

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 621

Building Safety

SPONSOR(S): Cretul

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Growth Management Committee</u>	<u>9 Y, 0 N</u>	<u>Porter</u>	<u>Grayson</u>
2) <u>Local Government Council</u>	<u></u>	<u>Smith</u>	<u>Hamby</u>
3) <u>Transportation & Economic Development Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 621 addresses a number of issues relating to the development and administration of the Florida Building Code and related building safety requirements. Specifically, the bill implements the following:

- Revises procedures governing the adoption and amendment of the Florida Building Code;
- Modifies membership requirements for the Florida Building Code Commission;
- 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; and
- Establishes an informal process for rendering non-binding interpretations of the Florida Fire Prevention Code.

The bill does not appear to have a material impact on state resources.

The bill provides for an effective date of October 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Effects

HB 621 provides for updating the Florida Building Code and incorporating the interpretations of the Florida Building Commission (FBC) into one "interpretations" statute.

The bill provides that persons installing or delivering certain lawn storage buildings or storage sheds do not have to be licensed contractors.

The bill requires the FBC to select the most recent addition of the international codes adopted by the International Code Congress when updating the building code. The bill further provides that the FBC may modify or amend any portion of the foundation codes as need to accommodate Florida specific requirements.

The bill requires the FBC to incorporate into the building code only those interpretations that are necessary to modify the foundation codes to the specific needs of the state.

The bill states that an update to the building code shall not take effect for 6 months after adoption unless necessary to protect the public from immediate threat of harm.

The bill adds final orders and interpretations of hearing officer panels to the list of technical amendments that may be initiated once each year to the extent that they are needed to modify the foundation codes to the specific needs of the state.

The bill requires all amendments and information submitted with amendments to undergo a qualitative review by commission staff prior to consideration by any technical advisory committee. Amendments may be rejected by staff if not accompanied by a fiscal impact statement, and if rejected may not be considered by the commission or any advisory committee.

The bill requires the FBC to initiate rule making for permitted standards and conditions for unventilated attic assemblies within 60 days of adoption by the International Code Council for inclusion in the Florida Building Code.

Florida Building Commission Membership

The bill requires the Governor to appoint commission members from lists of candidates submitted by respective professional organizations, and provides the Governor may appoint any other person otherwise qualified.

There appears to be duplicative language in section 3 of the bill. The bill states that the Governor may appoint any other person qualified under the statute. However, the bill later states the Governor shall chose each commission member "from a list". These instructions appear to be counter to each other and cast doubt as to whether the Governor would be able to choose a candidate not on a list submitted by the professional organizations regardless of whether they are otherwise qualified.

Section 3 of the bill also may create a situation where one professional group has undue influence over the make up of the commission. There appear to be three instances in the make up of the board where

one professional organization is allowed to control the selection of more than one member. Specifically, the Building Officials Association of Florida would appear to control the selection of three commission members, while the Florida Fire Marshals and Inspectors Association control the selection of two commission members each.

Building code interpretations

The bill moves existing language relating to interpretations and declaratory statements to a new “interpretations” statute.

The bill instructs the FBC to designate, in conjunction with the Building Officials Association of Florida, Inc., five member hearing panels to review the decisions of local building officials. The bill states who may file a request for such a review and outlines the procedure to initiate the review, including appeal procedures. The bill instructs the commission to adopt a form and states the content the form must include. The bill states the panel must issue an interpretation within 21 days of the filing of the petition.

The bill exempts the FBC and hearing officer panels appointed by the FBC (created in section 7) 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.

Truss Placement Plan

The bill states that a truss-placement plan is not required to be signed by an engineer or architect unless specifically required by the Florida Building Code.

Private Providers

The bill provides that a fee owner’s contractor, upon written authorization from the fee owner, may choose a private provider to provide building 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 7 business days prior to the first scheduled inspection by the local building code enforcement agency.

The bill eliminates the requirement that the private provider maintain comprehensive general liability insurance with minimum policy limits of one million dollars per occurrence. The bill maintains that private providers must maintain professional liability insurance with minimum policy limits of one million dollars per occurrence. 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 5 years subsequent to the performance of building code inspection services.

Building Code Fees

The bill restricts 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, provision of training courses, educational materials, and public building safety awareness related to the building code and building code enforcement; and enforcement against unlicensed contractor activity to the extent not funded with other user fees. The bill also lists four other categories of expenditures for which building code fees may not be expended. These fees include:

- Planning and zoning or other general government activities;

- Inspections of public buildings for a reduced fee or no fee;
- Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida building Code; and
- Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the code and excluding any local ordinance directly related to the code as defined earlier in the bill.

The bill also requires local governments to use recognized management, accounting, and oversight practices for building code fees.

The Florida Building Code

The bill requires the FBC to adopt the “State Existing Building Code” into the Florida Building Code and waives any delay provision of newly adopted code for this procedure.

