

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 697 Florida Building Code

**SPONSOR(S):** Economic Expansion and Infrastructure Council, Aubuchon & others

**TIED BILLS:** IDEN./SIM. BILLS:

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>9 Y, 0 N</u>	<u>Rojas</u>	<u>Miller</u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Rojas</u>	<u>Tinker</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill makes numerous changes to building standards and related regulations, including several changes to the structure and process of the Florida Building Commission and Florida Building Code. Major changes include:

- (1) Adoption of the International Energy Conservation Code (IECC) as one of the foundations for the Florida Building Code and adoption of updates to the National Electrical Code.
- (2) Adds a 24<sup>th</sup> and 25<sup>th</sup> Commissioner to represent the swimming pool industry and green building industry and encourages professional associations regulated by the Florida Building Commission to recommend to the Governor a list of candidates for consideration. The bill also provides for the Commission to meet via teleconference and provides the opportunity for public comment on proposed action of the Commission before a final vote is taken.
- (3) Repeals s. 553.731, F.S., relating to a specified standard for wind resistant construction to be enforced by building officials. The repeal would not affect ss. 553.73(6)-(8), F.S., which permanently prohibited the Commission from adopting amendments to the Code that diminish the standards pertaining to wind resistance and water intrusion.
- (4) Section 489.1138, F.S., is created to provide definitions; require a person to be certified in order to operate a crane on construction projects; provide for certification and standards; prohibit certain contractors from employing crane operators without certification; provide penalties; provide rulemaking.
- (5) Clarifies the date on which code-plus applies as a condition of coverage by Citizens Insurance.

There is no determinate fiscal impact to the state. Please see the fiscal analysis section for a discussion of potential impacts to the Florida Building Commission and the Department of Business & Professional Regulation (DBPR).

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

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## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Provide limited government:**

- The bill requires that Commissioners be selected from a panel of candidates selected by identified associations, adds a 24<sup>th</sup> and 25<sup>th</sup> Commissioner to represent the swimming pool industry and green-building industry.
- The bill allows roofing contractors to perform additional work related to their trade.
- The bill requires DBPR regulation of crane operators.

##### **Safeguard individual liberty**

Changes the meeting procedure of the Florida Building Commission to require that the Commission provide at least one opportunity for public comment on proposed action of the Commission before a final vote is taken.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Industry Standards and Definitions**

Amending s. 489.105, F.S. – Allows licensed roofing contractors to perform additional functions that are mandated under the re-roofing mitigation law. This change is intended to keep mitigation costs for the consumer as reasonable as possible. The bill will allow re-nailing of decks; allows replacement/removal of wood roof sheathing and fascia during re-roofing work as already articulated in Florida Building Commission administrative rule that has been filed as a result of resolution of a rule challenge by the Florida Roofing and Sheet Metal Association.

Creating s. 489.1138, F.S. – Effective July 1, 2009, creates statutory definition of "tower crane" to mean "a non-mobile, power-operated hoisting machine used in construction, maintenance, demolition, or excavation work that has a power-operated winch, load-line, and boom moving laterally." Under current law a tower crane may be operated in this state only if the tower crane has been certified to meet the American Society of Mechanical Engineers standards for construction tower cranes, ASME B30.3-2004, as modified by American Society of Civil Engineers standard ASCE 37-02. Certification must be from a certification organization that meets the standards of the American National Standards Institute/American Society of Mechanical Engineers or the accreditation requirements of the National Commission for Certifying Agencies.

The bill prohibits a person from operating a tower crane on a construction project unless the person is certified as a crane operator by the National Commission for the Certification of Crane Operators. The bill requires the supervising contractor of a project where a tower crane is operated to maintain a list identifying the certified tower cranes and certified tower crane operators used on the project. The bill requires the contractor to maintain this list for the duration of the construction project and make the list available to the DBPR upon request.

A certified or registered contractor is subject to administrative fines that may be imposed by the DBPR. The bill authorizes an exemption from certification for a person undergoing training for the purpose of qualifying for crane operator certification and, therefore, may operate a crane if the person is under the

direct supervision of a crane operator who holds a current and valid certification. The bill specifies that the regulation of tower cranes and tower crane operators is expressly preempted to the state, and no county, municipality, or other political subdivision may enact or enforce any ordinance relating to tower crane operations.

