

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 585 Florida Building Commission/Existing Buildings Code
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|--------|-----------------|-----------------|
| 1) <u>Local Affairs (Sub)</u> | _____ | <u>Mitchell</u> | <u>Cutchins</u> |
| 2) <u>Local Government and Veterans' Affairs</u> | _____ | _____ | _____ |
| 3) <u>Commerce & Local Affairs Appropriations</u> | _____ | _____ | _____ |
| 4) <u>Appropriations</u> | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

This bill provides that the Legislature has reviewed and approves the recommendations relating to existing buildings (also referred to as the rehabilitation code) contained in *The Florida Building Commission Report to the 2002 Legislature*.

The bill directs the Florida Building Commission to adopt these recommendations and provisions, as they may be amended through the workshop and hearing process, as part of the Florida Building Code.

The bill makes legislative findings and uses these finding to exempt the initial adoption of the existing buildings provisions from sections of the Florida Building Codes Act as well as any rules of the Florida Building Commission related to amendments, modifications, or updates to the Florida Building Code.

The effect of waiving these procedures and applying only the procedures of Chapter 120, Florida Statutes, is to expedite adoption of the Existing Buildings Code. The Existing Buildings Code is currently part of the 2004 Edition of the Florida Building Code which is not expected to become effective until January 2005. Given the importance of the existing building code and the amount of time that the Florida Building Commission has been working on this issue, this bill would allow the Existing Buildings Code to become effective as soon as the law becomes effective and the Chapter 120 proceedings are complete.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0585.lgv.doc
DATE: February 9, 2004

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:

The Florida Building Commission Report to the 2002 Legislature

Section 32 of chapter 2001-186, Laws of Florida, directed the Florida Building Commission¹ (Commission) to “research the issue of adopting a rehabilitation code for the state and shall report to the Legislature before the 2002 Regular Session regarding the feasibility of adopting such a code” and required the commission to review the rehabilitation codes adopted by other states as part of its research.

In response, the chair of the Florida Building Commission, Raul Rodriquez, appointed the Rehabilitation Code Ad Hoc Committee.² This committee was charged with “identifying and researching issues critical to the feasibility of development a rehabilitation code.”³ The committee researched the experience and rehabilitation codes of other states including: Maryland, Rhode Island, New Jersey, and Massachusetts.⁴ The committee also researched related regulatory entities and the other issues involved in the development of a rehabilitation code.⁵

The committee found “that numbers other states and local jurisdictions have realized the benefits of developing and adopting a rehabilitation code.”⁶ The rationale of the Ad Hoc committee for developing a rehabilitation code was based on: the predictability and proportionality of the alteration of projects; defining scopes of work more concisely including renovation, alteration, and reconstruction by levels of alteration, using the percentage of the altered area as criteria; egress and hazardous levels; low-income housing and urban blight.⁷

Based on the work of the Ad Hoc committee, the Commission “concluded that the development of a rehabilitation code is feasible and considers the benefits warrant developing such a code.”⁸ The Commission specifically recommended:⁹

¹ See Fla. Stat. § 553.74 (2003)(creating the Commission and providing for its membership, terms, and appointments).

² See Florida Building Commission, *The Florida Building Commission Report to the 2002 Legislature* (2002) at pp. 9-10 (available at http://www.dca.state.fl.us/fhcd/fbc/publications/1_publications.htm).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* Additional findings of the committee included: “It was discovered that rehabilitation codes encourage the use and reuse of existing buildings, as well as offset the negative effects of urban blight. Rehabilitation codes promote community redevelopment and promote the rehabilitation of affordable house.”

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

- that the new Florida Building Code and building rehabilitation related issues be evaluated for one year;
- that a summary be provided to the Legislature regarding the effectiveness of appropriate sections of the Florida Building Code and that changes be made as needed based on evaluation;
- that 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
- that it investigate rehabilitation thresholds and compare the Florida Building Code to the International Residential Code and other appropriate model codes as part of the evaluation and development of a rehabilitation code.

This bill provides that the Legislature has reviewed and approves these recommendations.

The Florida Building Commission Report to the 2003 Legislature

Based on these initial recommendations, the Commission reported the following actions in *The Florida Building Commission Report to the 2003 Legislature*:

The 2002 Legislature, in [response to these recommendations] 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.' 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 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. 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.¹⁰

The Commission also explained the need for this bill:

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 Chapter 120, Florida Statutes, Administrative Rule adoption procedures, coupled with the special procedures for code development and implementation of Section 553.73, Florida Statutes, 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.

¹⁰ See Florida Building Commission, *The Florida Building Commission Report to the 2003 Legislature* (2003) at pp. 8-9 (available at http://www.dca.state.fl.us/fhcd/fbc/publications/1_publications.htm).

Therefore, the Commission recommends that adoption and implementation be expedited by legislative authorization to waive the procedures of Section 553.73, Florida Statutes, and apply only the standard procedures of Chapter 120, Florida Statutes. This expedited approach would provide for implementation to proceed in the summer of 2003. 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.¹¹

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In addition to providing that that the Legislature has reviewed and approves of the existing buildings rehabilitation code recommendations in *The Florida Building Commission Report to the 2002 Legislature*, this bill directs the Commission to adopt these provisions as part of the Florida Building Code "as amended through the workshop and hearing process" pursuant to section 120.54, Florida Statutes.

