partnership called the Florida Construction Council. The Council provides administrative, technical, and Code-development services to the Commission.
- Amends the education requirements for commission licensees.
- The bill would take effect upon becoming law.

This bill substantially amends the following sections of the Florida Statutes: 399.106, 553.73, 553.74, 553.77, 553.79, 553.791, 553.80, 120.80, 553.841, 553.842, and 663.171.

This bill also creates s. 553.775, F.S., and unnumbered sections of the Florida Statutes.

## II. Present Situation:

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

The seven member Elevator Safety Technical Advisory Committee was created under s. 399.106, F.S., within the Department of Business and Professional Regulation, Division of Hotels and Restaurants. The purpose of this committee is to provide technical assistance to the Division of Hotels and Restaurants.

### **The Florida Building Code**

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 Code is required to be adopted by rule pursuant to ss. 120.536(1) and 120.54, F.S.

### **Specific Powers of the Commission**

The Commission is required by s. 553.77, F.S., to adopt and update the Florida Building Code. The Code must be updated every three years. The Commission is required to make a continual study of the operation of the Code, and other related laws relating to:

the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities, including manufactured buildings, and code enforcement, to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions.

The Commissions powers also include the following:

- Hearing appeals from decisions of local boards regarding the interpretation of the Code.
- Issue declaratory statements pursuant to s. 120.565 relating to this part IV of ch. 553, and ss. 515.25, 515.27, 515.29, and 515.37.
- Determine the types of products requiring approval for local or statewide use and provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use.
- The commission may prescribe by rule a schedule of reasonable fees to provide for evaluation and approval of products, materials, devices, and methods of construction.
- Provide technical assistance to local building departments.

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

Section 553.73(6), F.S., requires the Florida Building Commission (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. The Commission is established in s. 553.74, F.S. The Commission is located within the Department of Community Affairs for administrative purposes, and consists of 23 members who are appointed by the governor and confirmed by the Senate.

### **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.

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

The 2002 Legislature provided an additional mechanism for guidance on interpreting the Code. [ch. 2002-193, s. 16, L.O.F.] 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.

Because pursuant to s. 553.73, F.S., the Code is a rule, interpretations of the Code that are of general applicability most comply with the rule making provisions of ss. 120.536 and 120.54, F.S. According to the Department of Community Affairs, necessary binding interpretations of the Code require a more expedited resolution than is afforded by the Code amendment and update process or the rulemaking provisions of ch.120, F.S.

### **Permits- Application, issuance, and inspections**

Section 553.79(1), F.S., prohibits the construction, erection, alteration, modification, repair, or

demolition of any building within this state without first obtaining a permit from the appropriate enforcing agency.

Section 553.79(6), F.S., provides that a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant complies with the requirements for plan review established by the Commission within the Code.

### **Alternative Plans Review and Private Provider 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) of s. 553.791, F.S., 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.

The Building Inspection Division of the City of Jacksonville in its final draft report assessing the implementation of s. 553.791, F.S., expressed the concern that a potential conflict of interest may exist in the use of private inspectors in commercial projects in which the builder is not intended to be the final owner of the completed construction project. The division's report expresses the concern that a homebuilder's objective is to complete the construction project as quickly as possible and to transfer ownership to the buyer at the time of closing, but allowing the builder to pay for the inspection process discourages failed inspections in order for all parties to make a profit. The division is concerned that this may endanger the public safety. The final owner of the property may also not know that the builder hired and paid for the inspections on their new home or property.

### **Building Inspection Fees and Enforcement**

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."

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 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.

### **Rehabilitation Code**

Section 32 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 recommended evaluating the effects of the 2001 Florida Building Code requirements for existing buildings after the Code went into effect, following which needed changes would be determined. 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.

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 2005. 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, Florida Statutes. This expedited approach would provide for implementation to proceed in the summer of 2004. 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.

### **Elevators**

Section 33 of ch. 2001-186, L.O.F., required the Commission to research the issue of requiring all primary elevators in building 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 seven operational regions. According to the Division of State Fire Marshals, emergency access to elevators in most of the regions is made difficult by 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 promulgated in concert with the Florida Building Commission.