Amending s. 553.36, F.S. – Clarifies the definition of “manufactured building” to ensure it includes the terms “modular” and “factory built” buildings which are terms used to describe homes built in a factory to the Florida Building Code.

Amending s. 553.71, F.S. – Section 553.73(9), F.S., currently exempts from the Florida Building Code temporary buildings used exclusively for construction and mobile or modular buildings used as temporary offices. However, the statutes do not define “temporary,” creating confusion and wide variation in the building industry. This language clarifies that “temporary” buildings are those buildings other than what is designated permanent in the approved development order.

Amending s. 553.844, F.S. – Requires that criteria for a secondary water barrier may not be limited to a single method or material. It allows flexibility in providing an acceptable secondary water barrier rather than reliance on a particular type of product.

The bill also establishes priorities for roof-to-wall connections to be done for residential property owners who elect to spend no more than 15 percent of the value of the roofing project (as is allowed by law on such connections). This addresses the concerns raised by contractors, building officials, inspectors, engineers and others about the priority and order in which roof-to-wall connections should be made if all such connections cannot be made at the time of the improvements.

Amending s. 553.885, F.S. – Clarifies the requirement for new buildings to include carbon monoxide alarms. The intent is to provide the same level of alarm safeguard as provided by the requirements for smoke detectors found in the fire codes. In hospitals, hospice facilities and nursing homes patients are often confined to their beds, therefore the bill requires detectors be connected to the fire alarm system ensuring that alarm notifications go to the locations that are staffed 24 hours per day.

Amending s. 627.351, F.S. – Clarifies the date on which code-plus applies as a condition of coverage by Citizens Insurance. Citizens is prohibited by law from covering coastal “properties constructed on or after January 1, 2009,” unless the property conforms to the new “Code Plus” building standards adopted by the Florida Building Commission. Current law is unclear as to buildings under construction, but not completed until after January 1, 2009; and buildings for which a permit is applied prior to January 1, 2009, but for which the permit is not issued until after January 1, 2009. This provision clarifies that the date of the building permit application is the date to be used for determination of Code-Plus as a condition of coverage.

## The Florida Energy Code

### Present Situation

The elements of energy efficiency and accessibility differ from the rest of the Building Code in that each exists separately from the Building Code. With specific regard to energy efficiency, Part V of Chapter 553, F.S., provides for the adoption and maintenance of the Energy Efficiency Code for Building Constructions (Energy Code) and its integration into the Florida Building Code. The Commission can amend the Energy Code to require products and techniques that are demonstrated to be cost effective to the consumer provided that the proposed changes are made available to the public six months in advance of implementation.

The Energy Code provides two methods of compliance; one method that prescribes specific efficiencies for elements that must be incorporated into a building; and one method that defines a performance objective for the overall building and allows the designer to accomplish the objective selecting the

building elements efficiency that best suit the circumstances. Reliance upon flexible performance based measures is one of two factors that currently differentiate the Energy Code from the national model code and the International Energy Efficiency Code (IEEC). The second is that the Energy Code provides for greater efficiency by limiting the amount of window area used to set the overall building performance objective.

#### Effect of the Bill

Under current law in Part IV, Chapter 553, F.S., the Florida Building Code incorporates the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the National Electrical Code. The bill amends this part to require the Commission to adopt the most current version of the International Energy Efficiency Code as part of the Florida Building Code, it also provides that the IEEC shall be modified by the Commission to maintain the overall efficiencies of the Florida Energy Efficiency Code for Building Construction.

In addition the bill allows the Florida Building Commission to update the National Electrical Code to maintain pace with the National Standard. The cycle used to update the National Electrical Code is out of synchronization with the other foundation codes typically causing the Florida Building Code to lag behind in terms of electrical standards.

