

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 621 CS Building Safety  
**SPONSOR(S):** Cretul  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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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>7 Y, 0 N, w/CS</u>	<u>Smith</u>	<u>Hamby</u>
3) <u>Transportation &amp; Economic Development Appropriations Committee</u>	<u></u>	<u>McAuliffe</u>	<u>Gordon</u>
4) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

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

- revises the distribution of funds for the Hurricane Loss Mitigation Program;
- revises procedures governing the adoption and amendment of the Florida Building Code;
- modifies membership requirements for the Florida Building Code Commission (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 Administrative Procedures Act 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 that local governments must act upon certain permit applications within specified time or permits are automatically deemed approved;
- removes the code's wind-protection standards from the Florida Building Code; provides for an update of the code's wind-protection standards;
- provides for incorporation into the Florida Building Code of the repeal of a design option relating to internal pressure for buildings within the windborne debris region;
- provides an appropriation for a joint program to educate contractors for certain purposes;
- requires the commission to review damage from Hurricane Ivan and make recommendations to the Legislature for changes to the Florida Building Code; and
- directs the commission to evaluate the definition of the term "exposure category C" and recommend a revision to accurately reflect certain conditions specific to the state.

The bill appropriates \$200,000 from the Insurance Regulatory Trust Fund, and has an indeterminate fiscal impact on state and local governments.

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

**STORAGE NAME:** h0621d.TEDA.doc  
**DATE:** 4/14/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government and ensure lower taxes** - The bill creates the Building Code Education and Outreach Council to coordinate, develop, and maintain education and outreach efforts associated with the Florida Building Code. The bill states that local governments may, at their option, establish a registration system to ensure private providers comply with the licensure and insurance requirements of s. 553.791, F.S. The commission is authorized to impose a fee not to exceed \$250 for binding interpretations for each request for review or interpretation. The bill provides that employees of a fire protection system Contractor I and Contractor II who conduct 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. The State Fire Marshal is authorized to impose a fee of \$100 for permittee initial licensure and a \$50 fee for biannual permittee licensure renewal.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

**Hurricane Loss Mitigation Funding** – Section 215.559, F.S., provides for an annual appropriation of \$10 million from the Florida Hurricane Catastrophe Fund to the Department of Community Affairs (DCA) for administration of the Hurricane Loss Mitigation Program. This section currently provides that \$7 million of this total must be used for programs that improve the wind resistance of residences and mobile homes.<sup>1</sup> This section further specifies that 40 percent of these funds must be used to inspect and improve tie-downs for mobile homes, and another 10 percent is dedicated to the International Hurricane Center at Florida International University. The remaining 50 percent (\$3.5 million) is directed to programs developed by the DCA, in consultation with a statutorily created advisory council, to prevent or reduce losses or to reduce the cost of rebuilding after a disaster. In recent years, the DCA 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 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 of building materials, and consumers who need construction repairs after a natural disaster.

**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. 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

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<sup>1</sup> Section 215.559(2)(b), F.S., provides that the remaining \$3 million must be used to retrofit existing facilities used as public hurricane shelters.

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 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 nonbinding 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 process since its inception.

Because the code is an administrative rule, interpretations of the code that are of general applicability must comply with the 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 553.791, F.S., establishes a procedure by which the public may choose to hire an engineer or architect to perform plans review and building inspection services for structures for which building permits are required. The section

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

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 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 five 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 the commission to develop, with the DCA, 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** - Section 553.842, F.S., provides 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.<sup>3</sup>

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,

<sup>3</sup> Information taken from <http://www.floridacommunitydevelopment.org>.

<sup>4</sup> Florida Building Commission, *2005 Report to the Legislature*, January 2005.

thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding preengineered systems.

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 CO2 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>

Section 633.021, F.S., provides 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. The section 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 such contact.

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 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.

**Building Permit Applications** - Section 553.79, F.S., provides that it unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons as may, by appropriate resolution or regulation of the authorized state or local enforcing agency, be delegated authority to issue such permits. Additionally, an enforcing agency may not issue any permit for construction of any building or structure until the local building code administrator or inspector has

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

reviewed the plans and specifications required by the Florida Building Code or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code.

