

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/CS/CS/SB 442

SPONSOR: Banking and Insurance Committee, Regulated Industries Committee, Community Affairs Committee, and Senator Bennett

SUBJECT: Building Safety

DATE: April 13, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
4.	_____	_____	<u>GE</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute for committee substitute for committee substitute for Senate Bill 442 addresses a number of issues relating to the development and administration of the Florida Building Code (code) and related building safety requirements. Specifically, the CS/CS/CS implements the following:

- Revises the distribution of funds for the Hurricane Loss Mitigation Program;
- Revises procedures governing the adoption and amendment of the Florida Building Code;
- Provides new procedures for binding review of building code decisions by local building officials;
- Clarifies provisions relating to truss placement plans and the code;
- Allows a fee owner's contractor, rather than only the fee owner, to use a private provider for building code inspection services;
- Eliminates the requirement that the private provider of code inspection services maintain comprehensive general liability insurance and increases professional liability insurance requirements;
- Restricts local governments' ability to use building code fee revenues for non-related activities;
- Exempts commission and hearing officer panels from APA rule requirements when reviewing decisions of local building officials;
- Revises the administration and operation of the Florida Building Code Training Program;
- Modifies provisions relating to the local product approval and evaluation process and includes the International Code Council Evaluation Service as an authorized product evaluation entity;

- Establishes an informal process for rendering non-binding interpretations of the Florida Fire Prevention Code;
- Provides a standard for the construction and retrofitting of doors and windows in essential facilities;
- Provides for the regulation of employees of fire suppression contractors who conduct inspections;
- Provides a standard for the installation, testing, and maintenance of fire hydrants and fire protection systems;
- Provides that cities and counties may not impose additional certification or licensure requirements for state certified electrical and alarm contractors;
- Provides that an application to a county or municipality for a site development plan, building permit, or other permit is deemed approved unless acted upon within 120 days, unless the applicant agrees to an extension.
- Directs the Florida Building Commission to update the Florida Building Code with the most recent and relevant design standards for wind resistance of buildings issued by the American Society of Civil Engineers (ASCE Standard 7).
- Appropriates \$200,000 from the Insurance Regulatory Trust Fund to the Department of Financial Services to develop a joint program between the Florida Insurance Council and the Florida Home Builders to educate builders on the benefits and options of designing buildings for windborne debris protection
- Instructs the commission to evaluate the definition of “exposure category C” in the Florida Building Code and make recommendations for changing the definition to the Legislature.

This CS/CS/CS substantially amends the following sections of the Florida Statutes: 120.80, 215.559, 468.621, 489.537, 553.37, 553.73, 553.77, 553.79, 553.791, 553.80, 553.841, 553.842, 633.021, 633.0215, 633.065, 633.071, 633.082, 633.521, 633.524, 633.537, 633.539, and 633.547, 633.702.

The CS/CS/CS amends ch. 2000-141, Laws of Florida.

This CS/CS/CS creates the following sections of the Florida Statutes: 553.775 and 633.026

This CS/CS/CS also creates unnumbered sections of the Florida Statutes.

This CS/CS/CS repeals the following sections of the Florida Statutes: s. 553.8413 and 553.851

## II. Present Situation:

**Hurricane Loss Mitigation Funding** – The Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA) was created in 1999, with an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund (FHCF). The purpose of the HLMP is to fund programs for improving the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government designed to reduce hurricane losses or the costs of rebuilding after a disaster. Three (\$3) million from the HLMP is statutorily directed to retrofitting existing public facilities to enable them to be used as public shelters

during a disaster, while the remaining \$7 million makes up the Residential Construction Mitigation Program (RCMP), which the DCA administers with the input of the RCMP Advisory Council. The Florida Statutes require the \$7 million in RCMP funds to be allocated as follows:

- 40 percent (\$2.8 million) is used to inspect and improve tie-downs for mobile homes;
- 10 percent (\$700,000) is directed to the Type I Center of the Statue University System dedicated to hurricane research at Florida International University;
- 50 percent (\$3.5 million) is directed to programs developed by the DCA with advice from the RCMP Advisory Council to help prevent or reduce losses to residences and mobile homes or to reduce the cost of rebuilding after a disaster.

In recent years, the department has funded a variety of education, design, and construction initiatives through this funding, including the not-for-profit entities Building A Safer Florida, Inc. (BASF), and the Disaster Contractor Network. BASF is comprised of 21 member organizations that represent all the licensees required to comply with the Florida Unified Building Code. The Disaster Contractor Network is a web-based initiative sponsored by Florida's major trade groups and Florida State University to serve as a clearinghouse for contractors who are able to perform repairs, suppliers who have needed building materials, and consumers who need construction repairs after a natural disaster.

Hurricane loss mitigation is an important means of ensuring the safety of structures, as well as an important component in reducing hurricane damages and insurance costs. The Florida Office of Insurance Regulation has required insurance companies to provide actuarially reasonable credits or discounts to their policyholders for utilizing construction techniques that help reduce the amount of loss in a windstorm.<sup>1</sup> The 2005 Joint Select Committee on Hurricane Insurance recommended research into methods of strengthening new and existing structures, as well as the appropriation of mitigation funds from the FHCF to subsidize low-interest loans to consumers to retrofit structures built before the new building codes took effect and mitigate hurricane damage.