### **Composition and Appointment of the Florida Building Commission**

#### Present Situation

The Florida Building Commission is a collegial body created by s. 553.74, F.S. The Commission is comprised of 23 members, 22 of whom are required to meet statutorily described professional qualifications, and a chairperson. The Governor appoints the Commissioners who are subject to Senate confirmation. All appointments are for terms of 4 years, except that of the chair who serves at the pleasure of the Governor.

#### Effect of the Bill

The bill encourages identified professional associations to recommend a list of candidates for consideration by the Governor in the appointment of Commissioners, and adds a 24<sup>th</sup> and 25<sup>th</sup> Commissioner to represent the swimming pool industry and green-building industry. The intention is to give stakeholder groups input in the selection process. The bill also limits the term of the chairman to 4 years.

Below is a list of the professional associations specified in the bill to submit recommendations of candidates for appointment, and the number of Commissioner positions to be filled:

- American Institute of Architects, Florida Section (1)
- Florida Engineering Society (2)
- Florida Air Conditioning Contractors Association and the Florida Refrigeration and Air Conditioning Contractors Association and the Mechanical Contractors Association of Florida (1)
- Florida Electrical Contractors Association and the National Electrical Contractors, Association, Florida Chapter (1)
- Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association (1)
- Associated Builders and Contractors of Florida and the Florida Associated General Contractors Council and the Union Contractors Association(1)
- Florida Association of Plumbing, Heating and Cooling Contractors (1)
- Florida Roofing, Sheet Metal and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors National Association(1)

- Florida Home Builders Association (1)
- Building Officials Association of Florida (3) – two Municipal and 1 county
- Florida Fire Marshals and Inspectors Association (1)
- Florida Manufactured Housing Association (1)
- Florida League of Cities and Florida Association of Counties (1)
- Florida Building Material Association, Florida Concrete and Products Association, and Fenestration Manufacturers Association (1)
- Building Owners and Managers Association (1)
- Florida Insurance Council (1)
- Florida Swimming Pool Association (1)

### **Operation of the Florida Building Commission**

The bill mandates several changes to the operation and process of the Department of Community Affairs (DCA) and the Florida Building Commission. A summarization of changes is listed below:

Amending s. 553.37, F.S. – Clarifies the jurisdictional responsibilities of the DCA and the Florida Building Commission. Historically, DCA has operated a program to approve plans for construction of buildings and building components assembled off-site. Since 1998, the authority for the program has been divided between the Florida Building Commission, which establishes the plan review, the inspection requirements and the technical standards for the building; and DCA, which has maintained the business practices of the program, such as procurement, form development and processing requests for approval. Various statutory revisions have complicated the relative responsibilities and this bill clarifies those responsibilities.

Amending s. 553.381, F.S. – Incorporates more clarifying language addressing manufacturer certification, to reemphasize the traditional and accepted jurisdictional responsibilities of the DCA and the Florida Building Commission.

Amending s. 553.415, F.S. – Clarifies the traditional and accepted jurisdictional responsibilities of the DCA and the Florida Building Commission by requiring factory-built school buildings to bear department insignia and the manufacturer's data plate.

Amending s. 553.80, F.S. – The Department of Children & Family Services (DCF) operates facilities to house mental health patients who are not free to live among the general public. At DCF's request the Commission has recommended an exception, as has also been granted to the Department of Corrections, to allow DCF to enforce the code on its secure mental health facilities.

Amending s. 553.75, F.S. - Changes the meeting procedure of the Florida Building Commission to allow teleconference meetings and to require that the Commission provide at least one opportunity for public comment on proposed action of the Commission before a final vote is taken.

Amending s. 553.775, F.S. – Allows the Commission to render declaratory statements. Florida's requirements for accessibility for persons with disabilities are more stringent than applicable federal law. Application of these Florida specific requirements has been a source of confusion for several years. The Commission was presented with the concern that the general authority to interpret these provisions could be misused to diminish the requirements of the code. To address this issue, the bill provides for limited interpretations by the Commission by declaratory statement.

## **Standard for Wind Resistant Construction**

### Present Situation

When the Building Code was first developed, the law directed the Commission to adopt an edition of wind design standard, American Society for Civil Engineers (ASCE) 7-98, and specifically preserved one permissive alternative for protection of a building from wind borne debris.

