

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 3D Roof Repair, Replacement, and Recovering Requirements

**SPONSOR(S):** Trumbull

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 4-D

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Appropriations Committee	27 Y, 0 N	Thompson	Pridgeon

**SUMMARY ANALYSIS**

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code known as the Florida Building Code (Code). The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction by local governments through the issuance of permits and the completion of inspections. The Florida Building Commission (Building Commission) was statutorily created to implement the Code. The Building Commission adopts an updated Code every three years.

Related to roofs, the Code provides that when repairing, replacing, or recovering 25 percent or more of a roof, the entire roof must comply with the current edition of the Code. The “25 percent rule” states:

Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced, or recovered in any 12 month period unless the entire roofing system or roof section conforms to the requirements of this code.

As a result, if more than 25 percent of a roof is damaged, and the undamaged portion of the roof does not meet the requirements of the current edition of the Code, the entire roof would be required to be replaced to meet current Code requirements. If 25 percent or less of the roof is damaged, only that portion of the roof that is damaged would be required to meet the requirements of the Code.

The bill amends s. 583.844, F.S., creating an exception to the 25 percent rule. This exception allows the repair, replacement, or recovering of any portion of a roof without requiring the rest of the roof to be brought up to the current edition of the Code if the remaining portion of the roof at least meets the requirements of the 2007 Florida Building Code.

The bill requires the Building Commission to adopt this exception by rule and incorporate it in the Code.

The bill does not appear to have a fiscal impact on state or local government.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### 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 building 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 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. In 1998, the 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. In 2000, the Legislature authorized the implementation of the Building Code (Code), and that first edition replaced all local codes on March 1, 2002, making it the first statewide building code in the United States.<sup>2</sup>

The "Florida Building Codes Act" was created to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state Code. The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>3</sup>

The Florida Building Commission (Building Commission) was statutorily created to implement the Code. The Building 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 Code. The Building Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes (model codes) to determine if the Code needs to be updated and adopts an updated Code every three years.<sup>4</sup>

In 2017, the Legislature updated the Code adoption process so that the Building Commission is no longer required to adopt the most recent version of the model codes as the foundation of the Code. Instead, the triennial process requires the Building Commission to review the model codes to determine which programs are essential for Florida's specific needs.<sup>5</sup> As a result, the past edition of the Code becomes the foundation or base Code and the Building Commission decides what updates to make.

In 2019, the Legislature allowed the Building Commission to approve provisions to the Building Code every three years without a specific individual finding that each of the provisions are needed to meet the specific needs of the state. The Building Commission can use discretion to require such finding if it so chooses. The Building Commission may continue to adopt technical amendments once a year for statewide or regional application if they find that the amendment is needed in order to accommodate the specific needs of the state.<sup>6</sup>

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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 May 16, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> See s. 553.72(1), F.S.

<sup>4</sup> Ss. 553.73 and 553.74, F.S.

<sup>5</sup> Ch. 2017-181, Laws of Fla.

<sup>6</sup> Ch. 2019-75, Laws of Fla.

The current edition of the Code, the seventh edition, is generally referred to as the “2020 Florida Building Code.”<sup>7</sup>

## Damaged Roof Coverings

The Code addresses repairing, replacing and recovering damaged roof coverings (reroofing).<sup>8</sup> Chapter 6, Section 611.1.1 of the Code states:

Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced, or recovered in any 12 month period unless the entire roofing system or roof section conforms to the requirements of this code.<sup>9</sup>

The Code provides the following definitions related to recovering or replacing damaged roof coverings:<sup>10</sup>

- Roof Recover: The process of installing an additional roof covering over a prepared existing roof covering without removing the existing roof covering.
- Roof Repair: Reconstruction or renewal of any part of an existing roof for the purposes of its maintenance.
- Roof Replacement: The process of removing the existing roof covering, repairing any damaged substrate and installing a new roof covering.
- Roof Section: A separation or division of a roof area by existing expansion joints, parapet walls, flashing (excluding valley), difference of elevation (excluding hips and ridges), roof type or legal description; not including the roof area required for a proper tie-off with an existing system.
  - This definition applies to residential roof coverings.