Building Code Training

The bill revises the administration and operation of the Florida Building Code Training Program. The bill allows for voluntary accreditation of advanced module courses on the Florida Building Code and its enforcement. The bill states that the FBC shall develop a core curriculum that may be used by professional licensing boards as a prerequisite for initial licensing for professions not subject to testing on the code. The bill removes the equivalency test from statute. The bill states that courses approved by the Department of Business and Professional Regulation shall be deemed approved by the FBC.

Product Approval

The bill revises several provisions relating to the product approval and evaluation process. The bill limits the authority of local governments to approve building products and deletes a requirement that the Commission adopt procedures for local product approval. The bill states that products bearing a certification mark or listing from an approved certification agency shall be validated by inspection of the certification mark or listing. The bill recognizes the International Code Council Evaluation Services as a designated product evaluation entity.

Fire Alarm Systems

The bill provides that it is a 1st degree misdemeanor to intentionally or willfully install, service, test, repair, improve, or inspect a fire alarm system without being in compliance with s. 489.5185, F.S.

Background

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, and 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.

The law established the FBC as the body which is responsible for the development of the Code and the other elements of the system which support its implementation. The FBC 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 FBC. The FBC 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 is 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 FBC 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 on interpreting the Code.¹ It authorized the FBC 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 FBC selected the Building Officials Association of Florida (BOAF) as the entity to work with toward this end. Requests for opinions are received through the FBC'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 FBC'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 FBC 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 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

¹ Chapter 2002-193, s. 16, L.O.F.

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 concerns relating to the use of private providers, the FBC 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 FBC'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 FBC 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 assessing local government's 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 FBC to establish the Building Code Training Program. The FBC is to implement, by rule, a core curriculum and advanced module courses relating to the Florida Building Code. This section also:

- Directs the FBC to develop the training program in consultation with various agencies;
- Allows the FBC to enter into contracts with various providers to administer the program;
- Requires that the FBC develop, with the Department of Community Affairs, the Department of Business and Professional Regulation (DBPR), and the State Fire Marshall, 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 FBC to develop, with DBPR and respective licensing boards, an equivalency test for the core curriculum, for each category of license;
- Requires the FBC, with DBPR, develop for use as continuing education units core module work for superintendents, journeyman and residential designers; and
- Requires the respective state boards and the State Fire Marshal to require specialized or advanced core modules as part of a continuing education program.

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.²

Section 30 of ch. 2001-186, L.O.F., significantly rewrote the product approval provisions in s. 553.842, F.S., consistent with the FBC’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 of 2003, the FBC has processed 3,648 applications and approved 11,433 products and 113 private entities that evaluate product performance and manufacture.³ The FBC 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 FBC staff resources. In November of 2004, the FBC hired a contractor to assume responsibility for the review of applications for product approval.

² Information taken from http://www.floridacommunitydevelopment.org/fbc/index_page/FULL%20Report%20and%20Cover%20-%20Legislature%202003-021303.pdf

³ Florida Building Commission, 2005 Report to the Legislature, January 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 553.37, F.S., relating to manufactured buildings.

Section 2. Amends s. 553.73, F.S., relating to the Florida Building Code.

Section 3. Amends s. 553.74, F.S., relating to the Florida Building Commission.

Section 4. Amends s. 553.77, F.S., relating to the powers of the Florida Building Commission.

Section 5. Creates s. 553.775, F.S., relating to interpretations of the Florida Building Code.

Section 6. Amends s. 553.79, F.S., relating to truss placement plans.

Section 7. Amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 8. Amends s. 553.80, F.S., relating to building code enforcement.

Section 9. Provides instruction to the Florida Building Commission relating to code adoption.

Section 10. Amends s. 120.80, F.S., relating to the Florida Building Commission and appointed hearing officer panels.

Section 11. Amends s. 553.841, F.S. relating to the building code training program.

Section 12. Amends s. 553.842, F.S. relating to product evaluation and approval.

Section 13. Amends s. 633.702, F.S. relating to prohibited acts regarding fire alarm systems.

Section 14. Provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a material impact on state revenues.

2. Expenditures:

The bill does not appear to have a material impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a material impact on local government revenues.

2. Expenditures:

The bill does not appear to have a material impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a material impact on the private sector as a whole. However, there are provisions in the bill that would permit the use of products used in the construction of vent-less attics that are not currently approved for use under the code.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not materially affect the rule making authority of the FBC. However, there are provisions of the bill relating to the adoption of the building code and provisions contained in the code that will require the FBC to exercise its current authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

There appears to be duplicative language in section 3 of the bill related to the FBC. The bill states that the Governor may appoint any other person qualified under the statute. However, the bill later states the Governor shall chose each commission member "from a list". These instructions appear to be counter to each other and cast doubt as to whether the Governor would be able to choose a candidate not on a list submitted by the professional organizations regardless of whether they are otherwise qualified.

Section 3 of the bill also may create a situation where one professional group has undue influence over the make up of the FBC. There appear to be three instances in the make up of the board where one professional organization is allowed to control the selection of more than one member. Specifically, the Building Officials Association of Florida would appear to control the selection of three commission members, while the Florida Fire Marshals and Inspectors Association control the selection of two commission members each.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The sponsor of the bill is expected to submit a strike-all amendment.