

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 901 Florida Building Commission
SPONSOR(S): Careers & Competition Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	14 Y, 0 N, As CS	Brackett	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Commission (commission) located under the Department of Business and Professional Regulation (DBPR) implements and adopts the Florida Building Code (Code). The Code is the state wide building code for all construction in the state. The commission is made up of 27 members who are appointed by the Governor and confirmed by the Senate. The commission updates the Code every three years using the National Electric Code (NEC) and International Code Council's I-codes as a foundation for the updated Code. The commission may make amendments to the adopted Code.

The bill:

- Reduces the number of members on the commission from 27 to 11.
- Amends the qualifications for the architect and electrical contractor members of the commission.
- Requires the commission to update the Code every five years instead of every three years.
- Requires the commission to provide a fiscal impact statement when it updates the Code.
- Provides that the commission may update the Code at any time in order to update the most current version of the NEC.

The bill is not expected to have a fiscal impact on state government. The bill has an unknown fiscal impact on local government.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

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

STORAGE NAME: h0901a.CCS

DATE: 3/29/2017

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Building Code

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1992, Hurricane Andrew demonstrated this system of local codes did not provide the level of public protection that was necessary when the local code that was universally acknowledged to set the strongest standard for hurricane protection essentially failed. After the state filled the property insurer void left by failed and fleeing private insurance companies, and the federal government poured billions of dollars of aid into the disaster area, it became starkly apparent the state had a significant interest in the effectiveness of building codes.²

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Code), and that first edition replaced all local codes on March 1, 2002.

In 2004, for the second edition of the Code, the state adopted the International Code Council's I-Codes. The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." Every three years the ICC publishes the I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.³

All subsequent Florida Building Codes have been adopted utilizing the I-Codes as the base code. The most recent Code is the 5th edition, which is referred to as the 2014 Florida Building Code. The 5th edition of the Code went into effect June 30, 2015.⁴

The Florida Building Commission (commission) also adopts the National Electric Code (NEC) into the Code. The NEC is published every three years by the National Fire Protection Association (NFPA) and has been adopted by all 50 states. The NFPA develops codes to address the installation of electrical conductors, equipment, and raceways; signaling and communications conductors, equipment, and raceways; and optical fiber cables and raceways in commercial, residential, and industrial occupancies in order to protect people and property from electrical hazards.⁵

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Mar. 23, 2017).

² *Id.*

³ International Code Council, *About the ICC*, <http://www.iccsafe.org/about-icc/overview/about-international-code-council/> (last visited on Mar. 23, 2017) & International Code Council, *ICC Code Development Process*, <https://cdn-web.iccsafe.org/wp-content/uploads/ICC-Code-Development-Process.pdf> (last visited on Mar. 29, 2017).

⁴ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Mar. 23, 2017).

⁵ NFPA, *Codes and Standards*, <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards?mode=code&code=70> (last visited on Mar. 28, 2017) & NFPA, *National Electric Code: Current and Past editions*, <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards?mode=code&code=70&tab=editions> (last visited on Mar. 29, 2017).

The Florida Building Commission

The commission was statutorily created to implement the Florida Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Code. Members include:

- One architect registered to practice in the state and actively engaged in the profession;
- One structural engineer registered to practice in the state and actively engaged in the profession;
- One air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession;
- One electrical contractor certified to do business in the state and actively engaged in the profession;
- One member from fire protection engineering or technology and actively engaged in the profession;
- One general contractor certified to do business in the state and actively engaged in the profession;
- One plumbing contractor licensed to do business in the state and actively engaged in the profession;
- One roofing or sheet metal contractor certified to do business in the state and actively engaged in the profession;
- One residential contractor licensed to do business in the state and actively engaged in the profession;
- Three members who are municipal or district code enforcement officials, one of whom is also a fire marshal;
- One member who represents the Department of Financial Services;
- One member who is a county code enforcement official;
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in the state;
- One member of the manufactured buildings industry who is licensed to do business in the state and is actively engaged in the industry;
- One mechanical or electrical engineer registered to practice in the state and actively engaged in the profession;
- One member who is a representative of a municipality or a charter county;
- One member of the building products manufacturing industry who is authorized to do business in the state and is actively engaged in the industry;
- One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management;
- One member who is a representative of the insurance industry;
- One member who is a representative of public education;
- One member who is a swimming pool contractor licensed to do business in the state and actively engaged in the profession;
- One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED);
- One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in the state;
- One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy; and

