

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1577 Building Construction Standards

**SPONSOR(S):** McClain

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	14 Y, 0 N	Brackett	Anstead
2) Commerce Committee			

### SUMMARY ANALYSIS

The Florida Building Commission (Commission), located within the Department of Business and Professional Regulation, implements and adopts the Florida Building Code. The Building Code is the statewide building code for all construction in the state. Every local government must enforce the Building Code and issue building permits. The Commission adopts a new edition of the Building Code every three years.

Current law requires the Commission to develop and implement an approval of construction products for statewide use. The Commission has created a product evaluation and approval system for products and systems that makeup the building envelope and structural frame of a building.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following **evaluation entities**:
  - The National Evaluation Service;
  - The International Association of Plumbing and Mechanical Officials Evaluation Service;
  - The International Code Council Evaluation Services;
  - Underwriters Laboratories, LLC;
  - The International Conference of Building Officials;
  - SBCCI Public Safety Testing and Evaluation Services, Inc.;
  - Intertek Testing Services NA, Inc.; or
  - The Miami-Dade County Building Code Compliance Office Product Control Division.

Currently, the Commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the Commission's rules. However, the Commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities by the Legislature.

The bill adds NEMO ETC, LLC, to the list of approved **evaluation entities** that may issue product evaluation reports. According to its website, NEMO ETC, is a firm of engineers, and technicians providing engineering, evaluation, testing and consulting services for the building products manufacturing sector.

The bill does not have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### **The Florida Building Code**

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. 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.<sup>1</sup>

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.<sup>2</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>3</sup>

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>4</sup>

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.<sup>5</sup>

##### **The Florida Building Commission**

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.<sup>6</sup>

The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.<sup>7</sup>

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.<sup>8</sup> TACs are made up of commission members and other parties who

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<sup>1</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Feb. 15, 2021).

<sup>2</sup> *Id.*; DBPR, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited on Feb. 15, 2021).

<sup>3</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Feb.. 26, 2021).

<sup>4</sup> See S. 553.72(1), F.S.

<sup>5</sup> Florida Building Commission, *Advanced Florida Building Code Principals*, [http://www.floridabuilding.org/Upload/Courses\\_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf](http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf) (last visited Feb. 26, 2021).

<sup>6</sup> Ss. 553.73, and 553.74, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> DBPR, *Florida Building Code Online*, [https://www.floridabuilding.org/c/c\\_commission.aspx](https://www.floridabuilding.org/c/c_commission.aspx) (last visited Mar. 17, 2021).

advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.<sup>9</sup>

## Product Evaluation and Approval

Current law requires the Commission to develop and implement an approval of construction products for statewide use. The Commission has created an evaluation and approval system for products and systems that makeup the building envelope and structural frame of a building.<sup>10</sup> The Commission approves the products in the following categories for statewide use:<sup>11</sup>

- Panel Walls;
- Exterior Doors;
- Roofing Products;
- Skylights;
- Windows;
- Shutters;
- Structural Components; and
- Impact Protective Systems.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following **evaluation entities**:
  - The National Evaluation Service;
  - The International Association of Plumbing and Mechanical Officials Evaluation Service;
  - The International Code Council Evaluation Services;
  - Underwriters Laboratories, LLC;
  - The International Conference of Building Officials;
  - SBCCI Public Safety Testing and Evaluation Services, Inc.;
  - Intertek Testing Services NA, Inc.; or
  - The Miami-Dade County Building Code Compliance Office Product Control Division.<sup>12</sup>

In addition, current law also requires a manufacturer to submit certification from an independent third party valuation entity that the submitted report is valid and indicates the product complies with the Building Code.<sup>13</sup>

Currently, the Commission has authority to approve an entity as an approved testing laboratory, validation entity, or a certification agency if it meets the Commission's rules.<sup>14</sup> However, the Commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

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<sup>9</sup> S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.

<sup>10</sup> S. 553.842(1), F.S.; R. 61G20-3.001, F.A.C.

<sup>11</sup> Rule 61G20-3.001, F.A.C.

<sup>12</sup> S. 553.842, F.S.; DBPR, Product Evaluation Entity List, [https://www.floridabuilding.org/pr/pr\\_org\\_lst.aspx](https://www.floridabuilding.org/pr/pr_org_lst.aspx) (last visited Mar. 17, 2021).

<sup>13</sup> S. 553.842, F.S.; Rule 61G20-3.006, F.A.C.

<sup>14</sup> S. 553.842, F.S.; Rule 61G20-3.008, F.A.C.

In order to obtain statewide approval for a construction product, a manufacturer must submit an application that includes one of the required reports and certification from an independent third party valuation entity.<sup>15</sup>

Applications that include a test report from an approved testing laboratory or a product evaluation report, which is signed and sealed by a licensed engineer or an architect, are reviewed and approved by the Commission.<sup>16</sup> The Commission meets every two months.<sup>17</sup> The Commission may approve the product for statewide use unless there is credible evidence questioning the authenticity of the submitted report or the third party certification.<sup>18</sup>

Applications filed with a product evaluation report from an evaluation entity or a certification mark or listing of an approved certification agency are reviewed and approved by DBPR.<sup>19</sup>

According to industry members, since the Commission meets every two months, manufacturers who submit a report from a testing laboratory or an engineer or architect, have to wait longer to have their applications reviewed and approved than a manufacturer who submits a report from a certification agency or an evaluation entity.<sup>20</sup>

## **NEMO ETC, LLC**

According to its website, NEMO ETC, LLC, is a firm of engineers, technicians and research specialists providing engineering, evaluation, testing and consulting services to the building-envelope component and systems industry. According to the website, NEMO focuses on servicing building-envelope component and systems manufacturers, offers evaluation services to building product manufacturers for a variety of purposes and intended audiences, and has 100 years combined experience in testing and evaluation of roof and wall cladding systems.<sup>21</sup>

The Commission previously approved NEMO ETC, LLC, as an approved testing laboratory. According to its website, NEMO's President, Robert Nieminen, is a licensed engineer with 25 years of experience in the roofing and waterproofing industry, is an expert in wind-load design and analysis of roof and wall cladding systems, and has developed over 200 product evaluation reports. However, the company is not an evaluation entity.<sup>22</sup>

### **Effect of the Bill**

The bill adds NEMO ETC, LLC, to the list of approved **evaluation entities** that may issue product evaluation reports determining whether or not a product complies with the Building Code.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 553.842, F.S., amending the list of entities that may issue product evaluation reports.

Section 2. Providing an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>15</sup> Rule 61G20-3.007(1), F.A.C.

<sup>16</sup> *Id.*

<sup>17</sup> DBPR, *FBC Meetings*, [https://floridabuilding.org/fbc/meetings/2\\_meetings.htm](https://floridabuilding.org/fbc/meetings/2_meetings.htm) (last visited Mar. 20, 2021).

<sup>18</sup> Rule 61G20-3.007(1), F.A.C.

<sup>19</sup> *Id.*

<sup>20</sup> Email from Keyna Cory, Public Affairs Consultants, RE: HB 1577 by McClain (Mar. 20, 2021).

<sup>21</sup> NEMO, ETC, *Who We Are*, <https://nemoetc.com/about-us/> (last visited Mar. 17, 2021).

<sup>22</sup> *Id.*; Florida Building Commission, *Product Approval*, [https://floridabuilding.org/pr/pr\\_org\\_lst.aspx](https://floridabuilding.org/pr/pr_org_lst.aspx) (last visited Mar. 17, 2021).

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will increase the number of entities that may issue evaluations reports that a product complies with the Building Code.

D. FISCAL COMMENTS:

None.

### 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:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES