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DATE: April 16, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: CS/HB 1255

RELATING TO: Florida Building Code

SPONSOR(S): Committee on Local Government & Veterans Affairs and Representative Diaz-Balart

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
 - (2) FISCAL POLICY & RESOURCES (FRC)
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

This bill implements the recommendations of the Florida Building Commission providing for a state product approval system, the applicability of the Florida Building Code to storage sheds, plan review of prototype buildings, license fees to fund research and education relating to the construction industry, construction permits, code Commentary on the Florida Building Code, exemptions from fire safety provisions, the effective date of the code, and other issues relating to the Florida Building Code.

The bill also contains provisions relating to water well contractors, factory-built school shelters, inspection of factory-built school buildings, construction of swimming pools, technical amendments to the Florida Building Code, the Building Code Training Program, a study of the development of a rehabilitation code, a study of the necessity for universal elevator keys for emergency personnel, appointments to the Education Technical Advisory Committee of the Florida Building Commission, and the creation of an ad hoc subcommittee on alternative plans review and inspections procedures.

This bill has an indeterminate fiscal impact on state government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

The Florida Building Code/Background

Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity; mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, and exit systems; safe materials; energy efficiency; and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promote innovation and new technology, and help ensure economic viability through the availability of safe and affordable buildings and structures.

The reform of Florida's building codes system has been an issue within the construction industry for many years. It was not until Florida endured back-to-back natural disasters - Hurricane Andrew in August 1992, the “Storm of the Century” in March 1993, Tropical Storms Alberto and Beryl in the Summer of 1994, and Hurricanes Erin and Opal during the 1995 Hurricane Season - that the building code system’s effectiveness took on statewide significance for the construction industry and all of the stakeholders in the building codes system, including local governments, the banking and real estate industries, the insurance industry, labor unions, state agencies, manufacturers, and Florida’s citizens. While it was fortunate that these storms set no records with respect to loss of life, they (particularly Andrew) did break all records for insured losses. This was a direct cause of Florida's insurance crisis in the 1990’s, which essentially affected every homeowner in the state.

Building Code Study Commission

In 1996, Governor Lawton Chiles established a Building Codes Study Commission to evaluate Florida’s building codes system and develop recommendations to reform and improve it. The Governor appointed 28 members to the study commission, representing diverse stakeholders in the system, including building officials, local government officials, banking and real estate interests, the disabled, the design and construction industries, building owners, state agencies, and the general public.

In 1998, the study commission issued its findings and proposed a building codes system with the following characteristics:

- A single, statewide building code that would govern all technical requirements for Florida's public and private buildings and take into account appropriate local variations such as the

following: climatic conditions, soil types, termites, weather-related events, and risks associated with coastal development;

- Local enforcement of the statewide building code, with updates and amendments accomplished by a newly constituted state-level entity;
- State review of decisions of local officials or boards of appeal, and state authority to issue binding interpretations to ensure statewide consistency;
- Strengthened enforcement and compliance to ensure accountability through expanded education and training of all participants involved in building construction, clear and precise definition of roles and responsibilities, and discipline; and
- A strong product evaluation and approval process which is responsible, streamlined, and affordable, and which promotes innovation and new technology.

1998 Legislation

The 1998 Legislature considered the findings and recommendations of the study commission and enacted major legislation reflecting a majority of its proposals. Chapter 98-287, L.O.F., implemented many of the study commission's recommendations, to include the development of a statewide unified building code.

On February 14, 2000 the Florida Building Commission (commission) adopted the Florida Building Code as an administrative rule and submitted it, together with proposed conforming amendments to the Florida Statutes, to the 2000 Legislature for consideration. The commission also adopted the South Florida Building Code for application in Miami-Dade and Broward Counties.

2000 Legislation

In the 2000 Legislative session, the Legislature adopted many of the recommended statutory changes submitted by the commission, directed the commission to incorporate specific changes to the adopted Florida Building Code, and directed the commission to study the applicability of the Florida Building Code to utility buildings and to recommend a statewide product approval system to the Legislature by February, 2001. [Chapter 2000-141, L.O.F.]

Florida Building Commission's 2001 Report to the Legislature

In its Report to the 2001 Legislature, the commission reported its progress in implementing the requirements of ch. 2000-141, L.O.F., and its required recommendations to the Legislature. In addition, the commission submitted additional recommendations to address existing statutory inconsistencies, changes to the code amendment process and plan permitting processes, and other related issues.