- One member who is the chair.⁶

The commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.⁷ TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.⁸

The commission is currently in the process of adopting the 6th Edition of the Florida Building Code. The 6th Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.⁹

Updating the Florida Building Code

The commission must update the Code every three years. When updating the Florida Building Code, the commission is required to use the most current version of:

- The National Electric Code (NEC); and
- The following I-codes of the ICC:
 - International Building Code;
 - International Fuel Gas Code;
 - International Mechanical Code;
 - International Plumbing Code;
 - International Residential Code; and
 - International Electrical Code.

These I-Codes and the NEC form the foundation codes of the updated Florida Building Code. The commission may modify the foundation codes only as needed to accommodate the specific needs of the state.¹⁰

Amendments to the Code

The commission and local jurisdictions may make technical and administrative amendments to the Code. A technical amendment to the Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Code.¹¹

Local jurisdictions may make amendments to the code that are more stringent than the Code and are limited to the local jurisdiction. Amendments by local jurisdictions expire upon the adoption of the newest edition of the Code.

The commission may adopt amendments once a year. Amendments by the commission also expire with the adoption of the newest edition of the Code unless the amendment is:

- Related to state agency regulations;
- Related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward County.¹²

The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

- Is needed in order to accommodate the specific needs of this state.

⁶ s. 553.74, F.S.

⁷ DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited on Mar. 24, 2017).

⁸ DBPR, *Florida Building Code Standards*, http://www.myfloridalicense.com/dbpr/bcs/program_committees.html (last visited on Mar. 23, 2017), & Rule 61G20-2.001 F.A.C.

⁹ 6th Edition (2017) FBC Code Update Development Tasks, *available at*

http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf (Last visited Mar. 23, 2017).

¹⁰ s. 553.73(7), F.S.

¹¹ s. 553.73, F.S. & Rule 61G20-2.002 F.A.C.

¹² s. 553.73, F.S.

- Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
- Does not degrade the effectiveness of the Florida Building Code.¹³

The commission and local jurisdictions are required to complete fiscal impact statements for every proposed technical amendment to the Code. Fiscal impact statements include:

- The costs and benefits of the proposed amendment;
- The impact to local government relative to enforcement; and
- The impact to property and building owners as well as the industry relative to the cost of compliance.

Fiscal impact statements may not be used as a basis for challenging proposed amendments for compliance.¹⁴

Effect of the Bill

Commission

The bill reduces the number of members on the commission from 27 to 11. The bill removes the following members:

- The air-conditioning or mechanical contractor member;
- Two of the municipal or district code enforcement officials members including the one who is also a fire marshal;
- The Department of Financial Services member;
- The county code enforcement official member;
- The Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities member;
- The manufactured buildings industry member;
- The mechanical or electrical engineer member;
- The representative of a municipality or charter county member;
- The representative of the building products manufacturing industry member;
- The representative of the building owners and managers industry member who is actively engaged in the commercial industry;
- The representative of public education member;
- The swimming pool contractor member;
- The representative of the green building industry member;
- The representative of a natural gas distribution system member;
- The Department of Agriculture and Consumer Services' Office of Energy member;
- The member who is the chair.

The bill adds an additional member to the committee who is a residential contractor. The bill provides that one of the residential contractor members must be a residential contractor who builds an average of less than 20 custom homes per year, and the other residential contractor member must be a residential contractor who builds an average of more than 100 homes per year.

The bill amends:

- The qualifications of the architect member from an architect who is registered and actively practicing in the state to an architect who is licensed in the state and has at least 5 years of experience in the design and construction of buildings containing Group R occupancy(ies) at or

¹³ *Id.*

¹⁴ s. 553.73(4)(b) & 9(b), F.S.

above 210 feet above the lowest level of emergency service access. A Group R Occupancy is any building containing sleeping units either for permanent dwellings or transient occupancy;¹⁵ and

- The qualifications for the electrical contractor member from an electrical contractor to an electrical contractor or an electrical engineer.

