

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: CS/SB 1800

INTRODUCER: Community Affairs Committee and Senator Gibson

SUBJECT: Florida Building Code

DATE: March 21, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Toman | Yeatman | CA | Fav/CS |
| 2. | | | IT | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1800 allows the Florida Building Commission (Commission), during the triennial update process of the Florida Building Code, to approve certain amendments without a finding that the amendments are needed in order to accommodate the specific needs of the state. Current law requires each proposed amendment to the Florida Building Code, including amendments to align the Florida Building Code with updated international and national model codes, to demonstrate that it is needed to accommodate the specific needs of the state. The Commission prescribes by rule the conditions which satisfy the “specific needs test.”

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

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).

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 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

Most substantive issues before the Commission are vetted through a workgroup process. The Commission may adopt rules related to its consensus-based decision making process, including, but not limited to, super majority voting requirements. However, the commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.⁴

Florida Building Code Update Cycle and Process

Under s. 553.73, F.S., the Commission must update the Florida Building Code every three years.⁵ The 2017 Legislature implemented amendments to s. 553.73, F.S., with regard to this triennial Florida Building Code update and amendment process.⁶ Specifically, the Commission is no longer required to adopt the most recent version of specified model international codes (I-Codes)⁷ and the National Electrical Code (NEC) as the foundation for the updated Florida Building Code. Instead, the update process now requires the Commission to review the I-Codes and the NEC and then decide which provisions are needed to accommodate the specific needs of the state. As part of the review, the Commission must adopt provisions required to maintain eligibility for federal funding and discounts for the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and

² *Id.*

³ Section 553.74, F.S.

⁴ Section 553.76(2), F.S.

⁵ Section 553.73(7)(a), F.S.

⁶ Chapter 2017-149, s.11, Laws of Fla.

⁷ These are the International Building Code, the International Fuel Gas Code, International Existing Building Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the International Energy Conservation Code.

Urban Development.⁸ In essence, the change in the Florida Building Code update process reflect that the Florida Building Code, 6th Edition (2017) serves as the “base code” for the 2020 update process. The Commission must adopt update each update of the Florida Building Code by rule.⁹

Technical Amendments to the Florida Building Code

Under the new triennial process, the Commission may adopt as a technical amendment to the Florida Building Code any portion of the I-Codes and NEC, but only as needed to accommodate the specific needs of the state.¹⁰ Standards or criteria adopted from these codes shall be incorporated by reference to the specific provisions adopted.¹¹ The Commission may approve technical amendments during the triennial update after the amendments have been subject to the following conditions:

- The proposed amendment must have been published on the Commission’s website for a minimum of 45 days and all the associated documentation must have been made available to any interested party before consideration by a technical advisory committee (TAC).
- In order for a TAC to make a favorable recommendation to the Commission, the proposal must receive a two-thirds vote of the members present at the meeting. At least half of the regular members must be present in order to conduct a meeting.
- After the TAC has considered and recommended approval of any proposed amendment, the proposal must be published on the Commission’s website for at least 45 days before consideration by the Commission.
- A proposal may be modified by the Commission based on public testimony and evidence from a public hearing held in accordance with ch. 120.

In addition to the technical amendment procedures described above within the triennial code update process, the Commission may also approve technical amendments once each year for statewide or regional application upon a finding that the amendment is needed in order to accommodate the specific needs of the state.¹² This once a year technical amendment approval process also extends to technical amendments to incorporate the Commission’s own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels, but only to the extent that the incorporation of interpretations is needed to modify the foundation codes to accommodate the specific needs of the state.¹³

Rule 61G20-2.002, F.A.C. on Statewide Amendments to the Florida Building Code

In the fall of 2017, the Commission began the process to amend Rule 61G20-2.002 of the Florida Administrative Code, for the purpose of implementing the provisions of the 2017 legislation regarding processes for developing the Florida Building Code. The rule became effective March 27, 2018. Among the revisions were providing the purposes for which the Commission may

⁸ Sections 553.73(7)(c)-(d) and (9)(a), F.S.

⁹ Section 553.73(1)(a), F.S.

¹⁰ Section 553.73(7)(c), F.S.

¹¹ *Id.*

¹² Section 553.73(9)(a), F.S. Additional amendment approval criteria include a connection to health and safety, the ability to strengthen or improve codes, and no bias against materials, products, or methods.

¹³ *Id.* and s. 553.775(3)(c), F.S.

amend the Florida Building Code and the publication timelines for consideration of proposed amendments by TACs and the Commission.

In addition, pursuant to the rule, “amendment” was defined to mean an alteration to the adopted provisions of the Florida Building Code. “Technical amendment” was defined to mean an alteration to the prescriptive requirements or reference standards for construction adopted by the code. Technical amendments needed to accommodate the specific needs of this state include but are not limited to amendments to the Florida Building Code that provide for the following:

- Establish minimum life safety construction requirements to protect buildings and their occupants from fire, wind, flood, and storm surge using the latest technical research and engineering standards for buildings and materials products.
- Provide for flood protection provisions that are consistent with the latest flood protection requirements of the National Flood Insurance Program.
- Maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.
- Provide for energy efficiency standards for buildings that meet or exceed the national energy standards as mandated by Title III of the Energy Conservation and Protection Act.
- Maintain coordination with the Florida Fire Prevention Code.
- Provide for the latest industry standards and design.¹⁴

Division of Administrative Hearings Rule Challenge

In December of 2017, the Florida Association of American Institute of Architects, Inc. (FAAIA) filed a rule challenge to the Commission’s adoption of rule 61G20-2.002 of the Florida Administrative Code. The FAAIA challenged the rule as invalid based on their belief that the rule is an invalid exercise of the Commission’s delegated authority regarding implementation of the update process for the Florida Building Code. In February of 2018, the Division of Administrative Hearings ruled that the challenged provisions of Rule 61G20-2.002 (2) are a valid exercise of delegated authority and the petition was dismissed.¹⁵

Florida Building Code, 7th Edition (2020) Update Timeline¹⁶

The Commission completed its review of changes to the I-Codes and NEC for possible inclusion in the Florida Building Code 7th Edition (2020) in October of 2018. The period for the public to propose modifications to the Florida Building Code 6th Edition (2017) occurred from November 2018 through mid-February 2019. Proposed modifications are being reviewed by the Commission’s TACs in meetings from March 14 - 26, 2019. The TACs’ recommendations regarding proposed modifications will subsequently be posted to the Commission’s website for a

¹⁴ Rule 61G20-2.002, F.A.C.

¹⁵ *Florida Association of American Institute of Architects, Inc. v. Florida Building Commission*, Case No. 17-6578RP (Fla. DOAH 2018).

¹⁶ Florida Department of Business and Professional Regulation: Florida Building Code Information System, *2020 Code Update Process – 7th Edition, Florida Building Code (2020)*, available at http://www.floridabuilding.org/fbc/thecode/2020_Code_Development/2020_Code_Development_Process.htm (last visited Mar. 16, 2019)

minimum of 45 days and the public will be provided an opportunity to comment on the TACs' recommendations during this time-frame. The TACs will meet for a second time during the week of July 8-12, 2019 to review the public comments and provide TAC feedback on the public comments to the Commission. The Commission plans to consider the TACs' recommendations concurrent with the August, 2019 Commission meeting, conduct rule development workshops on February 4, 2020 and April 7, 2020, and conduct a rule adoption hearing on the final version of the Florida Building Code 7th Edition (2020) on June 8, 2020.

III. Effect of Proposed Changes:

Section 1 amends s. 553.73(7)(a), F.S., to allow the Florida Building Commission, upon the required review of certain international model codes, to approve triennial amendments to the Florida Building Code without a finding that the amendments are needed to meet the specific needs of the state. However, the bill provides the Commission the discretion to require such finding if it so chooses.

Section 2 provides an effective date of January 1, 2020.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to a DBPR analysis of SB 1800,¹⁷ if the bill were to pass, the Commission would likely be able to incorporate the new statutory provision into the code updating process that is currently underway. The necessary rulemaking to incorporate the bill's new provision into the process would likely take about three months to complete.

VIII. Statutes Affected:

This bill substantially amends section 553.73 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 20, 2019:

The committee substitute changes the effective date to January 1, 2020.

- B. Amendments:

None.

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

¹⁷ Florida Department of Business and Professional Regulation, *Senate Bill 1800: 2019 Agency Legislative Bill Analysis*, available at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=24140&yr=2019> (last visited Mar. 16, 2019)