### **Fireworks**

On February 20, 2003, an indoor rock concert in West Warwick, R.I., featured pyrotechnic stage effects that ignited the facility's ceiling. The building burned down within minutes. According to published reports, the accident was the fourth-deadliest nightclub fire in United States history. Ninety-seven people died, and 200 more were injured. Many of the concertgoers became trapped as they tried to leave the building by the front entrance. According to published reports, the

The sale, distribution, manufacture, and display of fireworks are regulated by the provisions of ch. 791, F.S.

### III. Effect of Proposed Changes:

**Section 1.** The bill amends s. 399.106, F.S., to increase the membership of the Elevator Safety Technical Advisory Committee, which is within the Department of Business and Professional Regulation, Division of Hotels and Restaurants. The committee's membership would be increased from seven to eight members by adding one member who is a certified elevator inspector from a private inspection service.

The bill eliminates the provision in s. 399.106(3), F.S., that terminates the committee on December 31, 2003. This section also deletes historical provision in s. 399.109(3), F.S., regarding the initial meeting and organization of the committee.

**Section 2.** The bill amends s. 553.73(2), F.S., to include hospice residential and inpatient facilities as included within the meaning of health care facilities. It requires that the Florida Building Code must contain provisions or requirements for such facilities.

The bill amends s. 553.73(7)(a), F.S., to permit the Florida Building Commission to approve technical amendments to the code based on interpretations of the code embodied in final orders and interpretations of hearing officer panels under s. 553.755(3)(c), F.S.

The bill amends s. 553.73(7)(c), F.S., to provide for the mandatory review by commission staff of all proposed amendments and information submitted with proposed amendments prior to consideration by any technical advisory committee. Staff review would be for sufficiency only and qualitative in nature. The bill would require staff to reject any proposed amendment that fails to include a fiscal impact statement. Under the provisions of the bill, the commission or any technical committee may not consider any proposed amendments that have been rejected by members of the staff.

**Section 3.** The bill amends s. 553.74, F.S., to provide additional procedures for gubernatorial appointment of members of the Florida Building Commission. It requires appointment from lists provided by various professional organizations. However, the Governor may appoint commission members from lists of three candidates provided by specified professional organizations, or he may appoint any other person who is otherwise qualified according to this section.

**Section 4.** The bill creates an unnumbered section of the Florida Statutes to provide that each building in the state, including, but not limited to, hotels and condominiums, on which construction is begun after June 30, 2004, and buildings six or more stories that are "substantially renovated" as defined in the Americans with Disabilities Act, as amended, after June 30, 2004, must be keyed with one master key to allow emergency elevator access in each of the seven state emergency response regions in fire emergency situations. The master key would only be issued to the fire department and would not be issued to any other emergency response agency. The key cannot be duplicated for anyone other than authorized fire-department personnel. Compliance for existing buildings six or more stories is required by July 1, 2007. The bill gives the local fire marshal authority to allow substitute emergency measures for buildings which technologically or physically cannot comply with the provisions of the section. The Division of the State Fire Marshal is authorized to enforce the provisions of the section. Any



building operated by an independent special district or airport that has 24-hour emergency response services is exempted from the provisions of this section.

By providing that the master key only be issued to the fire department, the bill may restrict key access to the building owner and to elevator inspectors and technicians who perform preventative maintenance and periodic tests, including that of the fire service mode required in chapter 30 of the Florida Building Code, and rule 9B-3.047, F.A.C.

**Section 5.** The bill deletes certain provisions of s. 553.77, F.S. regarding the specific powers of the Commission, including the Commission's ability to issue declaratory statements issued pursuant to s. 120.565, F.S., and the ability to hear appeals of the decisions of local boards. The bill also deletes the provisions of s. 553.77(7), F.S., that establish nonbinding interpretations of the Code.

These powers are replaced in the bill by the creation of s. 553.775, F.S., in section 6 of the bill, which created provision would also allow the commission, by rule, to establish an informal process of rendering nonbinding interpretations of the Code.

**Section 6.** The bill expresses the legislative intent that the Code should be interpreted in a manner that protects the public safety, health, welfare at the most reasonable cost to the consumer. The bill would require local building officials, state agencies, and the Commission to interpret the Code in a manner that is consistent with declaratory statements and interpretations entered by the commission. The bill provides the exception that conflicts between the Florida Fire Prevention Code and the Code must be resolved in accordance with s. 553.73(9)(c) and (d), which require that conflicts be resolved by agreement between the State Fire Marshal and the Commission, or, if agreement cannot be reached, by use of a mutually agreeable mediator.