**The Florida 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, exit systems, safe materials, energy efficiency, and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promotes innovation and new technology, and helps to ensure economic viability through the availability of safe and affordable buildings and structures.

Section 553.73, F.S., provides for the Florida Building Code (code). The code was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The code was developed and is updated and maintained by a state commission that works towards consistency of standards throughout the state and full accessibility to information on the standards. The law allows for differences in the standards in different locales based on compelling differences in physical conditions. However, the law establishes procedures for administration of the code at all levels that will constrain unwarranted differences and ensure the availability of information on local differences to all parties throughout the state.

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<sup>1</sup> S. 627.0629(1), F.S.

The law established the Florida Building Commission (commission) as the body which is responsible for the development of the code and the other elements of the system which support its implementation. The commission has 23 members, appointed by the Governor, representing engineers, architects, contractors, building owners and insurers, state and local governments and persons with disabilities.

The code is updated every three years by the commission. The commission may amend the code once each year to incorporate interpretations and update standards upon a finding that delaying the application of the amendment would be contrary to the health, safety, and welfare of the public, or the amendment provides an economic advantage to the consumer. 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 are established by rule and must include the impact to local government relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance. The 2004 Florida Building Code is scheduled to take effect on July 1, 2005.

The commission is also authorized to hear appeals from decisions of local boards regarding the interpretation of the code; issue declaratory statements relating to the code; 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; and develop a Building Code Training Program.

**Non-Binding Interpretations of the Florida Building Code** - The 2002 Legislature provided an additional mechanism for guidance when 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.

Requests for opinions are received through the commission's Internet 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. The commission reports that more than 1,000 advisory opinions have been issued through this since its inception.

Because the code is an administrative rule, interpretations of the code that are of general applicability must comply with the rule making provisions of ss. 120.536 and 120.54, F.S. The consensus of opinion by stakeholders is that necessary binding interpretations of the code require

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

a more expedited resolution than is afforded by the code amendment and update process or the rulemaking provisions of ch. 120, F.S.

**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. Subsection (2) 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 (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 expressed the concern that a builder'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 expressed concern 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.

In response to concerns relating to the use of private providers, the commission established a workgroup in 2004 to evaluate this program and make recommendations to the Legislature. The workgroup focused its efforts on the following issues: (1) clarification of insurance requirements for private providers; (2) clarification of requirements for building departments' audit of private provider inspections; (3) flexibility for owners to select private provider inspections after permits are issued; (4) preemption of local requirements for private providers; and (5) authorization of licensed building code administrators to be private providers. The recommendations of the workgroup were included in the commission's 2005 report to the Legislature.

**Building Inspection Fees** - 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. Subsection (6) 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.

Section 553.80(1), F.S., authorizes local governments to assess fees to fund the enforcement of the code. However, such fees “shall be used solely for carrying out the local government’s responsibilities in enforcing the code.”

In 2004, the Florida Home Builders Association conducted a study to assess local governments’ compliance with the fees provision of s. 553.80, F.S. The study found the following problems among twelve different local governments:

- local governments are 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 governments have in place adequate accounting and reporting practices for the full range of their financial management and reporting activities, but they do not appear to apply these tracking systems and accounting practices to building inspection fees; and
- 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** - Section 553.841, F.S., requires the commission to establish the Building Code Training Program. The commission is required to implement, by rule, a core curriculum and advanced module courses relating to the Florida Building Code. This section also:

- 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 the commission develop, with the Department of Community Affairs, the Department of Business and Professional Regulation (DBPR), and the State Fire Marshal, 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 the DBPR and respective licensing boards, an equivalency test for the core curriculum, for each category of license;
- requires the commission, with the DBPR, to 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.

The Florida Building Code Information System supports the accreditation process by providing a paperless mechanism that utilizes electronic “in-boxes” for each group involved in the code training and education process. This system provides screens that are customized for each individual user.

**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>

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 provided 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.

Since the implementation of the current product approval system in October, 2003, the commission has processed 3,648 applications and approved 11,433 products and 113 private entities that evaluate product performance and manufacture.<sup>4</sup> The commission has acknowledged that the initial approach of relying on parties who were contracted by manufacturers to validate the applications proved unreliable and resulted in a significant drain on commission staff resources. In November, 2004, the commission hired a contractor to assume responsibility for the review of applications for product approval.

**Fire Protection** - Section 633.539, F.S., requires that contractors who install and service fire protection systems must be certified by the State Fire Marshal. Fire protection system contractors are classified as Contractor I, II, III, IV, and V. Section 633.021(5)(b), F.S., defines a Contractor II as a contractor:

...whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point where the piping is used exclusively for fire protection, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

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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> Florida Building Commission, *2005 Report to the Legislature*, January 2005.