Section 553.79(13), F.S., provides that a building permit for a single-family residential dwelling must be issued within 30 working days of application unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances. However, there are no sanctions associated with the local government's failure to comply with this provision.

While the Florida Building Code establishes certain minimum standards for the interpretation of building permit applications, it does not address the timeliness of permit application processing.

According to representatives of local governments, the length of time required to process an application for a building permit is largely a function of departmental workload and the complexity of the proposed project. Permit processing timeframes are highly variable depending on the type of permit requested.

**Hurricane Protection** - The commission established standards for hurricane protection in the Florida Building Code that are based on a national model building code, federal regulations, and standards evolving out of southeast Florida's experience with Hurricane Andrew. Specifically, for protection against hurricane waters, the Code incorporates the flood plain management standards of the Federal Emergency Management Agency's National Flood Insurance Program for the entire state. For coastal construction it incorporates the Florida "coastal building zone" storm surge protection standards for coastal construction.

For protection against hurricane winds, the Florida Building Code adopts the national model building code engineering standard. Buildings constructed in regions that are expected to experience hurricane winds of less than 120 mph must be designed to withstand external wind pressures identified for their location. Buildings constructed in regions that are expected to see hurricane winds of 120 mph or greater must not only be able to withstand external wind pressures but also internal pressures that may result inside a building when a window or door is broken or a hole is created in its walls or roof by large debris. Areas within one mile of the coast that experience at least 110 mph winds are also required to meet the 120 mph standards for external and internal pressures.

The Florida Building Code requires that new homes throughout the state be designed to resist external wind speeds that the American Society of Civil Engineers standard (ASCE 7-98) predicts will experience sometime within a 50 to 100-year time period. In November of 1999, the commission agreed with the developers of ASCE 7-98 and applied additional requirements in what is called the "wind-borne debris region" to ensure that buildings inside this region will also be able to withstand internal wind pressure caused by the penetration of flying debris. This region includes areas expected to experience winds of 120 mph or greater as well as areas within one mile of the coast that experience at least 110 mph winds.

Subsection (3) of s. 109 of ch. 2000-141, L.O.F., directs the commission to adopt for areas of the state not within the high velocity hurricane zone, pursuant to s. 553.73, F.S., the wind protection requirements of the ASCE, Standard 7, 1998 edition as modified by the commission in its February 15, 2000, adoption of the Florida Building Code. However, the Legislature stipulated that from the eastern border of Franklin County to the Florida-Alabama line, only land within one mile of the coast is subject to the windborne-debris requirements adopted by the commission. This subsection provides for the exact location of wind speed lines to be established by ordinance using specified physical landmarks, and provides that buildings constructed within the windborne debris region must be either designed for internal pressures resulting from a broken window or door or a hole in the walls or roof, or be designed with protected openings. The subsection further provides that except in the high velocity hurricane zone, local governments may not prohibit the option of designing buildings to resist internal pressures.

The ASCE 7 standard considers both wind speeds that can be developed by hurricanes and factors such as terrain and shielding by other buildings which affect the strength of those winds when they impact buildings. Exposure A is characteristic of large cities with large expanses of tall buildings. Exposure B is characteristic of suburban areas with large expanses of short and medium height buildings and wooded areas. Exposure C is characteristic of areas of exposed expanses of open terrain or open water. Section 553.71, F.S., defines "exposure category C" to mean, except in the high velocity hurricane zone, that area which lies within 1,500 feet of the coastal construction control line, or within 1,500 feet of the mean high tide line, whichever is less. On barrier islands, exposure category C is applicable in the coastal building zone set forth in s. 161.55(5), F.S.

### **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 bill provides that 15 percent of the 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 provides that the DCA 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 to the Disaster Contractor Network for education and hurricane response preparedness. An additional 20 percent 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>6</sup> The remaining funds must be used by the entity for outreach activities relating to the Florida Building Code. (According to the DCA of Community Affairs, the requirements for the entity are too narrow and would effectively foreclose competitive bidding for this function.)

**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, regulates 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 commission adopted pursuant to Part IV, ch. 553, F.S., relating to the Florida Building Code.

**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 not exceeding 250 square feet, to be delivered and installed without the need for a contractor's or specialty license, and are 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 DCA.