Following the 2004 and 2005 hurricane seasons, the Legislature, with input from the Commission repealed the designation of wind design standards and requirements for protection from windborne debris from the Statute. In the first special session of 2007 the Legislature directed building officials around the State to implement and enforce specified provisions from the model code upon which the Florida Building Code is based. The Commission was further directed to adopt those specified provisions of the model code within the Florida Building Code by July 1, 2007.

However, Chapter 2007-1, Laws of Florida, did not explicitly direct codification of these provisions within Florida Statutes. In addition, the Legislature in ss. 553.73(6)-(8), F.S., permanently prohibited the Commission from adopting amendments to the Code that diminish the standards pertaining to wind resistance and water intrusion. Florida law currently recognizes ASCE 7-02 as the minimum standard for wind resistant construction in Florida, notwithstanding the status of the Building Code and any developments to the standard subsequent to 2002.

Most recently, the Commission has adopted the 2007 Edition of the Florida Building Code, scheduled to take effect on October 1, 2008. That edition of the Code adopts the 2005 edition of the ASCE, Standard 7. There have been no challenges to any provisions of any edition of the Code as diminishing provisions relating to wind resistance or water intrusion. The Commission opposes identification of standards in statute, arguing that codification in statute can lead to obsolete language as newer standards are adopted into the Building Code.

### Effect of the Bill

The bill repeals s. 553.731, F.S., relating to specified standards for wind resistant construction to be enforced by building officials. The Florida Building Code has since adopted subsequent provisions that have not been challenged as diminishing any standards relative to the windborne debris region. Furthermore, the repeal would not affect ss. 553.73(6)-(8), F.S., which permanently prohibited the Commission from adopting amendments to the Code that diminish the standards pertaining to wind resistance and water intrusion. The bill also includes language to clarify that the repeal will not in any way to diminish any portion of the Florida Building Code relating to wind resistance or water intrusion.

## C. SECTION DIRECTORY:

- **Section 1** amends Paragraph (e) of subsection (3) of section 489.105, F.S., to allow roofing contractors to perform additional work related to their trade.
- **Section 2** effective July 1, 2009, s. 489.1138, F.S., is created to provide definitions; require a person to be certified in order to operate a crane on construction projects; provide for certification and standards; prohibit certain contractors from employing crane operators without certification; provide penalties; provide rulemaking.
- **Section 3** creates s. 489.1139, F.S., to preempt the regulation of tower cranes and tower crane operators to the state which is effective July 1, 2008.
- **Section 4** amends s. 553.36, F.S., clarifying the definition of “manufactured building”.

- **Section 5** amends s. 553.37, F.S., clarifying the jurisdictional responsibilities of the DCA and the Florida Building Commission.
- **Section 6** amends s. 553.381, F.S., clarifying language addressing manufacturer certification.
- **Section 7** amends s. 553.415, F.S., requiring factory-built school buildings to bear department insignia and the manufacturer's data plate.
- **Section 8** amends 553.71, F.S., to clarify the definition of "temporary" buildings.
- **Section 9** amends s. 553.73, F.S., to require adoption of the International Energy Conservation Code (IECC) as one of the foundations for the Florida Building Code, and requires adoption of updates to the National Electrical Code.
- **Section 10** amends s. 553.74, F.S., to add two additional Commissioners and encourages the submission of candidates by identified professional associations.
- **Section 11** amends s. 553.75, F.S., to allow for teleconference meetings and provide at least one opportunity for public comment on proposed action of the Commission before a final vote is taken.
- **Section 12** amends 553.775, F.S., to allow the Commission to issue declaratory statements.
- **Section 13** amends 553.80, F.S., to allow DCF to enforce the code on its secure mental health facilities.
- **Section 14** amends s. 553.844, F.S., to require that criteria for a secondary water barrier may not be limited to a single method or material and establishes priorities for roof-to-wall connections.
- **Section 15** amends s. 553.885, F.S., to require installation of carbon monoxide detectors.
- **Section 16** amends s. 627.351, F.S., to clarify the date on which code-plus applies as a condition of coverage by Citizens Insurance.
- **Section 17** repeals s. 553.731, F.S., referring to a minimum standard for wind resistant design of buildings to be enforced by building officials; provides for construction and interpretation of repeal.
- **Section 18** provides for an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None
2. Expenditures:  
See Fiscal Comments below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

