

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: Transportation and Economic Development Appropriations Committee

BILL: CS/CS/SB 2836

INTRODUCER: Transportation and Economic Development Appropriations Committee, Community Affairs Committee, and Senator Constantine

SUBJECT: Florida Building Code

DATE: April 24, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/CS
2.			RI	Withdrawn
3.	Weaver/Kastroll	Noble	TA	Fav/CS
4.				
5.				
6.				

I. Summary:

The committee substitute (bill) requires the Florida Building Commission to review requirements in the National Electric Code relating to bonding and grounding systems for swimming pools, and to authorize the use of alternative method for bonding and grounding if appropriate. The Commission must develop and adopt mitigation techniques for the retrofitting of buildings constructed before the implementation of the Florida Building Code. The Florida Building Code Compliance and Mitigation Program is created within the Department of Community Affairs (DCA) to replace the Building Education and Outreach Program. Materials and services for the mitigation program will be provided by a private, nonprofit corporation under contract to DCA.

The bill revises requirements relating to certified firesafety inspectors, establishes grounds under which a firesafety inspector’s license may be suspended or revoked, provides for a provisional permit program for inspectors of certain fire systems, and revises continuing education requirements for certificateholders and permitholders.

The Commission is directed to conduct a Windstorm-loss Mitigation Study and report back to the Legislature as well as others by March 1, 2008. In addition, the Commission must review the Florida Energy Code for new building construction to evaluate the effectiveness of energy-efficient requirements, and report back to the Legislature by March 1, 2008.

An appropriation of \$1 million from the DCA’s operating trust fund to implement and administer the building code education, mitigation, and outreach programs is provided. An appropriation of \$750,000 in nonrecurring funds from the Operating Trust Fund to the DCA is provided for the purpose of implementing the windstorm loss mitigation study.

The bill substantially amends ss. 468.609, 553.73, 553.775, 553.791, 553.841, 553.842, 633.081, 633.521, and 633.637, Florida Statutes, and creates multiple unnumbered sections of Florida law.

II. Present Situation:

Florida Building Commission

The Florida Building Commission (Commission) is authorized to adopt and maintain the Florida Building Code (Code) as a single, unified state building Code consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings or structures, and to enforce requirements providing for effective and reasonable protection for the public safety, health, and welfare of the citizens of Florida. The Commission is administered and staffed by the Department of Community Affairs (DCA), and commission activities are funded through an “under roof floor space assessment” of one-half cent per square foot. The local government responsible for collecting a permit fee collects the surcharge and remits it to the DCA quarterly.

The Commission is charged with the responsibility of amending and updating the Code every three years to make recommendations on which laws should be revised or repealed to maintain consistency with the Code, and can approve technical amendments to the Code once each year. The first triennial update of the Code became effective in October of 2005, and the second update is due this year and will use the 2006 International Building Codes as a foundation.

Building Education and Outreach Council

In the 2005 Regular Session, the Legislature enacted chapter 2005-147, Laws of Florida, to address issues relating to the development and administration of the Code and relating building safety requirements. The Florida Building Code Training Program (program) in s. 553.841, F.S., was redesignated as the “Building Code Education and Outreach Program” and the Building Code Education and Outreach Council (council) was created to coordinate, develop, and maintain education and outreach efforts associated with the Code. The council, which consists of twelve members each serving a 2-year term, is responsible for the development, maintenance and updating of a core curriculum that is the prerequisite to advanced module coursework, as well as a set of advanced modules specifically designed for use by building Code administrators, plan reviewers, and inspectors; and engineers, architects and contractors, except for continuing education program requirements. Every two years upon receipt of funding from the DCA, the council determines how much funding is available for education and outreach programs.

Building Code Administrators, Plans Examiners and Inspectors

Local building officials and building administrators are responsible for administering, supervising, directing, enforcing and performing the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures under the provisions of part XII of ch. 468, F.S., which provides that when permitting is required, the building official or administrator must ensure compliance with the Code and any applicable local technical amendments. Responsibilities include the review of construction plans to ensure compliance with

all appropriate sections of the Code and the inspection of each phase of construction. The plans examiner is responsible for reviewing construction plans, and the building inspector is responsible for conducting on-site inspections.