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 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.

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<sup>6</sup> The Southeast Builders Conference which is held annually in Orlando is the largest construction trade show in the southeast.



**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 bill specifies that the pool-related door and window exit alarms required by ch. 515, F.S., must be battery-powered, hard-wired, or plug-in. This provision clarifies that the battery-powered and plug-in alarms satisfy the requirements of ch. 515, F.S.

*Updating the Code* – The bill 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 in the case of the National Electrical Code, adopted by the National Fire Prevention Association, to form the foundation codes for the Florida Building Code.<sup>7</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 bill provides that a model code must be available to the public at least six months prior to its adoption by the commission. Similarly, rule updates adopted by the commission must take effect at least six months following publication of the updated code. The bill requires the commission to incorporate its interpretations, declaratory statements, appellate decisions, and approved statewide technical amendments into the updated Florida Building Code only to the extent they are needed to modify the foundation codes to accommodate the specific needs of the state. The bill also requires that codes regarding noise contour lines must be annually reviewed by the commission and that the current federal guidelines must be adopted.

*Technical Amendments to the Code* – The bill 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 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 bill 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 may 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 bill 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 DCA, 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. Language providing for the commission to determine the type products requiring approval for local or statewide use is

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<sup>7</sup> HB 621 provides for the use of the following current model codes: the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code; and the National Electrical Code adopted by the National Fire Prevention Association.

amended to delete reference to local use and revised to require the commission to determine the type of product which may be approved by the commission. The bill also deletes the provisions of s. 553.77(7), F.S., which establish nonbinding interpretations of the code. These powers are replaced by the creation of s. 553.775, F.S., in section 7 of the bill, 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.

The bill also provides that if a member of the commission has a potential special private gain or loss in the outcome of a vote or other action of the commission, the member must abstain from voting or taking action on the matter. The section is amended to provide that a commissioner must abstain from voting on matters pursuant to ss. 120.569 and 120.60, F.S., before the commission in the foregoing circumstances, and provides disclosure proceedings for purpose of abstaining from voting.

**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 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 binding interpretations for each request for review or interpretation. For third-party proceedings the payment may be made directly to the third-party who must remit to the DCA that portion of the fee necessary to cover the DCA's costs.

**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 contractor 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 bill also provides additional terms and notification requirements governing the use of private providers.

The bill deletes the provision in s. 553.791(2), F.S., that authorizes local building officials to require that the fee owner use the private inspector to provide both plans review and building inspections 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 eliminate the requirement that the private provider maintain comprehensive general liability insurance with minimum policy limits of one million dollars per occurrence. The bill provides private providers must maintain professional liability insurance with minimum policy limits based on the cost of the construction project, ranging from \$1 million per occurrence and \$2 million in the aggregate for any project having a construction cost of \$5 million and \$5 million per occurrence and \$5 million in the aggregate for any project having a construction cost of \$50 million or more. 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. After such inspection and approval, the work may not be delayed because 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, reinspections, 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.

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** amends s. 120.80, F.S., to exempt the commission, and hearing officer panels appointed by the commission (created in section 7 of the bill), 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 DCA rule development.

**Section 12** substantially amends s. 553.841, F.S., to revise the administration and operation of the Florida Building Code Training Program. The bill 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, one of whom must have accessibility expertise, by the commission;
- 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. The bill limits the council to meeting no more than semiannually, however the council may meet more often but not more than monthly, and the meetings must be by telephone conference call. The bill authorizes the DCA to provide administrative support and to contract with an entity to provide administrative support. The entity must have prior experience with code training, development, and coordination.

The council is responsible for the development, updating, and maintaining 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>8</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 advance 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 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.

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<sup>8</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.

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 bill 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 bill for additional provisions relating to local product approval). The bill also recognizes the International Code Council Evaluation Services as a designated product evaluation entity, and authorizes the commission to adopt, by rule, a list of prescriptive, material standards and alternative means by which products subject to those standards may demonstrate compliance with the code.

**Section 15** creates s. 633.026, F.S., to authorize the State Fire Marshall to establish an informal process for rendering non-binding interpretations of the Florida Fire Prevention Code. 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. This provision is modeled after the program established by the commission in s. 553.77, F.S. Funding for this program is provided through the Insurance Regulatory Trust Fund. (See Fiscal Comments section.)