A Contract III is defined in s. 633.021(5)(c), F.S., as a contractor:

...whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service CO<sub>2</sub> systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding preengineered systems.

A Contractor IV is defined in s. 633.021(5)(d), F.S., as a contractor:

...whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings.

A Contractor V is defined in s. 633.021(5)(e), F.S., as a contractor:

...whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point at which the piping is used exclusively for fire protection and ending no more than 1 foot above the finished floor.

A Contractor I may install and service all types of fire protection systems, excluding preengineered systems.<sup>5</sup>

The contractor classifications are not intended to limit or prohibit a licensed fire protection engineer or architect from designing any type of fire protection system.<sup>6</sup> Section 633.021, F.S., defines the term “layout” as design concepts established through the provisions of s. 553.79(6)(c), F.S. The reference to s. 553.79(6)(c), F.S., is an incorrect cross reference and it is not clear what provision the reference is intended.

**Underground Gas Pipelines** - Section 553.851, F.S., establishes a procedure for determining the location of underground gas pipelines. It requires that any person, before commencing or performing any excavation, first obtain information from the person having the right to bury gas pipelines in the area proposed to be excavated. Any person who has the right to bury gas pipelines is required to file with the county clerk of the circuit courts the contact information for the person from whom the necessary information can be obtained.

The Underground Facility Damage Prevention and Safety Act (the “act”) in ch. 556, F.S., establishes a process for the identification of underground gas pipelines. Section 556.101, F.S., provides that it is the intent of the Legislature to provide a single toll-free telephone number for excavating contractors and the general public to call for notification of their intent to engage in excavation or demolition. Section 556.104, F.S., establishes a one-call toll-free telephone notification system. Any person who furnishes or transports materials or services by means of an

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<sup>5</sup> Section 633.021(5)(a), F.S.

<sup>6</sup> Section 633.021(5), F.S.



underground facility in this state must participate as a member operator of the system. According to industry representatives, s. 553.851, F.S., has not kept pace with current industry practice, and conflicts and is duplicative of the provisions in the act.

### III. Effect of Proposed Changes:

**Section 1** amends s. 215.559, F.S., to revise the distribution of funds for the Hurricane Loss Mitigation Program. The CS/CS/CS provides that 15 percent of the \$7 million in funds designated to prevent or reduce losses or to reduce the cost of rebuilding after a disaster (\$1.05 million annually) must be used for education awareness related to the code and the operation of the Disaster Contractor Network.

The CS/CS/CS provides that the department must contract with a nonprofit, tax-exempt entity having prior contracting experience with building code training, development, and coordination, and whose membership is representative of all the statewide construction and design licensee associations. The entity is required to allocate 20 percent of the funds (\$210,000) to the Disaster Contractor Network for education and hurricane response preparedness. An additional 20 percent (\$210,000) must be allocated to the largest residential construction trade show in the state for the education of the residential construction industry on building code and mitigation issues.<sup>7</sup> The remaining funds (\$630,000) must be used by the entity for outreach activities relating to the Florida Building Code. According to the department, the requirements for the entity are too narrow and would effectively foreclose competitive bidding for this function. (Also see, Related Issues, below.)

**Section 2** amends s. 468.621, F.S., to provide additional grounds for discipline of certified building code administrators and inspectors. Florida Building Code Administrators and Inspectors Board, within the DBPR, regulate building code administrators and inspectors under the provisions of ch. 468, F.S. The additional grounds are:

- failure to lawfully execute the duties and responsibilities in s. 553.791, F.S., which establishes a procedure for private provider inspections; and
- violating or failing to comply with a valid rule or lawful order of the Florida Building Commission adopted pursuant to Part IV, Ch. 553, F.S., (*FL Building Code Act*).

**Section 3** amends s. 489.537, F.S., to provide that cities and counties may not impose additional certification or licensure requirements for state certified electrical and alarm contractors.

**Section 4** amends s. 553.37, F.S., to permit lawn storage buildings and sheds to be delivered and installed without the need for a contractor's or specialty license, and to exempt from s. 553.842, F.S., relating to product approval, if the lawn storage building or shed bears the insignia of approval of the Department of Community Affairs.

Section 489.103(19), F.S., currently provides an exemption for these structures from the construction contracting requirements contained in that same chapter. Specifically, this exemption applies to the sale, delivery, assembly, or tie-down of prefabricated portable sheds

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<sup>7</sup> The Southeast Builders Conference which is held annually in Orlando is the largest construction trade show in the southeast.

that are not more than 250 square feet in interior size and are not intended for use as a residence or as living quarters. This section further stipulates that this exemption may not be construed to interfere with the Florida Building Code or any applicable local technical amendment to the Florida Building Code, local licensure requirements, or other local ordinance provisions.

**Section 5** amends s. 553.73, F.S., to implement a number of revisions to the adoption and amendment requirements for the Florida Building Code. Specific provisions contained in this section are summarized below.