Administrators, examiners and inspectors are regulated by the Florida Building Code Administrators and Inspectors Board (Board) created within the Department of Business and Professional Regulation. The Board has the authority to qualify and certify building Code administrators, plans examiners, and building inspectors. Standards for certification are established in s. 468.609, F.S., and procedures for disciplinary actions for failure to properly enforce applicable building Codes are established in s. 468.621, F.S.

Alternative Plans Review and Inspection

Section 553.791, F.S., establishes that notwithstanding other provisions of law, local ordinance, or local policy, the fee owner of a building or structure, or the fee owner's contractor (with written permission from the fee owner), may choose to use a private provider for building Code inspection services, and may pay the private provider directly, so long as a contract for services is executed. Private providers are defined as licensed engineers or licensed architects, and for residential additions or alterations of 1,000 square feet or less, a private provider can be a building Code administrator, inspector or plans examiner holding a standard certificate issued under part XII of ch. 468, F.S.

III. Effect of Proposed Changes:

Section 1 creates an unnumbered section of statute to require the Commission to review the requirements in the National Electric Code which relate to bonding and grounding systems for swimming pools. The Commission can adopt a rule authorizing the use of an alternative bonding and grounding system, and the alternative method can be integrated into the 2007 edition of the Code, notwithstanding the requirements of s. 553.73. Until a rule is adopted, the use of a single #8 AWG bare solid copper wire buried to a minimum depth of 4 inches to 6 inches below subgrade, and 18 to 24 inches from inside the wall of a swimming pool or spa, is a permissible alternative or is equal to compliance with the National Electric Code (2005), NFPA No. 70, adopted by reference into the Code.

Section 2 creates an unnumbered section of statute to establish the following legislative findings:

- The results of recent hurricane strikes have demonstrated the effectiveness of the Code in reducing property damage for buildings constructed in accordance with the Code,
- Buildings constructed before the Code are vulnerable,
- The destructive effect of hurricanes represent a continuing threat to the health, safety, and welfare of the residents of the states, and affect insurance rates in the state,
- Mitigating property damage is a valid and recognized objective of the Code, and
- Retrofitting buildings built before the Code was implemented is cost-effective and a benefit to the state.

Also, the Commission is required to:

- Consider the extent to which a propose Code provision will mitigate property damage to buildings and contents when evaluating if the provision should be adopted,

- If the provision applies does not demonstrate that it significantly affects life-safety issues, it must be evaluated by its measurable benefits when compared to the costs of implementing the provision as a rule,
- Develop and adopt within the Code the appropriate mitigation techniques to retrofit buildings constructed before implementation of the Code.
- Consider, but not be limited to, prescriptive techniques for installing gable-ended bracing; secondary water barriers for roofs and standards relating to secondary water barriers, cost-effectiveness of the secondary water barrier; prescriptive means and criteria to improve roof-to-wall connections; and clarifying that roof-fastener deficiencies must be corrected when exposed during reproofing.

If the cost to retrofit an existing building exceeds the cost of applying the Code to new construction, the Commission must authorize the use of alternate, less expensive means to retrofit.

Section 3 creates an unnumbered section of Florida law to provide that before eliminating gravel or stone roofing systems from the Code, the commission must determine and document the following:

- If there is a scientific basis or reason for eliminating gravel or stone roofing systems,
- If there is an available alternative that is equal in cost and durability to gravel or stone roofing systems,
- If eliminating gravel or stone roofing systems will unnecessarily restrict or eliminate business or consumer choices in roofing systems, and
- In consultation with the Fish and Wildlife Conservation Commission, if eliminating the gravel or stone roofing systems will negatively affect the nesting habits of any species of nesting birds.

Notwithstanding provisions of s. 553.73, F.S., relating in part to the adoption of Code amendments, the Commission can adopt provisions to preserve the use of gravel or stone roofing systems in future editions of the Code if necessary to address the determination of the above issues.

Section 4 amends paragraph (d) of subsection (7) of s. 468.609, F.S., to extend the time frame for a newly employed person or hired person to perform the duties of a plan examiner or building code inspector from 90 days to 120 days under certain circumstances and under the authority of the appropriate supervisor.

Section 5 amends subsection (7) of s. 553.73, F.S., as amended by section 7 of chapter 2007-1, Laws of Florida, to authorize the Commission to approve amendments to the Code to address changes to federal or state laws.