**Section 16** provides 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 approved 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.

**Section 17** requires that, beginning July 1, 2005, the construction funded with state or federal funds of new or retrofitted window or door covering in an essential facility must meet the standards of American Standard and Testing Materials Level E (ASTM Level E) for impact protection. The bill provides that if the construction is funded under the Hazardous Mitigation Grant Program (HMGP), the DCA must advise the local government applying for the funds that price or cost shall not be the sole criteria for selecting a vendor. (According to the Department of Community Affairs, the commission has in the past rejected the ASTM Level E standard as too cost prohibitive, especially in the context of limited HMGP funded projects. According to the industry, the ASTM Level E is the highest standard of safety designed to protect essential facilities and the welfare of the state's citizens.)

The bill defines the term essential facilities as including, but not limited to, hospitals and other health care facilities that have surgery or other emergency-treatment facilities, fire, rescue, and police stations and emergency garages, designated emergency shelters, communications centers and other facilities required for emergency response, power generating stations and other public utility facilities required in an emergency, and buildings and other structures that have critical national defense functions.

**Section 18** 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(14), 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 or the State Fire Marshal.

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. Current law in 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 may not be required to be sealed, i.e., approved, by a registered professional engineer.

**Section 19** amends s. 633.0215, F.S., relating to the Florida Fire Prevention Code, to require that the design of interior stairways in dwelling units, including stair tread width and riser height, landings, handrails and guards, must be consistent with chapter 10 of the Florida Building Code.

**Section 20** 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 21** 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.

An Attorney General opinion was rendered on April 5, 2005, to Mr. Stephen Lee, Deputy Seminole County Attorney<sup>9</sup>, relating to "COUNTIES–FIRE PROTECTION–HYDRANTS–responsibility of maintaining fire hydrants; enforcing requirements." The opinion stated:

"[t]he responsibility for properly maintaining a water-based fire protection system shall be that of the owner of the property." A question has been raised as to whether the term "property" refers to the real property on which the fire hydrant is located or to the fire hydrant itself. You have not advised this office of any provision in either the Florida Fire Prevention Code or NFPA code defining the term "owner of the property." A common sense reading would lead to the conclusion that the owner of the hydrant would be responsible for its inspection and maintenance and therefore the term "property" would refer to the hydrant. The Division of State Fire Marshal has advised this office that it is the position of the division that the owner of the hydrant is responsible for its inspection and maintenance. However, a review of the context in which the term is used in NFPA Standard 25-10 would indicate that the term refers to the owner of the real property rather than the fire hydrant owner. Thus, the reference to "property" is not clear, and this office would therefore suggest that the Legislature clarify its intent on this issue. (Footnote omitted.)

The bill clarifies that the maintenance of fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the system or hydrant. The bill further provides

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<sup>9</sup> See AGC 2005-21.

that this provision is not intended to limit the inspection and enforcement authority of government entities.

**Section 22** amends s. 633.521, F.S., provides for certification as a Contractor V, the applicant must be licensed as a certified underground utility and excavation contractor or plumbing contractor, have verification by an individual who is licensed as a certified utility contractor that has 4 years' proven experience in the employ of a certified underground utility and excavation contractor or plumbing contractor, or have a combination of education and experience equivalent to 4 years' proven experience in the employ of a certified underground utility and excavation contractor or plumbing contractor. The bill creates 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 23** amends s. 633.524, F.S., to decrease the amount of the biennial renewal fee for fire protection system certificate holders 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 24** amends s. 633.537, F.S., to provide that the renewal period for the permit class will be the same as the biennial renewal period for certificate holders. The bill establishes a continuing education requirement of eight hours for permit holders 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 25** 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 permit holder to conducting inspections only while employed by the certificate holder.

The bill permits the authority having jurisdiction, and an 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 26** amends s. 633.547, F.S., to include permit holders within the disciplinary provisions of this section.

**Section 27** provides that a local government must approve, approve with conditions, or deny a completed permit application within 120 days of receipt. The bill specifies the categories of building permits that are subject to this requirement and stipulates that this 120-day timeframe does not supersede other laws, rules, or ordinances that specify a different timeframe for local building permit application processing.