*Pool-Related Exit Alarms* – The CS/CS/CS specifies that the pool-related door and window exit alarms required by ch. 515, F.S., must be of the battery-powered, hard-wired, or plug-in type. This provision clarifies that the battery-powered and plug-in alarms satisfy the requirements of ch. 515, F.S.

*Updating the Code* – The CS/CS/CS provides that when updating the Florida Building Code the commission must select the most current versions of the appropriate model codes adopted by the International Code Council or the National Fire Prevention Association to form the foundation codes for the Florida Building Code.<sup>8</sup> The commission is authorized to modify portions of the foundation codes only as needed to accommodate the specific needs of Florida, and any Florida-specific amendments to the foundation codes must be clearly marked in printed versions of the code. The CS/CS/CS also provides that a model code adopted by the International Code Council must be available to the public at least 6 months prior to its adoption by the commission. Similarly, rule updates adopted by the commission must take effect at least 6 months following publication of the updated code. The CS/CS/CS also requires that codes regarding noise contour lines must be annually reviewed by the commission and that the current federal guidelines must be adopted.

The CS/CS/CS does not include the International Electrical Code as an element of the Florida Building Code. According to the department, adoption of the International Electrical Code as an element of the Florida Building Code may conflict with s. 553.88(1), F.S., which requires that the National Electrical Code, a standard adopted and maintained by the National Fire Protection Association, be adopted and updated by the commission. Adoption of the International Building Code, which incorporates provisions relating to accessibility and energy, may conflict with s. 553.73(1)(b), F.S., which requires that the Florida Building Code contain the provisions of the Florida Accessibility Code for Building Construction and narrowly defines the commission's ability to amend those provisions. Section 553.901, F.S., also requires that the commission adopt the requirements of the Florida Energy Efficiency Code for Building Construction within the code subject to modification by the commission pursuant to the procedures in Chapter 120, F.S.

*Technical Amendments to the Code* – The CS/CS/CS revises the standard for allowing adoption of technical amendments to the code to include a finding that the amendment “is needed in order to accommodate the specific needs of the state.” The commission is required to subject all proposed amendments to a review by staff prior to consideration by any technical advisory

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<sup>8</sup> The CS/CS provides for the use of the following model codes: the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the National Electrical Code.

committee. Staff must reject any proposed amendment that fails to include the required fiscal impact analysis. Any proposed amendment which is rejected on this basis is not available for consideration by the commission or any technical advisory committee.

*Unvented Conditioned Attic Assemblies* – The CS/CS/CS provides that notwithstanding other provisions governing the adoption of code revisions, permitted standards for unvented conditioned attic assemblies in the International Residential Code are incorporated by reference as an authorized alternative in the code. The commission is directed to incorporate permitted standards in the code by rule, however, the effectiveness of such permitted standards shall not be delayed in adopting pending rules. This provision is intended to address hurricane-related water intrusion concerns by allowing for the expedited approval and use of new ventless attic assemblies.

*Mezzanine Requirements/Warehouses* – The CS/CS/CS permits both enclosed and non-enclosed areas to be included when determining the allowable size of a mezzanine located within a warehouse. Specifically, this provision states that mezzanines may be no larger than one-third of the total foot area as provided under the code, however, both enclosed and non-enclosed areas may be included in this calculation. In addition, this section addresses certain mezzanine egress requirements. According to the department, the commission has consistently rejected these type of structures as unsafe. This provision becomes effective upon the bill becoming law.

**Section 6** 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 CS/CS/CS also deletes the provisions of s. 553.77(7), F.S., which establishes nonbinding interpretations of the code. These powers are replaced by the creation of s. 553.775, F.S., in section 7 of the CS/CS/CS, which would allow the commission, by rule, to establish an informal process of rendering interpretations of the code. This section also provides that local building departments may approve minor changes to state approved plans under the prototype building program.

CS/CS/CS/SB 442 requires a Commission member to abstain from a vote or action of the Commission if that member has a present or potential financial interest in the outcome. The strike-all sets forth situations in which a Commission member may abstain from voting, and when the member must abstain from voting. The member *may* abstain from voting:

- In any matter which would inure to the commissioner's special private gain or loss;
- In any matter which the commissioner knows would inure to the special private gain or loss of a principal, or the parent or subsidiary of a corporate individual, for whom the commissioner is retained;
- In any matter which the commissioner knows would inure to the special private gain or loss of a relative or business associate of the commissioner.

The commissioner *must* abstain from voting in the above listed circumstances if the matter is before the Commission under s. 120.569, F.S. (a hearing of the Commission that affects the substantial interests of a party) or s. 120.60, F.S., (a Licensing decision). In these circumstances, the bill requires the Commissioner to publicly state the nature of the interest that is causing the commissioner to abstain, and to disclose that interest in a public record (the meeting's minutes) within 15 days after the vote occurs.

**Section 7** creates s. 553.775, F.S., to set forth a procedure 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, Inc. (BOAF), 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 code enforcement officials and licensed as building code administrators and have experience interpreting and enforcing provisions of the code.