## Home Hardening, Windstorm Loss Mitigation Requirements and Roofs

Between 1980 and 2021, hurricanes<sup>11</sup> in the United States (U.S.) caused approximately \$1.1 trillion in damage, including an average cost of \$20.5 billion per event and 6,697 deaths.<sup>12</sup> In Florida, Hurricanes Irma and Michael, in 2017 and 2018 respectively, caused approximately \$43 billion in insured losses.<sup>13</sup> The current forecast for hurricane activity in the Atlantic Basin for 2022 predicts above-normal activity, including 19 named storms, nine hurricanes and four major hurricanes.<sup>14</sup>

In 2007, the Legislature found that due to the effects and threats of hurricanes, the mitigation of property damage is a valid and recognized objective of the Code, and that cost-effective techniques for integrating Code requirements into buildings built prior to the Code’s implementation benefit all residents of the state.<sup>15</sup>

Consequently, the Building Commission was required to:<sup>16</sup>

- Analyze the extent to which proposed Code provisions will mitigate property damage to buildings and their contents;

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<sup>7</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited May 16, 2022).

<sup>8</sup> Ch. 15, *Building* and Ch. 9 *Residential*, F.B.C. (2020).

<sup>9</sup> Ch. 6, s. 611.1.1, F.B.C.

<sup>10</sup> Ch. 2, s. 202, *Building*, ch. 2, s. R202, *Residential*, F.B.C. (2020).

<sup>11</sup> The National Oceanic and Atmospheric Administration (NOAA), National Hurricane Center (NHC), <https://www.nhc.noaa.gov/aboutgloss.shtml> (last visited May 18, 2022), defines the term “hurricane” to mean a tropical cyclone in which the maximum sustained surface wind (using the U.S. 1-minute average) is 64 kt (74 mph or 119 km/hr) or more. The term hurricane is used for Northern Hemisphere tropical cyclones east of the International Dateline to the Greenwich Meridian. The term typhoon is used for Pacific tropical cyclones north of the Equator west of the International Dateline.

<sup>12</sup> NOAA, *Fast Facts, Hurricane Costs*, <https://coast.noaa.gov/states/fast-facts/hurricane-costs.html> (last visited May 16, 2022).

<sup>13</sup> Insurance Information Institute, *Facts + Statistics: Hurricanes*, <https://www.iii.org/fact-statistic/facts-statistics-hurricanes> (last visited May 16, 2022).

<sup>14</sup> Colorado State University Tropical Weather & Climate Research, *Seasonal Hurricane Forecasting, Forecast for the 2022 Hurricane Activity*, <https://tropical.colostate.edu/forecasting.html> (last visited May 16, 2022).

<sup>15</sup> Ch. 2007-126, Laws of Fla., codified in s. 553.844(1), F.S.

<sup>16</sup> S. 553.844(2), F.S.

- Develop and adopt within the Code a means to incorporate recognized mitigation techniques for site-built, single-family residential structures constructed before the implementation of the Code, including, but not limited to:
  - Prescriptive techniques for the installation of gable-end bracing;
  - Secondary water barriers for roofs and standards relating to secondary water barriers;
  - Prescriptive techniques for improvement of roof-to-wall connections;
  - Strengthening or correcting roof-decking attachments and fasteners during reroofing; and
  - Adding or strengthening opening protections.

The Building Commission adopted many of these measures related to roofs and incorporated them into the 2007 Florida Building Code, including measures that require a roof replacement to include secondary water barriers for roofs and measures that strengthen or correct roof-decking attachments and fasteners during reroofing.

The 2007 Florida Building Code also required specific roof replacement techniques for certain site-built, single-family residential structures located in a wind-borne debris region as defined in s. 1609.2 of the International Building Code (2006)<sup>17</sup> and that meet certain insured or taxable value thresholds.<sup>18</sup>

### Florida Residential Property Insurance Market

From 2017 through the second quarter of 2021, Florida property insurers (insurers) experienced combined financial losses of \$1 billion.<sup>19</sup> As a result, it is reported that insurers sought rate increases, dropped customers, and stopped writing new policies. This also resulted in an influx of policies into Citizens Property Insurance Corporation,<sup>20</sup> which was created by the Legislature as a government entity to provide property insurance to eligible Florida property owners unable to find affordable coverage in the private market.<sup>21</sup>

The Florida Insurance Commissioner attributed the financial losses to several trends and behaviors present in Florida’s property insurance market, including but not limited to, claims solicitations and litigation.<sup>22</sup> Claims solicitations allegations include solicitations related to roofs and the fraudulent use of the 25 percent rule. It is reported that in such cases, roofers and roofing contractors go door to door asking homeowners if they can inspect their roof for damage. The contractors then advise homeowners their property insurance may replace the entire roof if the homeowners file a claim.