Specifically, the bill provides that within 10 days of receipt of an application for a building permit the local government must review the application and advise the applicant what, if any, information is needed in order for the application to be considered complete. If the local government fails to provide

written notice that the applicant has failed to submit the properly completed application, the application is automatically deemed complete and available for processing. If additional information is required in order for the local government to evaluate the sufficiency of the application, the local government must notify the applicant within 45 days after receipt of the application and specify any additional information that is needed. The applicant must submit the additional information or request that the local government act without the additional information. While the applicant responds to the local government's request for additional information, the 120-day timeframe is tolled. The parties may agree to an extension of time, particularly in the event of extraordinary circumstances.

Within 120 days of receipt of the completed application for a building permit, the local government must approve, approve with conditions, or deny the application. The bill provides that the application processing procedures apply to following specific types of permits:

- a permit for an accessory structure;
- an alarm permit;
- a permit for a nonresidential building of less than 25,000 square feet;
- an electrical permit;
- an irrigation permit;
- a landscaping permit;
- a mechanical permit;
- a plumbing permit;
- a permit for a residential unit other than a single-family unit;
- a permit for a multifamily residential unit that does not exceed 50 units;
- a roofing permit;
- a permit for a sign;
- a permit for site-plan approval or a subdivision plat that does not require a public hearing or public notice; and
- a permit for lot grading or site alteration that is associated with an application for any permit previously identified.

The bill stipulates that the 120-day timeframe for permit processing does not apply to a permit for any wireless communication facility and does not supersede any other provision of law, rule, or local ordinance which specifies a different timeframe for review of an application for a local building permit.

The bill would provide greater certainty for building contractors and other interested parties by establishing a timeframe for the processing of building permits. However, representatives of local governments have indicated that the bill could result in an increase in the number of permit application denials due to the 120-day processing provision.

**Section 28** repeals s. 553.851, F.S., relating to the procedure for recording and determining the location of underground gas pipelines.

**Section 29** amends subsection (3) of s. 109 of ch. 2000-141, L.O.F., requiring the commission to adopt the most current edition of the wind protection requirements of the American Society of Civil Engineers (ASCE) Standard 7 into the Florida Building Code and removes the obsolete standard (1998 edition) from the Laws of Florida.

**Section 30** provides for the repeal of the current option of designing buildings to resist internal pressures for buildings within the windborne debris region when the commission adopts the standards and conditions of the International Building Code or International Residential Code prohibiting such design options.

**Section 31** requires the 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 32** requires the commission to evaluate the current definition of “exposure category C” as currently defined in s. 553.71(10), F.S., in the building code and make recommendations for updating the definition prior to the 2006 Legislative Session. This would allow the Legislature to update the definition to the most current and/or relevant available standards on this category of location (i.e. within 1500 feet of the mean high tide line or coastal construction control line...which ever is less).

**Section 33** appropriates for fiscal year 2005-2006 only, the sum of \$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 to reduce property loss during a windstorm and to develop an affidavit for verifying insurance discounts for techniques demonstrated to reduce the amount of loss during a windstorm.

**Section 34** provides an effective date of July 1, 2005.

C. SECTION DIRECTORY:

- Section 1. Amends subsections (3) and (4) of s. 215.559, F.S., relating to Hurricane Loss Mitigation Program.
- Section 2. Amends paragraph (i) of subsection (1) of s. 468.621, F.S., relating to disciplinary proceedings.
- Section 3. Amends paragraph (a) of subsection (3) of s. 489.537, F.S., relating to application.
- Section 4. Amends subsection (3) of s. 553.37, F.S., relating to rules, inspections, and insignia.
- Section 5. Amends s. 553.73, F.S., relating to the Florida Building Code.
- Section 6. Amends s. 553.77, F.S., relating to the powers of the Florida Building Commission.
- Section 7. Creates s. 553.775, F.S., relating to interpretations of the Florida Building Code.
- Section 8. Amends subsection (14) of s. 553.79, F.S., relating to truss placement plans.
- Section 9. Amends s. 553.791, F.S., relating to alternative plans review and inspection.
- Section 10. Amends s. 553.80, F.S., relating to building code enforcement.
- Section 11. Adds paragraph (c) to subsection (17) of s. 120.80, F.S., relating to the Florida Building Commission and appointed hearing officer panels.
- Section 12. Amends s. 553.841, F.S. relating to the building code education and outreach training program.
- Section 13. Repeals s. 553.8413, F.S., relating to Education Technical Advisory Committee.
- Section 14. Amends s. 553.842, F.S. relating to product evaluation and approval.
- Section 15. Creates s. 633.026, F.S., relating to informal interpretations of the Florida Fire Prevention Code.
- Section 16. Creates a new section of law relating to local product approval.