The request to review a decision of a local building official's interpretation of the code may be initiated by any substantially affected person. Requests 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 issue and publish 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. Similarly, 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 refer interpretive issues to organizations that represent those engaged in the construction industry. The resulting interpretations are advisory only and nonbinding on the parties and the commission.

The commission is authorized to impose a fee not to exceed \$250 for each request for review or interpretation.

**Section 8** amends s. 553.79(14), F.S., to provide 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 code.

**Section 9** amends s. 553.791, F.S., to provide that a contract for a building or structure fee owner, upon written authorization from the fee owner, may choose a private provider to provide building or structure inspection services. The fee owner's contractor is required to notify the local building official at the time of permit application. The notification to the local building

official must take place at least seven business days prior to the first scheduled inspection by the local building code enforcement agency. The CS/CS/CS also provides additional terms and notification requirements governing the use of private providers.

The bill authorizes local building officials to require that a fee owner using a private inspector to provide plans review, also use a private provider to furnish required building inspections services, rather than require that the same private provider furnish both services.

Subsection (14) is amended to authorize local governments to establish a registration system to ensure that private providers comply with the licensure and insurance requirements contained in this section. In addition, local building officials retain the authority to issue a stop-work order for a building project if the official determines that a condition on a building site constitutes an immediate threat to public safety and welfare.

Subsection (15) is amended to state that a private provider of building code services must maintain insurance for professional liability of \$1 million per occurrence and \$2 million in the aggregate for any project having a construction cost of \$5 million or less, and \$2 million per occurrence and \$4 million in the aggregate for construction projects having a cost of over \$5 million. The fee owner may require additional insurance or higher limits. If the private provider chooses to secure claims-made coverage to fulfill the insurance requirement, the provider must maintain coverage for a minimum period of five years subsequent to the performance of building code inspection services. The insurance must be written by an insurer authorized to do business in this state with a minimum A.M. Best rating of "A."

Subsection (17) is amended to specify that work on a building may proceed after the inspection and approval by a private provider if the provider has given notice of the inspection and, subsequent to inspection and approval, the work may not be delayed for completion of an inspection audit by a local building enforcement agency. It deletes the requirement that each local building code enforcement agency develop and maintain an audit process for private providers.

**Section 10** amends s. 553.80, F.S., to restrict the use of building code fee revenues by local governments. 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. Prohibited uses of fee revenue are specified. Any unexpended balance must be carried forward to fund allowable activities or be refunded.

The term "enforcing the Florida Building Code" is defined to include the direct costs and reasonable indirect costs associated with review of building plans, building inspections, re-inspections, building permit processing, building code enforcement, and fire inspections associated with new construction, training costs, and enforcement action pertaining to unlicensed contractor activity to the extent not funded with other user fees.

Section 550.80(6), F.S., currently provides that state universities, community colleges, and public school districts are subject to enforcement of the Florida Building Code. The CS/CS/CS permits the aforementioned parties to create a board of adjustment and appeal to which a

substantially affected party may appeal an interpretation of the Code with regard to a specific project. The board's decision is reviewable pursuant to s. 553.775, F.S. (created by section 7 of the bill) The bill also states that a substantially affected party may appeal an interpretation of the Code by a local government code enforcement office to that office's board of adjustment or appeal, or to the Commission via s. 553.775, F.S. if no local board exists. Decisions by a local board of adjustment and appeal are reviewable via s. 553.775, F.S.

The bill provides that under s. 553.80(1) (d), F.S., lawn storage buildings and storage sheds not bearing the insignia of approval of the department are not subject to s. 553.842, F.S. Such buildings that do not exceed 400 square feet may be delivered and installed without need of a contractor's or specialty license.

A new subsection (8) is added to this section to exempt equipment storage sheds, pole barns, and other unoccupied structures owned by the Department of Agriculture and Consumer Services from local government permitting, plan review, and inspection fees.

**Section 11** creates s. 120.80(17)(c), F.S., to exempt the commission, and hearing officer panels appointed by the commission (created in section 7 of the CS/CS/CS), from the 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. These sections impose standard procedures for agency and department rule development.

**Section 12** amends s. 553.841, F.S., to revise the administration and operation of the Florida Building Code Training Program. The CS/CS/CS redesignates this section as the "Building Code Education and Outreach Program" and creates the Building Code Education and Outreach Council (council) to coordinate, develop, and maintain education and outreach efforts associated with the Florida Building Code. The council is comprised of the following members, who each serve two-year terms:

- three representatives of the Building Commission, selected by the commission, one of whom must be a member of a disabled persons organization located or based in Florida;
- one representative selected by the Florida Building Code Administrators and Inspectors Boards, selected by that board;
- one representative of the Construction Industry Licensing Board, selected by that board;
- one representative of the Electrical Contractors Licensing Board, selected by that board;
- one representative of the Florida Board of Professional Engineers, selected by that board;
- one architect representative of the Board of Architecture and Interior Design, selected by that board;
- one interior designer representative of the Board of Architecture and Interior Design, selected by that board;
- one representative of the Board of Landscape Architecture, selected by that board; and
- one representative from the Office of the State Fire Marshal, selected by that office.