The bill creates s. 553.775, F.S., to provide the following procedures for the Commission to review decisions of local building officials and local enforcement agencies regarding interpretations of the Code:

- The Commission coordinates with the Building Officials Association of Florida, Inc., to designate panels composed of five hearing officers to hear requests to review decisions of local building officials. The hearing officers must be licensed as building Code administrators or building officials 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.
- The substantially affected person must file a petition containing specific information provided in the section.
- The local building official shall provide a written response that meets the requirements of the section. The petitioner then replies.
- The hearing officer panel conducts proceeding necessary to resolve the issues and publishes its interpretation.
- The substantially affected person may file an appeal to the commission for a ch. 120, F.S, proceeding. 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 subsection, and may not be appealed to the Commission of the local governing body finds that there is an immediate danger to the health and safety of the public.

The Commission would be required to issue declaratory statements to any substantially affected person relating to an agency's interpretation and enforcement of specific provisions of the Code which the agency is authorized to enforce.

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

**Section 7.** The bill amends s. 553.79(14), F.S., to include a provision that excludes a truss placement plan from being signed and sealed by an engineer or architect unless specifically required by the Code. This language clarifies that the Code does not require this process for trusses.

**Section 8.** The bill amends ss. 553.791(2) and (4), F.S., to include a fee owner's contractor, upon written authorization from the fee owner, to choose a private provider to provide 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. The bill amends language to include that the notification to the local building official can also take place prior to a private provider providing building Code inspection services.

The bill amends s. 553.791(6), F.S., to provide that the local building official must grant or deny a permit application no more than 30 days from the receipt of an affidavit from the private provider and the permit application. The reference under current law to 30 business days would be eliminated under this provision to shorten the time period under current law. Current law also provides that receipt of the permit application is the sole event that triggers the approval period. This provision would require the submission of an affidavit from the private provider.

The bill amends s. 553.791(6), F.S., to eliminate the requirement that the private provider maintain comprehensive general liability insurance with minimum policy limits of one million dollars per occurrence. As amended the bill would maintain the current requirement that the private provider maintain professional liability insurance with minimum policy limits of one million dollars per occurrence. The bill eliminates the 5-year minimum tail coverage requirement. The bill would require that, if the private provider chooses to secure claims-made coverage to fulfill the insurance requirement, the provider must maintain the 5-year minimum tail coverage.

The terms, claims-based coverage, occurrence-based coverage, and tail coverage are not defined in the bill or the Florida Statutes. In *Property and Liability Insurance Principles*,<sup>1</sup> the terms occurrence and claims coverage. Occurrence coverage insures against injury that occurs during the policy period. With occurrence coverage, claims may be made after the policy period. Claims coverage insures injury and claims made during the policy period. With claims coverage, the

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<sup>1</sup> B.D. Smith, J.S. Trieschmann, E.A. Wiening, & A.W. Johnson, *Property and Liability Insurance Principles* (2d ed. 1994).

insurance claim must be made during the policy period. Claims made after the policy period would not be covered.

The tail coverage is also known as discovery period coverage. Tail coverage supplements a claims policy to give the insured added protection beyond the policy period. The reason for such policies is that act causing injury might not be discovered until after original policy period had terminated.<sup>2</sup>

The bill provides that occurrence based coverage shall not be subject to any tail coverage requirement.

**Section 9.** The adds subsection (7) to s. 553.80, F.S., to provide that the governing bodies of local governments may provide a schedule of reasonable fees for the enforcement of the Code as authorized in ss. 125.56(2) or 166.222, F.S. 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.

This language was created in response to a study requested by the Florida Home Builders Association and several different local builders associations regarding their concern over compliance with s. 553.80, F.S.

**Section 10.** The bill creates an unnumbered section of the Florida Statutes to provide that the Commission may expedite the adoption and implementation of the State Existing Building Code (Rehabilitation Code) as part of the Florida Building Code. The commission is in the processes of adopting the State Existing Building Code, which would not take effect until July, 2005. This provision waives the special update and amendment requirements of s. 553.73, F.S., which relates generally to the Florida Building Code and not to a specific building code limited to the existing buildings.