- Section 17. Creates a new section of law relating to window or door coverings in essential facilities and impact-resistance standards.
- Section 18. Amends subsections (5), (14), and (18) of s. 633.021, F.S., relating to definitions.
- Section 19. Adds subsection (11) to s. 633.02115, F.S., relating to the Florida Fire Prevention Code.
- Section 20. Amends s. 633.071, F.S., relating to standard service tag required on all fire extinguishers and preengineered systems; serial number required on all portable fire extinguishers; and adds standard inspection tags required on all fire protection systems.
- Section 21. Amends s. 633.082, F.S., relating to inspection of fire control systems and fire protections systems.
- Section 22. Amends s. 633.521, F.S., relating to certificate application and issuance; adds permit issuance; examination and investigation of applicant.
- Section 23. Amends s. 633.524, F.S., relating to certificate and permit fees; use and deposit of collected funds.
- Section 24. Adds subsection (4) to s. 633.537, F.S., relating to certificate; expiration; renewal; inactive certificate; continuing education.
- Section 25. Amends subsection (2) of s. 633.539, F.S., relating to requirements for installation, inspection, and maintenance of fire protection systems.
- Section 26. Amends s. 633.547, F.S., relating to disciplinary action; fire protection system contractors; grounds for denial, nonrenewal, suspension, or revocation of certificate of permit.
- Section 27. Creates a new section of law relating to applications to local governments for building permits.
- Section 28. Repeals s. 553.851, F.S., relating to protection of underground gas pipelines.
- Section 29. Amends subsection 3 of s. 109 of ch. 2000-141, L.O.F., relating to the Florida Building Code.
- Section 30. Creates a new section of law to remove the option for designing for internal pressure for buildings within the windborne debris region consistent with the International Building Code and International Residential Code.
- Section 31. Provides that the commission, in conjunction with local building officials, must conduct a review of damage resulting from the Hurricane Ivan and make recommendations to the Legislature for changes to the code as it relates to region from the eastern border of Franklin County to the Florida-Alabama line.
- Section 32. Requires the commission to evaluate the definition of “exposure category C” as currently defined in s. 553.71(10), F.S., and make recommendations for a new definition that more accurately depicts the Florida-specific conditions prior to the 2006 Legislative Session.
- Section 33. Appropriates \$200,000 from the Insurance Regulatory Trust Fund to the Department of Financial Services.
- Section 34. Provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill authorizes the commission to impose a fee not to exceed \$250 for binding interpretations for each request for review or interpretation relating to the building code.

The bill provides that employees of fire protection system Contractor I and Contractor II who conduct 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.

The State Fire Marshal is authorized to impose a fee of \$100 for permittee initial licensure and a \$50 fee for biannual permittee licensure renewal.

#### 2. Expenditures:

The bill appropriates from the Insurance Regulatory Trust Fund \$200,000 for FY 2005-2006 only, 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 and to develop an affidavit for verifying insurance discounts for techniques demonstrated to reduce the amount of loss during a windstorm.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill provides local governments may provide a schedule of fees for enforcing the code. The bill provides that these fees, and any fines or investment earnings related to the fees must be used solely for carrying out the local government's responsibilities in enforcing the code.

#### 2. Expenditures:

The bill is designed to implement several recommendations to improve the private provider program at the local level. The bill could reduce local government expenditures associated with plans review and inspections in instances where a building owner contracts with a private provider to perform such services. Local governments may incur additional staffing costs in meeting the permit processing requirements contained in the bill.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that economic impact on the private sector would be reflected in the authority to conduct business as a private provider and for an owner of a building to negotiate inspector services. Benefits could be recognized in the timelines for services to be conducted and thus overall project savings.