Florida Building Code

The bill provides:

- That the commission must update the Code every five years instead of every three years;
- The commission may update the Code to adopt the most current version of the NEC at any time if the commission determines that:
 - Waiting to adopt the most current version of the NEC until the beginning of the Code's five year cycle would likely cause undue hardship to stakeholders or would threaten the public's health, safety, and welfare.
- The commission must complete a fiscal impact statement when it updates the Code. The fiscal impact statement mirrors the fiscal impact statement required for amendments and includes:
 - The costs and benefits of the updated Code;
 - The impact to local government relative to enforcement; and
 - The impact to property and building owners as well as the industry relative to the cost of compliance.

A fiscal impact statement may not be used as a basis for challenging the updated Code for compliance.

B. SECTION DIRECTORY:

Section 1. Amends s. 553.73, F.S., by amending the process for adoption of the Code.

Section 2. Amends s. 553.74, F.S., by reducing the number of members on the commission.

Section 3. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

¹⁵ Section 310, Florida Building Code: Building (5th ed. 2014).

D. FISCAL COMMENTS:

Opponents of the bill argue that the further the Code moves away from the publication date of the most current version of the I-codes the higher insurance policies and premiums will be. The opponents argue that local jurisdictions are graded on the Building Code Effectiveness Grading Schedule (BCEGS) and National Flood Insurance Program's Community Rating System (CRS). The BCEGS scale measures a jurisdiction's effectiveness of enforcing a building code, and is used to adjust building insurance policies and flood insurance premiums. The CRS is a voluntary grading system to encourage communities to minimize flood losses. The more flood resiliency a community achieves, the higher CRS rating it receives, and generally lowers the flood premiums in the jurisdiction. The further a jurisdiction moves away from using the most recent edition of the I-codes the lower its BCEGS and CRS grade will be. A lower grade generally results in higher policies and premiums.

Opponents to the bill argue that reducing the number of members on the commission will remove experience and knowledge from the commission. Proponents argue that the commission's TACs are able to provide the commission with knowledge and experience.

Proponents of the bill argue that contractors are forced to constantly keep checking the Code because of how often it is updated. The proponents argue that updating the Code every five years instead of three would provide relief to contractors by saving them the time required to constantly study the Code.

It is unknown if updating the Code every five years instead of every three years will have a negative effect on local governments. The Code may have a negative effect if local jurisdictions are required to consistently make amendments to the Code in order to keep up to date with the I-codes and NEC in order to keep insurance premiums down in their jurisdictions.

It is unknown if updating the Code every five years instead of every three years codes will have a positive effect on local governments. The Code may have a positive effect by building officials not being required to learn an updated Code every three years.

The building official association of Florida indicated that updating the Code every five years instead of every three years will make the updated Code out of sync with the Florida Fire Prevention Code, which is updated every three years,¹⁶ resulting in a hardship for building officials.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹⁶ s. 633.202(4), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Careers and Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a subcommittee substitute. The amendment adds the following elements to the original bill that:

- Requires the commission to update the Florida Building Code every five years instead of every three years.
- Allows commission to update the Code at any time to adopt the most current version of the NEC if waiting to adopt the most current version of the NEC until the beginning of the Code's five year cycle would likely cause undue hardship to stakeholders or would threaten the public's health, safety, and welfare.
- Reduces the number of members on the commission from 27 members to 11 members.
- Amends the qualifications of the commission member who is an architect from a licensed architect to a licensed architect with at least 5 years of experience in the design of Group R designated buildings at or above 210 feet in height from the lowest level of emergency access.
- Amends the qualifications of the commission member who is an electrical contractor from an electrical contractor to an electrical contractor or an electrical engineer.
- Requires the commission to provide a fiscal impact statement when it updates the Code.

The analysis is drafted to the subcommittee substitute.