The bill directs the council to determine the areas of priority funding for research and continuing education. In addition, the council is required to review all proposed continuing education courses concerning the code and recommend to the commission any related courses that should

be approved for continuing education. The bill limits the council to meeting no more than semiannually. The bill requires the department to provide administrative support, but the department may contract out such support, though the private provider must have prior experience with code training, development, and coordination.

The council is responsible for the development, maintenance and updating of a core curriculum that is the prerequisite to advanced module coursework, as well as a set of advanced modules specifically designed for use by each profession.<sup>9</sup> The core curriculum must cover the information required to have all categories of participants appropriately informed of their technical and administrative responsibilities under the code. The core curriculum and advanced modules must be submitted to the DBPR for approval. The core curriculum must be a prerequisite to the advanced module coursework for all categories of licensees within the first two-year period after establishment of the program. Core courses taken by licensees pursuant to this requirement count toward fulfillment of required continuing education units.

The Florida Building Commission is required to determine the amount of funds available for education and outreach projects from the proceeds of contractor licensing fees and identify, solicit, and accept funds from other sources for education and outreach projects. The commission must approve or reject the council's recommendations on education and outreach projects, but any rejection must be made with specificity and communicated to the council.

The bill requires that the commission adopt rules to establish the criteria for approval of advanced courses, and provides that nothing in this section is intended to modify or eliminate the continuing education requirements in the applicable practice acts.

**Section 13** repeals s. 553.8413, F.S., which creates the Education Technical Advisory Committee.

**Section 14** amends s. 553.842, F.S., to revise several provisions relating to the product approval and evaluation process. The CS/CS/CS limits the authority of local governments to approve building products and deletes a requirement that the commission adopt procedures for local product approval (see section 16 of the CS/CS/CS for additional provisions relating to local product approval). The CS/CS/CS also recognizes the International Code Council Evaluation Services as a designated product evaluation entity.

The bill also creates a new subsection (16) that provides the Commission with authority to adopt via rule standards and alternative means by which products may demonstrate compliance with the code.

**Section 15** creates s. 633.026, F.S., to require the State Fire Marshall to establish an informal process for rendering non-binding interpretations of the Florida Fire Prevention Code. The State Fire Marshal is authorized to contract with a nonprofit organization with experience in fire safety and control issues. This process is intended to allow fire chiefs, fire marshals, and fire inspectors to utilize a panel of fire code experts for the expeditious interpretation of fire code provisions.

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<sup>9</sup> This section is applicable to all individuals licensed under part XII of ch. 468, ch. 471, ch. 481, and ch. 489, except as otherwise provided in s. 471.017, F.S.

This provision is modeled after the program established by the Florida Building Commission in s. 553.77, F.S. Funding for this program is provided through the Insurance Regulatory Trust Fund.

**Section 16** revises requirements relating to local government approval of products for local application. In general, this section provides for enhanced reliance on the documentation of code compliance through the state-level product approval process.

This section identifies methods for demonstrating product compliance with the structural windload requirements of the code. In addition, this section provides that product-evaluation reports that indicate compliance with the code based upon a test report from an approved testing laboratory and analysis by a Florida-registered engineer or architect must include a certification of independence. Similarly, this section provides that local building officials may accept modifications to products or their installation if sufficient evidence is submitted to demonstrate compliance with the code or the intent of the code. Products bearing a certification mark, label, or listing by an approved certification agency require no further documentation to establish compliance with the code. Compliance may be shown by making a designation of compliance with a standard adopted via rule by the Commission via s. 553.842(16), F.S.

**Section 17** requires that, beginning July 1, 2005, the construction of new or retrofitted window or door funded with state or federal funds must conform to design drawings that are signed sealed, and inspected by a structural engineer who is registered with the state. Before the DCA forwards payment to the grant recipient, an inspection report and attestation or copy of the signed and sealed plans must be provided to the department. The department must advise the local government applying for the funds that price or cost shall not be the sole criteria for selecting a vendor. Additionally, a project funded under mitigation or retrofit grants is subject to inspection by the local building officials in the county in which the project is performed.

**Section 18** provides that, notwithstanding any provision in the Florida Building Code, backflow prevention assemblies must be inspected once every five years.

**Section 19** amends s. 633.021, F.S., to delete the provisions in the definitions for Contractor II and V that provide that these contractors' ability to service piping that is an integral part of the system begins at the point where the piping is used exclusively for fire protection. In place of the deleted provision, the bill provides that the ability to service piping begins at the point of service as defined in the section. Section 633.021(18), F.S., which defines the term "point of service," is amended by the bill to replace the term "sprinkler system" with the term "fire protection system." The bill further amends the term to delete the provision that the point of service is designated by the engineer who sealed the plans for a system of 50 or more sprinklers or by the contractor who designed the plans for a system of 49 or fewer sprinklers.

A Contractor I, II, or IV may design a fire protection system which complies with the National Fire Prevention Association standard for one and two family dwellings and mobile homes.