The bill provides that employees of fire protection system Contractor I and Contractor II who conduct 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 fee are increased to \$15 and examination/reexamination fees for each class of permit is set at \$100.

The bill provides that representatives of the construction industry maintain that delays in the processing of applications for building permits generate considerable costs for both contractors and consumers. To

the extent that the bill results in the expedited processing of building permit applications and reduces costs, the bill would benefit contractors and consumers.

The bill provides for an appropriation that is intended to create an education program on building techniques designed to decrease windborne debris damage to buildings that is intended to benefit the private sector.

#### D. FISCAL COMMENTS:

The bill requires that, beginning July 1, 2005, the construction funded with state or federal funds of new or retrofitted window or door covering in an essential facility must meet the standards of American Standard and Testing Materials Level E (ASTM Level E) for impact protection. The bill provides that if the construction is funded under the Hazardous Mitigation Grant Program (HMGP), the DCA must advise the local government applying for the funds that price or cost shall not be the sole criteria for selecting a vendor. (According to the Department of Community Affairs, the commission has in the past rejected the ASTM Level E standard as too cost prohibitive, especially in the context of limited HMGP funded projects. According to the industry, the ASTM Level E is the highest standard of safety designed to protect essential facilities and the welfare of the state's citizens.)

The bill defines the term essential facilities as including, but not limited to, hospitals and other health care facilities that have surgery or other emergency-treatment facilities, fire, rescue, and police stations and emergency garages, designated emergency shelters, communications centers and other facilities required for emergency response, power generating stations and other public utility facilities required in an emergency, and buildings and other structures that have critical national defense functions. (See section 17 of the bill.)

The bill does not appropriate funding for the State Fire Marshall to establish an informal process for rendering non-binding interpretations of the Florida Fire Prevention Code. Funding for this program is provided through the Insurance Regulatory Trust Fund. (See section 15 of the bill.)

As discussed in the Effect of Proposed Changes, section 1 of the bill revises distribution of funds for the Hurricane Loss Mitigation Program.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill:

- provides the commission must establish by rule an informal process of rendering nonbinding interpretations of the code;
- provides the commission may adopt by rule and impose a fee for binding interpretations to recoup the cost of the proceedings that may not exceed \$250 for each request for a review or interpretation;

- provides the commission must adopt rules for establishing procedures and criteria for the approval of advanced courses, relating to the Building code education and outreach program;
- provides the commission may establish by rule statewide approval of products, methods, or systems of construction may be achieved by one of the following methods. One of these methods must be used by the commission to approve the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components; the bill removes local approval;
- authorizes the commission to adopt, by rule, a list of prescriptive, material standards and alternative means by which products subject to those standards may demonstrate compliance with the code;
- provides the State Fire Marshal must adopt by rule specifications as to the size, shape, color, information, and data contained thereon of inspection tags to be attached to all types of fire protection systems and information required on an inspection report of such an inspection;
- requires the commission to initiate rulemaking to incorporate the bill's provisions into the Florida Building Code when the base code is updated; and
- provides the commission must initiate rulemaking to incorporate standards and conditions prohibiting designing for internal pressure for buildings into the code when the base code is updated.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Council on Local Government adopted a strike-all amendment on April 6, 2005. The strike-all amendment:

- revises the distribution of funds for the Hurricane Loss Mitigation Program;
- modifies membership requirements for the Florida Building Code Commission
- 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 that local government must act upon certain permit applications within specified time or permits are automatically deemed approved;
- removes the code's wind-protection standards from the Florida Building Code; provides for an update of the code's wind-protection standards;
- provides for incorporation into the Florida Building Code of the repeal of a design option relating to internal pressure for buildings within the windborne debris region;
- provides an appropriation for a joint program to educate contractors for certain purposes;
- requires the commission to review damage from Hurricane Ivan and make recommendations to the Legislature for changes to the Florida Building Code; and
- directs the commission to evaluate the definition of the term "exposure category C" and recommend a revision to accurately reflect certain conditions specific to the state.

The bill, as amended, was reported favorably with committee substitute.