Section 6 amends s. 553.775, F.S., to clarify that the Commission will issue or cause to be issue a formal interpretation of the Code under certain circumstances.

Section 7 amends section 553.791, F.S., to:

- Provide a definition of “audit”.

- Define “Immediate threat to public safety and welfare” as a building Code violation that, if allowed to continue, constitutes a hazard that could result in death, serious bodily injury, or significant property damage.
 - The definition does not limit the authority of a local building official to issue a Notice of Corrective Action at any time during the construction of a building project, or construction of any portion of the project, if the official determines that a condition of the building, or the condition of a portion of the building, may constitute a hazard when the building is put into use following completion if the cited condition is shown to be in violation of the Code or in violation of the approved plans.
- Define “Stop work order” as the issuance of any written statement, director, or order to stop work on a project.
- Provide that the written contact for a private provider to conduct building Code inspection services may be executed by the fee owner’s contractor upon written authorization of the fee owner.
- Provide that changing the private provider’s authorized representative as named in a permit application does not require a permit revision, and prohibits the imposition of a fee for making the change.
- Requires a deficiency notice to be posted at a job site by a private provider of inspection services, or an authorized representative, or a building department official when a item that doesn’t conform to the Code or the permitted documents is found. A re-inspection must be performed after corrections are made and before the item is concealed. Re-inspection or re-audit fees may not be charged by a local jurisdiction prior to the private provider’s inspection or for any administrative matter not unrelated to a violation of the Code.

Section 8 amends s. 553.841, F.S., to:

- Require the DCA to develop the Florida Building Code Compliance and Mitigation Program (program) to develop, coordinate, and maintain education and outreach to persons required to comply with the Code, and to ensure consistency in complying with the Code requirements, including methods for mitigating storm-related damage. The program replaces the Building Education and Outreach Program.
- Abolish the Building Education and Outreach Council.
- Provide that services and materials under the program be provided by a private, nonprofit provider under contract with the DCA.
- Provide contract terms and experience requirements for the private, nonprofit provider, including experience in and the ability to promote design and construction techniques and materials for mitigating hurricane damage at a Florida-based trade conference. The conference must include a broad range of participants in the design and construction trades and profession, including public and private entities with jurisdiction over building Codes, and design and construction licenses.
- Require the Commission to provide by rule for accredited courses relating to the Code.
- Require the Commission to establish qualifications of accreditors and criteria for accreditation of courses.
- Authorize the DCA to use funds from the contractor licensing application fees for the program.

Section 9 amends s. 553.842, F.S., to require that the certification method for compliance for state product approval can only be used for products for which the Code designates standardized testing. Provides the Commission with the authority to adopt by rule a schedule of penalties to be imposed against approved validators who validate product applications in violation of state product approval and evaluation requirements. Provides that the imposition of penalties is governed by s. 120.60, F.S., and the uniform rules of procedure. Authorizes the Commission to adopt a rule identifying standards equal to or more stringent than those specifically adopted within the Code to allow the use of products that comply with equivalent standards within the state.

Section 10 amends subsection (2) of s. 633.081, F.S., to provide that every firesafety inspection conducted under state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshall, and a person who is at least 18 years of age. Florida residency requirements are deleted.

Subsection (6) of s. 633.081, F.S., is amended to create the following additional criteria under which the State Fire Marshall may deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector or special state firesafety inspector:

- Conviction of a crime in any jurisdiction which directly relates to the practice of fire code inspection, plan review, or administration.
- Making or filing a false report or record.
- Knowingly failing to file a report or record required by state or local law.
- Knowingly impeding or obstructing the filing of a report or record required by state or local law, or knowingly inducing another person to impede or obstruct such filing.
- Failing to properly enforce applicable fire codes or permit requirements within the state through willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence which results in significant danger to life or property.
- Accepting labor, services, or materials at no charge, or at a noncompetitive rate, from any person who performs work under the enforcement authority of the firesafety inspector or special state firesafety inspector, and who is not an immediate family member.

Section 11 amends s. 633.521, F.S., to express legislative intent that:

- The NFPA-25¹ inspection of exposed underground piping and any attached appurtenances supplying a fire protection system be conducted by a Contractor I or Contractor II.
- Inspections required under chapter 633 be conducted by a certificateholder, or a permitholder who is employed by a certificateholder.