The following overview of the product approval and storage shed issues and summary of the commission's recommendations was reproduced, to a great extent, from the commission's report. (The entire report may be viewed at www.dca.state.fl.us/fhcd/fbc/legislative/Report/leg2001)

Product Approval

Product performance standards are integral to the scheme used by building codes to establish minimum building safety and performance standards. The reforms to the building code system enacted by 98-287, L.O.F., specifically address how products' compliance with the Code are to be

established and approved for use in Florida. The commission was given the authority to complete the product approval system by administrative rule but was unable to achieve consensus on system specifics prior to the 2000 Legislative session. Consequently, the commission recommended delaying implementation of the new state system, the continuation of the current system of local approvals until a consensus system is adopted by rule, and that a transition period be provided for implementation of the system after the rules are established.

The 2000 Legislature reviewed the commission's recommendations and through ch. 2000-141, L.O.F., suspended rule adoption authority and directed the commission to make consensus recommendations to the 2001 Legislature for their review and action. In addition, ch. 2000-141, L.O.F., enhanced the existing intent language of the law by requiring the system to use private sector evaluations that indicate compliance with the Code and ensure there is an effective government oversight, prior to approving a product's acceptance in Florida.

Product Evaluation and Approval, s. 553.842, F.S.

Section 553.842, F.S., was created by 98-287, LOF, to establish the framework governing the product approval system and s. 553.77, F.S., directs the Commission to determine which products must have either state or local approval. The product approval system framework establishes the following requirements:

- Custom fabricated products, using state or locally approved components, are exempt.
- The system allows manufacturers to have their products approved for use either at the local jurisdiction level, for specific local use, or by the state for statewide use.
- State approval constitutes a determination that the tests and evaluations required to demonstrate compliance with standards established by the Code have been conducted and are adequate. As always, local code enforcement officials must determine that the products are being utilized in specific buildings according to the limitations of use established by the evaluations and according to the manufacturer's installation instructions.
- Statewide approval shall preclude local jurisdictions from requiring further testing, evaluation or submission of other evidence as a condition of using the product so long as the product is being used consistent with the conditions of its approval.
- The commission must keep a list of approved products accessible to local code enforcement officials and the public.
- When approval is local, the local official must determine that both the testing and evaluation is adequate, and that the product is being used in accordance with the limitations and instructions established by the evaluation.
- Decisions of local officials regarding local approvals may be appealed first to local boards and then to the Commission. Decisions of the commission regarding both local and state approval are subject to judicial review for any final determination.
- The system requires long-term approvals where feasible, but also provides for recall or revocation of approvals for due cause.
- Approval is based on validation of the reports on the evaluation by testing or rational analysis of product compliance with the standards set by the Code or the intent of the Code. Product testing shall be done by independent, third party, qualified, and accredited testing and laboratory facilities.

- Evaluation shall be conducted by: nationally accredited entities; commission approved evaluation entities; or Florida registered engineers or architects who have no conflict of interest associated with the manufacturer of the product.
- Products approved based on evaluations and certifications by Florida registered engineers or architects must be manufactured under a quality assurance program certified by an approved product evaluation entity.
- To ensure a smooth transition from the current system to the new system, products certified or approved for statewide or local use by an approved product evaluation entity prior to the effective date of the law establishing the statewide product approval system are deemed approved.
- The law provides additional general guidance for developing the state product approval system by specifying that the system must be cost effective, must appropriately promote innovation and new technologies, and must ensure applications for product approval are processed in a timely manner.

Current Product Approval Process

Approval of products is a multi-step process. First, manufacturers have samples of their products evaluated for compliance by approved testing laboratories, evaluation entities or Florida registered engineers or architects. The evaluation is based on testing and/or rational analysis. Next, manufacturers submit reports on the evaluation to the approving authority for validation and approval. The approving entity issues an approval subject to conditions established by the evaluation. Typically, manufacturers have quality assurance programs that monitor production to ensure continued compliance and in some instances these programs are required as a condition of approval. The final step in approval is the determination that the product is being used consistent with the conditions of approval. This final step is always performed by the code enforcement official. The most extensive private sector programs for verifying product compliance with standards are administered by "certification agencies." These organizations test products to evaluate compliance, conduct production monitoring programs to ensure continued compliance, and certify compliance to specific standards. The most widely recognized of these is Underwriters Laboratories (UL) which certifies and labels electrical products. The product approval system established by s. 553.842, F.S., stipulates that validation is not required where compliance is certified by recognized entities.

Commission Recommendation

The Commission recommends that either state or local approval be required for all products for which the Code establishes standards. Approval of a product by the State would be voluntary and at the manufacturer's discretion. Approval is based on the evaluation of a product's compliance with the standards established by the Code and validation of the information supporting compliance presented to the approving entity. The Commission recommends that approval also require manufacturers operate quality assurance programs to ensure that approved products continue to comply. The Commission's recommendations for implementing the system incorporate specified evaluation methods and recognize the differences between local approval processes and State/commission approval processes.

