

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1870

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Florida Building Code

DATE: March 2, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GA</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SB 1870 retains the internal design options in the Florida Building Code until June 1, 2007, for a building permit application made prior to that date. The provisions of the bill shall apply retroactively to January 25, 2007, the effective date of chapter 2007-1, Laws of Florida, and applies to any action taken on a building permit affected by Section 9 of Chapter 2007-1, L.O.F.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:

II. Present Situation:

Florida Building Code

The Florida Building Code establishes minimum safety standards for the design and construction of buildings. The first edition of the code replaced all local codes in Florida on March 1, 2002. The Florida Building Code undergoes major updates every three years, while also being subject to amendment each year. The Florida Building Commission is charged with updating and amending the Florida Building Code, often by incorporating updates made to the various source building codes that constitute the Florida code. The code contains design and construction enhancements targeted at preventing hurricane damage. Enforcement of the Florida Building Code is carried out by local governments.

House Bill 1-A Changes to the Florida Building Code

The property insurance legislation enacted in the 2007 Special Session A, Chapter 2007-1, Laws of Florida (House Bill 1-A), requires the Florida Building Commission to amend the Florida Building Code by July 1, 2007, to adopt the wind-borne-debris protection requirements of the International Building Code (2006) and the International Residential Code (2006) within the

wind-borne-debris region (120 mph+) as defined by those codes. These codes require openings, such as windows and doors, to be protected by shutters, wind resistant glass, or other approved methods. These requirements do not apply to the High Velocity Hurricane Zone, which has similar or stronger requirements under the Miami-Dade building code. The legislation also prohibits amendments or modifications that diminish provisions related to wind resistance or water intrusion. However, the commission may amend such provisions to enhance those requirements. The Florida Building Commission is also directed to develop voluntary “Code-Plus” guidelines for increasing the hurricane resistance of buildings that may be modeled on the Miami-Dade building code.

These building code changes had two primary effects: 1) They eliminated the so-called “Panhandle exemption” that had previously exempted certain areas within the wind-borne debris region from that region’s wind-borne debris protection requirements. 2) They eliminated the internal pressurization option for buildings in the wind-borne-debris region. This is an option that allows a structure to be built without meeting the opening protection requirements, if the structure is built to withstand internal pressure if an opening is breached, by having stronger roof to wall, wall to floor, and floor to foundation attachments. However this option was already scheduled to be eliminated at the next triennial update of the Florida Building Code, expected to be adopted in October, 2008, because the 2006 version of the International Code had eliminated this option. The internal pressure option has been criticized as not adequately protecting the contents of the home or human safety.

Section 9 of the act required local jurisdictions to immediately enforce these wind-borne debris protection requirements upon the effective date of the act pending adoption by the Florida Building Commission. The act did not expressly state whether that meant such requirements were to be applied to building permits issued or permit applications filed on or after the effective date of the act. The effective date was upon becoming law, or January 25, 2007, the date signed by the Governor.

Building Code Enforcement After Deletion of the Internal Pressurization Option

With the requirement that local jurisdictions immediately begin enforcement of the change deleting the internal pressurization option, questions arose from local building officials regarding how to enforce the new requirements of the building code. One issue raised was whether to apply the new requirements to permit applications received or approved before the effective date of the bill. Section 553.73(6), F.S., states that “the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.”

From research conducted by committee staff, it appears that most jurisdictions began enforcing the new building code requirements immediately, or were in the process of beginning enforcement shortly after the passage of HB 1-A. However, in some jurisdictions the requirements were not being enforced, with such jurisdictions being unaware of the deletion of the internal design option or applying a different interpretation of its effective date. Occasional variations were found in how local jurisdictions chose to enforce the new requirements. For instance, Nassau County is permitting applications received between January 26, 2007 and July 1, 2007 that were designed using the internal pressurization option to be approved if

accompanied by a signed and sealed affidavit from the designer stating that the structure was undergoing design prior to January 26, 2007.