The provision also waives the administrative rule requiring additional delay time between adoption and implementation of the code. The bill does not specifically identify this rule. Consequently it is not clear to which administrative rule this provision relates. Staff of the commission identified the provisions of Rule 9B-3.050(9), F.A.C., as the relevant cause of delay. This rule provides that each amendment approved for adoption by the commission shall take effect no earlier than three months after the rule amendment is filed for adoption with the Department of State.

**Section 11.** The bill amends s. 120.80, F.S., to provide that the commission may conduct proceedings to review decisions of local building code officials in accordance with s. 553.775(3)(c), F.S., which provision is created by section 6 of this bill.

**Section 12.** The bill creates an unnumbered section of the Florida Statutes to create the Florida Construction Council (the council) to provide administrative, technical, interpretive and Code-development services to the Commission. The council would be corporation not for profit and have a five-member board of directors. The board of directors would consist of the Secretary of

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<sup>2</sup> *U.S. Fire Ins. Co. v. Fleekop*, 682 So.2d 620 (Fla. 3<sup>rd</sup> DCA 1996)

Community Affairs or his or her designee, one layperson appointed by the Department of Community Affairs who is not performing work within the construction industry, two members appointed by the commission, and one member appointed by Florida State University. For administrative purposes the council would be attached to Florida State University.

The bill requires that the commission review this act and make recommendations to the Legislature regarding its implementation on or before January 1, 2005.

**Section 13.** The bill amends s. 553.841, F.S., to provide that the commission must offer voluntary accreditation of advance module courses relating to the Florida Building Code and its enforcement.

The bill deletes the provisions in subsections (1), (3), and (4) of s. 553.841, F.S., related to legislative findings, required consultation with specified state agencies and the university system, and the authority to enter into contract with the Department of Education, educational institutions, and private industry to administer the program, respectively.

The bill amends s. 553.841(6), F.S., to provide that the commission must develop a core curriculum as a prerequisite to initial licensure for those licensees not subject to testing on the Florida Building code as a condition of licensure. Under current law, which would be deleted by the bill, the core curriculum is a prerequisite to all specialized and advanced module coursework.

The bill also deletes the provision in s. 553.841(8), F.S., that requires the commission to develop in consultation with Department of Business and Professional Regulation an equivalency test that may be taken in lieu of the core curriculum for each category of licensee.

**Section 14.** The bill amends s. 553.842, F.S., to include the International Code Council Evaluation Service as one of the entities that the Commission shall specifically approve along with architects and engineers that are specifically qualified.

**Section 15.** The bill amends the penalty provisions of s. 633.171, F.S., to prohibit persons from initiating a pyrotechnic display in an indoor facility that does not have a fire suppression system. A violation of this provision would be a third degree felony.

The bill prohibits a person from initiating a pyrotechnic display without the following:

- Written consent of the owner or operator of the indoor facility; and
- A permit issued by the local authority having jurisdiction.

Section 791, F.S., authorizes county boards of commissioners to adopt rules for the granting of permits for display of fireworks.

This section does not apply to the manufacturer, distribution, wholesale, and retail sale or seasonal sale of products regulated under ch. 791, F.S., if those products are not used in an indoor facility. It is unclear if the manufacturer, distributor, or seller of products regulated under ch. 791, F.S., would be culpable for a violation of this section if the products are used in an indoor facility. This provision implies that manufacturers, distributor, or seller may be criminally culpable for the use of their products by third parties.

A violation of this provision would be a third degree felony.

### **Section 16**

The bill would take effect upon becoming law.

#### **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:

Commission licensees would have to comply with the education requirements as amended by this bill in section 13.

A fee owner's contractor would be permitted to use a private provider for building Code inspection services.

C. Government Sector Impact:

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.

The fiscal impact of the creation of the Florida Construction Council created under section 12 of the bill is not available at this time.

**VI. Technical Deficiencies:**

There is a potential conflict of provision in section 3 regarding the appointment and qualifications of Commission members. Section 553.74, F.S., as amended by the bill at page 7, lines 7 to 9, allows the Governor to appoint other qualified persons, but lines 11 to 12 appear to limit the appointments to the persons on the lists submitted by the professional organizations.

**VII. Related Issues:**

Sections 2 and 4 of the bill are substantially similar to sections 2 and 1, respectively, of SB 680 by Senator Smith.

**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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