Storage Sheds

Historically, portable buildings not designed for human habitation have been regulated in a bifurcated manner, allowing the manufacturer to choose regulation by local governments or the Department of Community Affairs' Manufactured Buildings Program. Generally, manufacturers delivering units to Miami-Dade and Broward counties opted to be regulated under the Manufactured Buildings Program, while manufacturers delivering units to the rest of the state opted to be governed by local regulations. The 2000 Florida Legislature removed the manufacturers' option to choose the regulating entity and determined that all portable buildings manufactured offsite would be regulated under the Florida Building Code.

The Legislature recognized that portable buildings not designed for human habitation were different from buildings where people live or work. Section 112 of ch. 2000-141, L.O.F., directed the commission to review the applicability of the full proposed Florida Building Code to buildings manufactured and assembled offsite but not intended for human habitation, including, but not limited to, storage sheds and lawn storage buildings. The commission was directed to consider whether these buildings should be subject to the same standards applicable to buildings intended for human habitation, the additional financial costs associated with compliance, the risk reduction effects associated with compliance, and the long-term economic and practical consequences of compliance.

The Commission appointed an ad hoc committee to review portable buildings in the context of the Florida Building Code. Committee participants included members of the commission, representatives of the manufactured buildings industry, and the Florida Portable Building Manufacturers Association, a trade group consisting of companies that manufacture portable storage buildings for use in the State of Florida.

The buildings are usually constructed of light-weight aluminum with walls measuring .019 inches in thickness. The buildings are designed to store lawn mowers, garden equipment, and other personal property from the weather and are not meant to shelter or protect people. Industry groups expressed concern that the buildings as currently constructed do not meet the impact standards required in the Florida Building Code. The Florida Building Code will require the buildings to be constructed to withstand internal pressure to prevent additional wind-borne debris resulting in the penetration of the envelope of another building. Complying with the impact standards would require a substantial change in the way these buildings are constructed and the benefits gained would not warrant the increased cost that consumers would incur.

The long-term consequence of requiring the buildings to comply with the impact standards would be a surge in the number of Do-It-Yourself kits used in Florida. The issue becomes how these kits can be held to the same standards and equivalent permitting requirements as those structures manufactured offsite subject to the Florida Building Code. Do-It-Yourself kits and conventionally-constructed buildings should be subject to the same requirements as those manufactured under the Manufactured Buildings Program. Further, the consumer should be notified that the unit may require permitting by the local enforcement agency, constructed in accordance with applicable provisions of the Florida Building Code, and installed and anchored in accordance with regulations.

Section 553.37(7), F.S., grants the Department of Community Affairs the authority to establish fees to pay the cost incurred for work related to administration and enforcement of the Manufactured Building Program. These buildings are included in the Manufactured Building Program and fee authority is available.

Commission Recommendation

The commission recommended to exempt buildings not designed for human habitation with floor areas of 720 square feet or less, from mandatory impact standards of the Florida Building Code, and to exempt all types of construction. In addition, the commission recommended that a warning be placed on the panel of lawn/storage kits sold in retail stores stating:

“This structure may not meet Code requirements. Consult with your local building department or jurisdiction prior to construction for applicability of permitting and Code requirements.”

Code Implementation Date

The commission recommends that implementation of the Florida Building Code be delayed until October 1, 2001. This will allow an additional three months for training of building officials, contractors, architects and engineers in the differences between the existing state minimum building codes and the new Florida Building Code. The date for printing of the new Code, which is an integral part of training on the Code, was tied to finalizing the Code for rule adoption. Rule adoption was delayed several months last year to resolve rule challenges by affected construction interests.

Prototype Buildings

The commission recommends that the plan review of prototype buildings be privatized, recognizing the option of contracting with an alternative public entity or a private entity as the service provider, allowing for an administrator to perform such duties as monitoring and record keeping. The commission requests specific legislative authority to establish the method of compensation to the entity providing plan review service and fees for providing administration functions provided by the commission such as record keeping and monitoring. The commission requests specific legislative authority for exemption to public record and sunshine laws to ensure the safety and security of buildings designated as essential facilities in the building code, such as schools, correctional institutions, and hospitals.

