

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1420

INTRODUCER: Senator Gruters

SUBJECT: Florida Building Code

DATE: March 23, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1420 requires a manufacturer seeking to have an insulation product approved under the Florida Building Commission’s (Commission) statewide product approval program to provide specified testing data, reports, and proof of standards compliance to the Commission. The bill also requires manufacturers to provide the testing data to building officials and homeowners upon request and specifies that a failure to provide the data is a violation of the Florida Deceptive and Unfair Trade Practices Act.

II. 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. The system provided four separate model codes that local governments could consider and adopt to establish minimum standards of health and life safety for the public. 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 saw fit.¹

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 same legislation created the Commission to develop and maintain the Florida Building Code and related programs and

¹ See The Florida Building Commission, *Annual Report FY 2017-2018*, available at https://www.floridabuilding.org/fbc/commission/FBC_0618/Commission/FBC_FY_2017-2018_Annual_Report.pdf (last visited Mar. 11, 2019).

processes. The 2000 Legislature authorized implementation of the Florida Building Code, and the first edition replaced all local codes on March 1, 2002. There have been six editions to date, and the Commission initiated the development of the 7th Edition (2020) Florida Building Code in October of 2017.²

The Florida Building Commission

The Commission, which is housed within the Florida 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 Florida Building Code.³

Florida Building Code Enforcement

Section 553.73(1)(e), F.S., designates that the responsibility for enforcement, interpretation, and regulation of the Florida Building Code be vested in a specified local board or agency. These responsibilities include reviews of building plans, building inspections, and building permitting. Each enforcement district is governed by a board whose composition is determined by the affected localities.⁴ Day-to-day functions are typically carried out through municipal and county building departments and building officials.⁵

Product Evaluation and Approval

Section 553.842, F.S., provides the Commission with the authority to adopt rules to develop a product evaluation and approval system that applies statewide to operate in coordination with the Florida Building Code.⁶ The system must rely on national and international consensus standards whenever such standards are adopted into the Florida Building Code to demonstrate compliance with code standards.⁷ Other standards which meet or exceed state requirements must also be considered.⁸

Subsection (5) of section 553.842, F.S., provides the methods that must be used by the Commission for the statewide approval process.⁹ The categories of products subject to statewide approval are limited to the following:

- Panel walls
- Exterior doors

² *Id.*

³ Section 553.74, F.S.

⁴ Section 553.80(3)(a), F.S.

⁵ The definition of “building official” in s. 468.603 F.S., references a person charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting.

⁶ *See* rule 61G20-3, F.A.C.

⁷ Section 553.842(2), F.S.

⁸ *Id.* Equivalence of standards for product approval are standards for products which meet or exceed the standards referenced in the Florida Building Code, and which are certified as equivalent for purposes of determining code compliance (Rule 61G20-3.015 F.A.C.).

⁹ *See* s. 553.842(5)(a)-(b), F.S.

- Roofing
- Skylights
- Windows
- Shutters
- Impact protective systems
- Structural components.¹⁰

The Commission is required to maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities.¹¹

Section 553.8425, F.S., governs approvals for products not identified as part of the statewide product approval program. Generally, products bearing a certification mark, label, or listing by an approved certification agency require no further documentation to establish compliance with the Florida Building Code.¹² Upon review of the compliance documentation, and a finding that a product complies with the Florida Building Code, the authority having jurisdiction or a local building official deems products approved for use in accordance with its approval and limitation of use.¹³

Florida Deceptive and Unfair Trade Practices¹⁴

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act) broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce. The Act is a separate cause of action intended to be an additional remedy, and it is aimed toward making consumers whole for losses caused by fraudulent consumer practices. The Act protects consumers from deceptive acts that mislead consumers, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

Labeling and Advertising of Home Insulation

Federal regulations on the labeling and advertising of home insulation are governed by 16 CFR Part 460.¹⁵ This regulation deals with home insulation labels, fact sheets, ads, and other

¹⁰ *Id.*

¹¹ Section 553.842(13), F.S.

¹² Section 553.8425(5), F.S. Specific methods are provided for local approval of products or systems to demonstrate compliance with the structural windload requirements of the Florida Building Code in s. 553.8425(1), F.S.

¹³ Section 553.8425(6), F.S.

¹⁴ *See* ss. 501.201-213, F.S.

¹⁵ *See* <https://www.law.cornell.edu/cfr/text/16/part-460> (last visited Mar. 23, 2019). Chapter 553, part V, F.S., Florida Building Code, makes no references to insulation. While the term insulation is used within thermal efficiency standards ss. 553.902, 553.905 and 553.906, F.S., the references do not directly define insulation or its manufacture. Section 202, Florida Building Code: Energy Conservation (2017) defines insulation as a material mainly used to retard the flow of heat.

promotional materials in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act.¹⁶ Home insulation is defined as:

any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective (aluminum foil). It may be in rigid, semirigid, flexible, or loose-fill form. Home insulation is for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation. It does not include any kind of duct insulation except for duct wrap.¹⁷

The regulation covers members of the home insulation industry including individuals, firms, partnerships, corporations, manufacturers, distributors, franchisors, installers, retailers, utility companies, and trade associations.¹⁸

Thermal Insulation Standards

ASTM¹⁹ provides thermal insulation standards widely used in specifying and evaluating the materials and methods used to reduce the rate of heat transfer. These thermal insulation standards help laboratories, device and equipment manufacturers, construction companies, and industrial firms, and other groups of people that deal with thermal insulating materials and procedures in examining these respective materials for efficiency.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 563.842, F.S., to provide that a manufacturer seeking approval for an insulation product must provide test data to the Florida Building Commission. The test data must include the name of the testing lab, the date of the test, and the test report number. The manufacturer must also show that the insulation product conforms to the standards for insulation products in the Florida Building Code, ASTM International standards, and the requirements of 16 C.F.R. 460.

A manufacturer may submit evaluation reports from a testing lab, accredited by a nationally recognized accrediting agency, as supporting documentation to the test data. An evaluation report must be for a single product and must include the name of the testing lab, date the product was tested, and the test report number.

A manufacturer must provide test data to building officials and homeowners upon request. Failure by a manufacturer to provide such data is a deceptive and unfair trade practice and constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act.

¹⁶ 16 CFR § 460.1. If covered by this regulation, breaking any of its rules is an unfair and deceptive act or practice or an unfair method of competition subject to fine.

¹⁷ 16 CFR § 460.2

¹⁸ 16 CFR § 460.3 Advertisers and advertising agencies as well as labs doing tests for industry members are also covered.

¹⁹ ASTM is an international testing organization that develops and publishes technical standards that are arrived at through consensus and used on a voluntary basis for a wide variety of products, materials, systems and services.

²⁰ See ASTM, *International, Thermal Insulation Standards*, available at <https://www.astm.org/Standards/thermal-insulation-standards.html#C16.94> (last visited Mar. 23, 2019).

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

See Related Issues section.

C. Government Sector Impact:

See Related Issues section.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A Department of Business and Professional Regulation analysis of SB 1420 states that because insulation products are currently not within the scope of the Florida Building Commission's

statewide product approval program, these products are currently approved by the local authority having jurisdiction pursuant to s. 553.8425, F.S. The bill, as written, does not change this.²¹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 553.842 and 553.8425.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

²¹ Florida Department of Business and Professional Regulation, *2019 Agency Legislative Bill Analysis for SB 1420* (March 14, 2019) (on file with the Senate Committee on Community Affairs).