In response to such challenges in Florida’s property insurance market, the Legislature passed SB 76 in 2021.<sup>23</sup> The bill addressed various property insurance concerns including contractors soliciting homeowners to file insurance claims for roof damage, notices of intent to litigate property insurance claims, attorney fee awards in first-party property insurance litigation, and eligibility standards for, and ratemaking by Citizens Property Insurance Corporation. Specifically, the bill attempted to address increases in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from:

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<sup>17</sup> 2006 International Building Code, Section 1609, Wind Loads, <https://www.optasoft.com/applications/codes/2006IBC/HTMLHelp/1609.htm> (last visited May 18, 2022). S. 1609.2, IBC, defines the term “Wind-borne Debris Region” to mean “portions of hurricane- prone regions that are within 1 mile (1.61 km) of the coastal mean high water line where the basic wind speed is 110 mph (48 m/s) or greater; or portions of hurricane-prone regions where the basic wind speed is 120 mph (53 m/s) or greater; or Hawaii.”

<sup>18</sup> S. 553.844(3), F.S.

<sup>19</sup> David Altmaier, Commissioner Florida Office of Insurance Regulation (OIR), Overview of the Florida Insurance Market, pg. 6 (Sept. 22, 2021). [https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419\\_MeetingPacket\\_5252\\_2.pdf](https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf) (last visited May 18, 2022).

<sup>20</sup> S. 627.351(6), F.S.

<sup>21</sup> News4JAX, Property Insurers Seek Hefty Rate Hikes, <https://www.news4jax.com/news/florida/2022/05/18/property-insurers-seek-hefty-rate-hikes/> (last visited May 19, 2022).

<sup>22</sup> Altmaier, supra note 19.

<sup>23</sup> Ch. 2021-77, Laws of Fla.

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an insured with an agreement authorizing repairs without providing a good faith estimate.

On July 11, 2021, a federal district court enjoined the enforcement of the provisions of SB 76 that ban contractors from making prohibited advertisements regarding property insurance roof claims. The judge issued the injunction on the basis that these provisions violate First Amendment commercial free speech rights of contractors under the U.S. Constitution.<sup>24</sup>

### **Effect of Proposed Changes**

The bill amends s. 583.844, F.S., creating an exception to the 25 percent rule. The exception allows the repair, replacement, or recovering of any portion of a roof without requiring the remaining portion of the roof to be brought up to the current edition of the Code if the remaining portion of the roof at least meets the requirements of the 2007 Florida Building Code.

Specifically, the bill provides that if an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable.

The bill requires the Building Commission to adopt this exception by rule and incorporate it in the Code.

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

Section 1: Amends s. 553.844, F.S., relating to windstorm loss mitigation; requirements for roofs and opening protection.

Section 2: Provides an effective date of upon becoming law.

## **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:**

None.

##### **2. Expenditures:**

<sup>24</sup> *Gale Force Roofing & Restoration, LLC. V. Brown*, 548 F.Supp.3d 1143, (N.D. Fla., 2021). (Order Granting Preliminary Injunction, July 11, 2021).

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate positive fiscal impact on the private sector because the Code will not require the entire roof to be updated to the most current version of the Code when 25 percent or more of the roof needs to be repaired or replaced. In addition, to the extent the bill reduces fraud, property insurance rates, and claims litigation, the bill may have an indeterminate positive fiscal impact on the private sector.

**D. FISCAL COMMENTS:**

The bill may reduce expenditures of county courts and the state circuit court system related to litigation regarding roof related property insurance claims and fraud.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires the Building Commission to adopt this exception by rule and incorporate it in the Florida Building Code.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.