- Arguably, adoption of the IEEC would allow construction professions greater ease in meeting compliance standards, use of free calculation software provided by the federal government, eliminating the need for Florida-specific calculations and for ease of builder processing of tax credit requirements that can be passed along to homeowners. Adoption of the IEEC could also allow for greater compatibility among product manufacturers, suppliers and builders who operate in various regional and national markets by requiring them to comply with only a single code.
- This bill would allow licensed roofing contractors to perform additional functions that are mandated under the re-roofing mitigation law and relevant to activities currently performed.
- There may be a decrease in cost to builders by allowing for strategic placement of carbon monoxide alarms in medical facilities.
- There may be an increase in cost to crane operators for certification and licensing requirements.

D. FISCAL COMMENTS:

The Florida Building Commission reports it will incur additional expenses as a result of the bill. Based upon average attendance and travel costs submitted by the Commission, the addition of a Commissioner will cost approximately \$4,000.00 per year (\$8000 for the addition of two Commissioners). Subsequently, the Commission has indicated that these increased costs could be mitigated by the use of teleconferencing, which is specifically authorized by the bill.

DBPR has indicated that the cost of regulation of crane operators can be absorbed within the department's existing resources.

There may be an increased cost to DCF for self-enforcement of the code on its secure mental health facilities. The amount of this cost is indeterminate and may be offset by administrative efficiencies resulting from self-enforcement.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None



#### B. RULE-MAKING AUTHORITY:

The bill requires DBPR oversight of the certification and regulation of crane operators as defined in the bill as well as the imposition of administrative fines upon non-compliant contractors. DBPR may find it necessary to develop rules specific to the regulation of crane operators.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The preemption language regarding the state regulation of tower cranes has an effective date of July 1, 2008, whereas the provisions establishing certification and regulation standards have an effective date of July 1, 2009. As written this could be interpreted to create a one-year window, prior to state regulation, where local governments are unable to enforce any local action relating to this matter.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 13, 2008, a strike-all amendment was adopted by the Infrastructure Committee, and the bill was reported favorably with one amendment.

The amendment changed the following:

- Replaces the specific appointed position of Chairman on the Florida Building Commission with a representative from the swimming pool industry and provides that one of the 23 members shall be designated Chairman.
- Encourages professional associations regulated by the Florida Building Commission to recommend to the Governor a list of candidates for consideration, and adds several groups to the list of associations that are encouraged to submit a list of candidates for consideration.
- In lieu of restricting the Commission's power of rejecting TAC recommendations, the amendment changes the meeting procedure of the Florida Building Commission to require that the Commission provide at least one opportunity for public comment on proposed action of the Commission before a final vote is taken.

By removing the requirement for additional TAC reviews and by keeping the number of commissioners at the current total number, the amendment eliminates the potential fiscal impacts to state government.

On April 11, 2008, a strike-all amendment was adopted along with one other amendment by the Economic Expansion and Infrastructure Council and the bill was reported favorably as a council substitute.

The amendments changed the following:

- Allows licensed roofing contractors to perform additional functions.
- Clarifies the definition of "manufactured building".
- Clarifies the jurisdictional responsibilities of the DCA and the Florida Building Commission.
- Clarifies that "temporary" buildings are those buildings other than what is designated permanent in the approved development order.

- Revises the membership of the Florida Building Commission to 25 members; adds a representative from the swimming pool industry and a representative from the green building industry; and imposes a 4-year term limit on the Chairman.
- Allows the Commission to render declaratory statements.
- Provides language to ensure the preservation of flexibility to achieve a secondary water barrier.
- Clarifies the date on which code-plus applies as a condition of coverage by Citizens Insurance.
- Creates certification requirements for crane operators.