Expresses an understanding that after July 1, 2008, employee turnover may result in a depletion of personnel who are certified under the NICET Sub-field of Inspection and Testing of Fire Protection Systems Level II, which is required for permitholders.

Authorizes certificateholders to obtain a provisional permit with an endorsement for inspection, testing, and maintenance of water-based fire extinguishing systems for an employee if the employee has instituted proceedings for certification from the National Institute for Certification

¹ Standard for the Inspection Testing, and Maintenance of Water-Based Fire Protection Systems.

in Engineering Technologies (NICET) Sub-field of Inspection and Testing of Fire Protection Systems and achieved Level 1 certification. After 2 years of provisional certification, the employee must have achieved NICET Level II certification or cease performing inspections requiring Level II certification. Restrictions on the length and renewal of the provisional permit by the certificateholder are provided.

Section 12 amends s. 633.537, F.S., to revise continuing education requirements for certificateholders from 8 contact hours by June 30, 2006, with an additional 16 contact hours by June 30, 2008, to what is required to maintain NICET Sub-field of Inspection and Testing of Fire Protection Systems Level II or higher certification, and 8 hours of continuing education during each 2-year renewal period. After July 1, 2008, the technical curriculum for certification is at the discretion of the State Fire Marshall and may be used to meet the maintenance of NICET Level II certification and 8 contact hours of continuing education requirements.

Section 13 creates an unnumbered section to statute to require the Commission to review modification relating to existing warehouses which have been reviewed by the Commission's technical advisory committee. The Commission will take public comment on the modifications, including the necessity of the modification, how the modifications affect the health, safety, and welfare of Florida residents, and the continuing need for any Florida-specific requirement of the Code which the modifications seek to repeal. Notwithstanding the Code, the Commission can adopt or modify the modifications in response to public comment received subject only to the rule adoption requirements of ch. 120, F.S.

Section 14 creates an unnumbered section of statute to require the Commission to conduct a study updating the evaluation of loss relativities and resulting reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for properties on which fixtures which have been installed or construction techniques which have been implemented demonstrate a loss reduction in damage caused by windstorms. Fixtures and techniques include, but are not limited to, the enhancement of roof strength, roof-covering performance, wall-to-floor-to-foundation strength, opening protection, and window, door, or skylight strength. The study is contingent upon appropriations from the Legislature, and the Commission must submit a report to the Legislature, the Governor, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than March 1, 2008. At the request of the Commission, the Office of Insurance Regulation must assist the Commission in developing the scope and methodology used to perform the study.

Section 15 creates an unnumbered section of statute to require the Commission, in consultation with the Florida Energy Commission, the Building Officials Association of Florida, the Florida Energy Office, the Florida Home Builders Association, the Florida Association of Counties, the Florida League of Cities, and other stakeholders, to review the Florida Energy Code to valuation the cost-effectiveness analysis that serves as the basis for energy-efficiency levels for residential buildings. The Commission must identify cost-effect means to improve energy efficiency in commercial buildings and compare the finding to the International Energy Conservation Code and the American Society of Heating, Air Conditioning, and Refrigeration Engineers Standards 90.1 and 90.2. The Commission must present a report to the Legislature no later than March 1, 2008, and the report must include a new energy-efficiency standard that may be adopted for the construction of all new residential, commercial, and government buildings.

Section 16 provides a \$1 million appropriation from the DCA's Operating Trust Fund for the 2007-2008 fiscal year for the purpose of implementing the building code education, mitigation, and outreach programs.

Section 17 provides an \$750,000 nonrecurring general revenue appropriation from the Operating Trust Fund to the DCA for fiscal year 2007-2008 to implement the windstorm loss mitigation study required in the bill.

Section 18 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill appropriates \$1 million from the DCA's Operating Trust Fund for fiscal year 2007-2008 to implement and administer the building code education, mitigation, and outreach program.

The bill appropriates \$750,000 in nonrecurring funds from the Operating Trust Fund to the DCA for fiscal year 2007-2008 to implement the windstorm loss mitigation study required under the bill.

The Florida Building Commission reported no fiscal impact to the commission from the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill abolishes the Building Education and Outreach Council yet appears to maintain the Building Education and Outreach Program, as well as create the new Florida Building Code Compliance and Mitigation Program. License fees which previously funded the Building Education Program will now fund the Compliance and Mitigation Program.

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.

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