The bill amends the definition of the term "layout" in s. 633.021(18), F.S., to delete the incorrect cross reference to s. 553.79(6)(c), F.S., and to provide that design concepts are made in accordance with the Responsibility Rules of the Board of Professional Engineers.



The bill also provides that there is a distinction between system design concepts prepared by a design professional and a system layout prepared by a contractor. Under current law, s. 633.021, F.S., does not prohibit a licensed fire protection engineer or architect from designing any type of fire protection system. The bill amends s. 633.021, F.S., to provide that a Contractor I, II, or IV may design a fire protection system that complies with the standards adopted by the State Fire Marshal. The bill clarifies that contractor developed plans shall not be required to be sealed, i.e., approved, by a registered professional engineer.

**Section 20** amends s. 633.0215, F.S., relating to the Florida Fire Prevention Code, to require that the design of interior stairways in dwelling units must be consistent with chapter 10 of the Florida Building Code.

**Section 21** amends s. 633.065, F.S., relating to the installation, inspection, and maintenance of fire suppression equipment, to require that each fire hydrant be tested and inspected and maintained in accordance to the specified standards as adopted by the State Fire Marshal. The bill provides that, consistent with s. 633.025(1), F.S., the requirements of this provision shall be deemed adopted by each local government having firesafety responsibilities. Section 633.025(1), F.S, provides that the Florida Fire Prevention Code and the Life Safety Code adopted by the State Fire Marshal shall be deemed adopted by each local government with firesafety responsibilities. Penalties for noncompliance are to be in accordance with s. 633.171, F.S.

**Section 22** amends s. 633.071, F.S., to authorize the State Fire Marshal to adopt by rule standards for inspection tags to be attached to all fire protection systems, including the information required on an inspection report for such an inspection.

**Section 23** amends s. 633.082, F.S., to require the inspection of fire protection systems installed in public and private properties, except one-family or two-family dwellings, using the nationally recognized inspection, testing, and maintenance standard NFPA-25 adopted by the State Fire Marshal. It requires quarterly, annual, three-year, and five-year inspections. A copy of the inspection report must be provided to the building owner and to the local authority having jurisdiction. The bill provides that maintenance of fire sprinkler systems and any corrective actions required are the responsibility of the property owner. The bill further provides that this provision is not intended to limit the inspection and enforcement authority of government entities.

**Section 24** amends s. 633.521, F.S., to create the Water-Based Fire Protection Inspector permit classification. The bill requires that a permit must be issued by the State Fire Marshal for any employee of a Contractor I or Contractor II who will be inspecting water-based fire protection systems. The permit holder must carry the permit on his person at all times while engaged in inspecting fire protection systems, and must also carry picture identification. The permit holder is allowed to inspect specified systems. The inspection of underground piping supplying a fire protection system must be conducted by a Contractor I or Contractor II. The bill also requires, effective July 1, 2008, that the State Fire Marshal use the National Institute of Certification in Engineering Technologies (NICET), Sub-field of Inspection and Testing of Fire Protection Systems Level II or equivalent testing program to establish the permit holder's competency.

**Section 25** amends s. 633.524, F.S., to decrease the amount of the biennial renewal fee for fire protection system certificateholders from \$250 to \$150. It sets an application fee of \$100 for the permit classification, and provides a biennial renewal fee in the amount of \$50 for the permits classifications. The fee for duplicate certificate is increased from \$5 to \$15 and the examination/reexamination fee for each class of certificate is \$100.

**Section 26** amends s. 633.537, F.S., to provide that the renewal period for the permit class shall be the same as the biennial renewal period for certificateholders. The bill establishes a continuing education requirement of eight hours for permitholders by June 30, 2006, and increases that requirement to an additional 16 hours by June 30, 2008 and for each biennial renewal period thereafter. The bill also establishes the curriculum needed for certification.

**Section 27** amends s. 633.539, F.S., to require that inspections of fire protection systems be conducted by a person holding a certificate or permit issued by the State Fire Marshal. The bill limits a permitholder to conducting inspections only while employed by the certificateholder. The bill permits the authority having jurisdiction and insurance company representative to review the fire protection system.

The bill further establishes specific scope of work criteria for contractors, including criteria for the completion of required inspection and testing forms, and criteria for the installation and retrofitting of backflow devices.

**Section 28** amends s. 633.547, F.S., to include permitholders within the disciplinary provisions of this section.

**Section 29** amends s. 633.702, F.S., by incorporating the language of CS/SB 634. Under ch. 489, F.S., the Electrical Contractors Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) regulates licensed fire alarm system contractors and certified unlimited electrical contractors, as well as their employees who are termed fire alarm system agents. The Division of State Fire Marshal (DSFM) within the Department of Financial Services (DFS) and certified local firesafety inspectors have the responsibility to inspect buildings and facilities and to inspect fire alarm systems regarding issues of fire safety, prevention, and control under ch. 633.052, F.S.