The bill also makes legislative findings:

The Legislature finds that application of such provisions provides a benefit to the citizens of this state and that adoption and implementation of such provisions should not be delayed any more than required by rulemaking procedures.

The bill then uses these findings as the basis for providing that the initial adoption of the existing buildings provisions are not subject to the requirements of section 553.73 and 553.77, Florida Statutes, as these sections relate to amendments, modifications, or updates to the Florida Building Code. Similarly, the bill exempts the initial adoption of the existing buildings provisions from any rule of the Commission that relates to amendments, modifications, or updates to the Florida Building Code.

Waiving these provisions of rule and law will allow the Existing Buildings Code to become effective as soon as the law becomes effective and the Chapter 120 proceedings are complete.

Otherwise, the Existing Building Code provisions will not take effect until the 2004 Edition of the Florida Building Code, of which it is a part, takes effect.¹² The 2004 Edition of the Florida Building Code is being adopted based on the following amendment cycle:¹³

- April 18, 2003 - Deadline for submitting proposed amendments
- Week of June 15-20 - Technical Advisory Committees review proposed amendments
- Week of August 24-29 - Florida Building Commission considers proposed amendments and TAC recommendations for the 2004 Edition of the Florida Building Code
- October 14 - Rule development workshop on amendments to Rule 9B-3.047 adopting the 2004 Edition of the Florida Building Code

¹¹ *Id.*

¹² See Florida Department of Community Affairs, *DRAFT 2004 Florida Building Code* (visited Feb. 11, 2004) <http://www.dca.state.fl.us/fhcd/fbc/thecode/2_thecode.htm> and specifically chapter 34 of the document which highlights the changes in the draft code by clicking on the hyperlink labeled "2003 IBC Chapters 1 – Appendices" <http://www.dca.state.fl.us/fhcd/fbc/thecode/2004%20FBC%20Draft/2004_FBC_IBC.rtf>.

¹³ See Florida Department of Community Affairs, *Florida Administrative Code Rule Development* (visited Feb. 11, 2004) <http://www.dca.state.fl.us/fhcd/fbc/rules/1_rules.htm>.

- November 18 - Rule adoption hearing on amendments to Rule 9B-3.047 adopting the 2004 Edition of the Florida Building Code
- January 2005¹⁴ - Anticipated effective date for the 2004 Edition of the Florida Building Code

C. SECTION DIRECTORY:

Section 1: Provides that the Legislature has reviewed and approves of the recommendations for Florida Building Code provisions applicable to existing buildings contained 2002 report of the Florida Building Commission; directs the Florida Building Commission to adopt these provisions pursuant to section 120.54, Florida Statutes; makes legislative findings; provides that the existing building provisions will not be subject to the requirements of section 553.73 and 553.77, Florida Statutes, or rules of the Florida Building Commission related to Florida Building Code amendments, modifications, or updates.

Section 2: Provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There is no known fiscal impact on the revenues of state government.

2. Expenditures:

There is no known fiscal impact on the expenditures of local government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is no known fiscal impact on the revenues of local government.

2. Expenditures:

There is no known fiscal impact on the expenditures of local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a direct economic impact on the private sector by implementing the Existing Building Code earlier than anticipated.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹⁴ Telephone conversation with legal counsel for the Commission indicated that the effective date would be January 2005 and not July 2004 (Jan. 29, 2004); telephone conversation with staff of the Commission to verify effective date as January 2005 (Feb. 11, 2004).

The municipality/county mandates provision does not appear to apply to this bill as it does not directly require counties or municipalities to spend funds or take action requiring the expenditure of funds. Thus, the bill appears exempt the bill from the provisions of section 18, article VII of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs the Commission to adopt provisions related to existing buildings, or a rehabilitation code, as they may be amended through the workshop and hearing process, as part of the Florida Building Code pursuant to section 120.54, Florida Statutes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While the bill utilizes the proposed statutory language proposed by the Commission in *The Florida Building Commission Report to the 2003 Legislature*, this language is potentially problematic in that it does not *specifically* delineate the exact recommendations the Legislature is approving. For example, the bill refers to “provisions applicable to existing buildings,” but the section of the report that provides the recommendations is entitled “Feasibility of an Existing Buildings Rehabilitation Code.” It is also unclear whether the Legislature needs to review and approve the recommendations in order to direct the Commission to adopt the existing building code provisions. This type of action by the Legislature may also set a precedent for future action related to the Florida Building Code.

There is alternative language that is being used in other legislation which might achieve the same result:¹⁵

The Florida Building Commission shall expedite the adoption and implementation of the State Existing Building Code as part of the Florida Building Code pursuant only to the provisions of chapter 120, Florida Statutes. The special update and amendment requirements of section 553.73, Florida Statutes, and the administrative rule requiring additional delay time between adoption and implementation of such code are waived.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁵ See section 10 of Fla. CS for SB 494 (2004).