The immediate removal of the internal pressurization option has created some ongoing difficulties for some homeowners who were in the often lengthy process of having a new home built. Committee staff received reports of homeowners who had undergone the expense of having a home designed pursuant to the internal pressurization option, but had not submitted their plan to the local building official to receive a permit prior to the deletion of the internal pressurization option. That homeowner potentially faced the additional cost of having the home redesigned, and perhaps the need to change the terms of the financial loan being used to finance the construction.

The Windstorm Mitigation Study Committee (appointed pursuant to House Bill 1-A), at its meetings of February 22-23, noted the complications that have arisen. The committee made a preliminary recommendation that the Legislature postpone the effective date for a short time and make appropriate efforts to forgive interim non-compliance.

III. Effect of Proposed Changes:

Section 1. Provides that the internal design (i.e., internal pressurization) option provided in Section 1609.1.4.1, in the Florida Building Code, Building Volume and Section R301.2.1.2, Florida Building Code, Residential Volume, shall remain in effect until June 1, 2007, for a building permit application made prior to that date. As a result, the elimination of the internal pressurization option will apply to building permit applications made on or after June 1, 2007.

Section 2. The act is effective upon becoming law and applies retroactively to January 25, 2007, (the effective date of chapter 2007-1, L.O.F.). The act applies to any actions taken on any building permit affected by Section 9 of Chapter 2007-1, L.O.F., including any actions, legal or ministerial, pertaining to the issuance, revocation or modifications of any building permit initiated, issued, or pending before, on, or after January 25, 2007. Therefore, building code officials are held harmless for any actions taken with regard to building permits issued on or after January 25, 2007, that approved plans that continued to use the internal pressurization option, rather than the opening protection requirements.

The bill provides that if the retroactivity of any provision of this act or its retroactive application to any person or circumstance is held invalid, the invalidity does not affect the retroactivity or retroactive application of other provisions of this act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Supreme Court has stated that a statute may be retroactively applied only when the Legislature provides clear evidence of legislative intent to apply the statute retrospectively, and when such application is constitutionally permissible. The retroactive application of a statute is invalid when it impairs vested rights, creates new obligations, or imposes new penalties.¹ SB 1870 does not place new obligations on a party seeking to have a new structure built, nor does it impose any new penalties. On the contrary, it extends an additional option to such parties of having a structure built pursuant to the internal design standard. The impairment of a vested right does not appear to be implicated either, as this bill does not take away from a party “an immediate right of present enjoyment, or a present fixed right of future enjoyment.”² All parties may design structures using internal design, or in accordance with wind-borne debris protection standard.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Reinstating the internal design option until June 1, 2007 should economically benefit parties who had their structures designed in accordance with that option, but had yet to submit a building permit application. The cost of adding shutters or other opening protections is more expensive than the costs associated with internal pressure design features, which made such option attractive to most homebuilders and buyers. The delay also provides the manufacturers of opening protections such as shutters additional time to increase product to meet the higher demand for products necessitated by the statutory change. Additionally, the delay should allow local building officials more than sufficient notice to familiarize themselves with the pending deletion of the internal pressurization option and begin enforcing the new code requirements with greater uniformity statewide on June 1. However, reinstating the internal pressurization option until June 1, 2007 will result in additional structures being built to that standard in Florida without opening protections. Such structures are more likely to incur damage to their interior because of wind-borne debris puncturing the structure’s envelope (i.e. debris crashing through a window).

¹ *Metropolitan Dade County v. Chase Federal Housing Corp.*, 434 So.2d 494 (Fla.1999).

² *Clausell v. Hobart Corp.*, 515 So.2d 1275, 1276 (Fla. 1987). To be vested, a right must be more than an expectation based on the continuance of an existing law. See *Clausell* at 515 So.2d at 1276; *Div. of Workers’ Comp. Bureau of Crimes Comp. v. Brevda*, 420 So.2d 887, 891 (Fla. 1st DCA 1982).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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