CS/CS/CS/SB 634 amends ch. 633, F.S., the law relating to the DSFM, to provide that it is a first degree misdemeanor for any person to intentionally or willfully install, service, test, repair, improve, or inspect a fire alarm system unless a person is one of the following:

- A holder of a valid and current active license as a certified unlimited electrical contractor as defined in part II of ch. 489, F.S.;
- A holder of a valid and current active license as a licensed fire alarm contractor as defined in part II of ch. 489, F.S.;
- An authorized fire alarm system agent under s. 489.5185, F.S.; or

A person who is exempt under the contract licensing provisions of s. 489.503, F.S

**Section 30** CS/CS/CS/SB 442 requires a county or municipal government to review and approve, approve with conditions or deny an application for a site development plan, building permit or other permit:

- Within 120 days of receipt of a completed application, the local government must approve, approve with conditions, or deny the application.
- Within 10 days of an application being submitted, the local government must inform the applicant of any information necessary to complete the application. If notice is not written, the application is deemed accepted.
- Within 45 days of an application being submitted, the local government must inform the applicant of any information needed to determine the sufficiency of the application. The applicant must either provide the additional information or request action without additional information. While the applicant responds to the request for additional information, the 120 day period the local government has to make a decision on the application is tolled. Both parties may agree to a reasonable extension of time, particularly in the event of a nature disaster or other extraordinary circumstances.

The bill also specifies the types of building permit applications the aforementioned requirements apply to.

**Section 31** adopts the substance of CS/SB 1232, which amends section 109, Chapter 2000-141, Laws of Florida. The bill directs the Florida Building Commission to update the Florida Building Code with the most recent and relevant design standards for wind resistance of buildings issued by the American Society of Civil Engineers (ASCE Standard 7). It also repeals the current option for designing buildings to resist internal pressures when the commission adopts the relevant national standards prohibiting such design options.

**Section 32** states that regardless of the provisions of this act, the option for designing for internal pressure for buildings within the windborne debris region shall be repealed immediately upon adoption of standards and conditions within the International Building Code or International Residential Code prohibiting such option design. The FBC must initiate rulemaking to incorporate such standards and conditions prohibiting designing for internal pressure for buildings into the Florida Building Code when the base code is updated.

**Section 33** The bill appropriates \$200,000 from the Insurance Regulatory Trust Fund to the Department of Financial Services to develop a joint program between the Florida Insurance Council and the Florida Home Builders to educate builders on the benefits and options of designing buildings for windborne debris protection.

**Section 34** requires the Florida Building Commission and local building officials to evaluate the damage from Hurricane Ivan and make recommendations to the Legislature for changes to the Building Code as it relates to the region from the eastern border of Franklin County to the Florida-Alabama line.

**Section 35** instructs the commission to evaluate the definition of “exposure category C” in the Florida Building Code and make recommendations for changing the definition to the Legislature.

**Section 36** repeals s. 553.851, F.S., relating to the procedure for recording and determining the location of underground gas pipelines.

**Section 37** provides an effective date of July 1, 2005.

**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:**

The Florida Building Commission is authorized to impose a fee not exceed \$250 for each request for review or interpretation of local decisions relating to the building code.

**B. Private Sector Impact:**

Employees of fire protection system Contractor I and Contractor II who conducts inspections would have to apply for a permit with an application fee of \$100 and renewal fee of \$100. The renewal fees for fire protection system certificateholders would decrease from \$250 to \$150. Duplicate certificate fees are increased to \$15 and examination/reexamination fees for each class of permit is set at \$100.

**C. Government Sector Impact:**

The CS/CS/CS provides that 15 percent of the \$7 million in funds designated to prevent or reduce losses or to reduce the cost of rebuilding after a disaster (\$1.05 million annually) must be used for education awareness related to the code and the operation of the Disaster Contractor Network. The bill also provides guidelines for the distribution of the \$1.05 million in funds used for code education awareness and the Network.

The CS/CS/CS creates s. 553.80(7), F.S., to restrict the use of building code fee revenues, and specifying that such fees must be used solely for carrying out the local government's responsibilities in enforcing the code.

Section 15 requires the State Fire Marshall (SFM) to establish an informal process for rendering non-binding interpretations of the Florida Fire Prevention Code and authorizes the SFM to contract with a nonprofit organization for this purpose, funded by the Insurance Regulatory Trust Fund.

Section 33 makes a \$200,000 appropriation from the Insurance Regulatory Trust Fund to the Department of Financial Services to be used to develop a joint program between the Florida Insurance Council and the Florida Home Builders Association to educate

contractors on designing building to protect against windborne debris, and to develop a standardized affidavit for use in verifying insurance discounts for residential construction techniques that reduce windstorm damage and loss.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/SB 1488 also revises the distribution of funds for the Hurricane Loss Mitigation Program in the Department of Community Affairs, by authorizing up to \$1 million to be used in FY 2005-06 for a pilot project to subsidize or guaranty low-interest, private sector loans for retrofitting homes to mitigate hurricane damage.

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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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## **VIII. Summary of 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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