Miscellaneous Statutory Changes

The commission requests:

- Amending of s. 489.509(3), F.S., to transfer \$4 from each electrical contractor's license to the Department of Community Affairs, rather than the Department of Education, for research and education relating to construction industry issues and the Code.
- Clarification of the exemption of Prototype Buildings from local technical amendments to the Florida Building Code in s. 553.73(3)(c), F.S., by amending that section and eliminating potentially inconsistent revisions in s. 553.77(6), F.S.
- Amending s. 553.79, F.S., to authorize the commission to establish standards for preliminary construction prior to completion of plans review (e.g., foundation-only permits, etc.) and to authorize the commission to establish the minimum requirements for plans review. As existing practice conflicts with legislative provisions, the commission recommends that the statute be amended to eliminate conflicts.
- Statutory authority to produce explanatory text to accompany the Florida Building Code similar to the Code Commentary produced by the publisher of the Standard Building Code. This text

would provide explanatory comments for compliance rather than mandatory direction, and the Commission recommends exemption from chapter 120, F.S.

- That the federal disproportionate cost exception from path of travel upgrades to renovation of existing buildings apply to Florida's vertical accessibility standards (s. 553.509, F.S.). The commission recommends that local officials determine cost-prohibition rather than the State.
- Correction of cross-references to s. 316.1955, F.S., contained in s. 553.507, F.S., and s. 553.5041, F.S. The referenced provisions relating to accessible parking have been relocated to s. 553.5041(4), F.S.
- Revising s. 553.895, F.S., to exempt telecommunications spaces located in telecommunications buildings from the requirements of s. 553.895(2), F.S., provided that those spaces are equipped with an equivalent fire prevention standard approved by both the Florida Building Commission and the State Fire Marshal.
- Delegation of authority from the Legislature to determine transition issues such as the status of pending building permit applications on the date that the new Code takes effect. The issue is at what point building plans have to be resubmitted under the new Code, or whether they continue to comply with the older codes (i.e., this is a "grandfathering" issue). The commission recommends that this determination be made through the Chapter 120, F.S., rulemaking procedures in which all affected parties will participate, be heard and develop a consensus product.

Issues Not Addressed in the Commission's Report

Water Well Contractors

Section 373.323, F.S., provides for the licensure of water well contractors. Persons wanting to become water well contractors must obtain a license from the water management district where the person's principal place of business is located. Licensure qualifications, examination requirements, and disciplinary procedures are specified in this section.

Factory-Built School Buildings

Section 533.415, F.S., provides an alternative procedure for the construction and alteration of factory-built school buildings. Subsection (9) requires school and community college districts to provide for periodic inspections of such buildings during each phase of construction or alteration. Subsection (13) requires that, by July 1, 2000, all existing and newly constructed factory-built school buildings bear an identification label signifying that the structure has been brought into compliance with chapter 5 of the Uniform Code for Public Educational Facilities, and after July 1, 2001, the Florida Building Code. After this date, existing buildings without this label may not be used as classrooms.

The Florida Building Code

Section 553.73, F.S., requires the commission to adopt, by rule, the Florida Building Code, which must contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules. This section also provides for amendments to the Code.

The Residential Swimming Pool Safety Act

Chapter 2000-143, L.O.F., created ch. 515, F.S., The Residential Swimming Pool Safety Act. This act requires all new residential swimming pools to be equipped with at least one of four pool safety features; a pool barrier; an exit alarm on doors with pool access; an approved safety cover; or self-closing or self-latching doors providing access to the pool. In order to pass a building inspection and receive a certificate of completion from the local building official, the pool must comply with the safety requirements of the bill. The bill creates a second degree misdemeanor for violating the terms of the bill. The Department of Health is required to develop or adopt a nationally recognized drowning prevention education program and develop or adopt and make available to the public a drowning prevention pamphlet. Certain public pools, drainage and agricultural ponds and canals are exempt from the law.

Chapter 36, section 315.2 of the Florida Building Code, provides standards for the construction of residential swimming pools. This provision is largely derived from The Standard Swimming Pool Code, 1997 Edition, published as a supplement to the Standard Building Code. In addition, some local governments have ordinances requiring that outdoor residential pools be enclosed or fenced. Violations of such ordinances are generally enforced as code enforcement matters.

Building Code Training Program

Section 553.841, F.S., requires the commission, by rule, to establish the Building Code Training Program to develop and provide a core curriculum and advance module courses relating to the Florida Building Code and a system of administering and enforcing the Florida Building Code. The program must be developed, implemented, and administered by the commission in consultation with the Department of Education, the Department of Community Affairs, the Department of Business and Professional Regulation, the State Fire Marshal, the State University System, and the Division of Community Colleges.

Architect and Engineers

Prior to 1998, architects and engineers were often asked to perform plans review or building inspection duties by local jurisdictions who were experiencing a temporary shortage of inspectors or plan reviewers. It was a common practice to perform these duties by contract without being forced to obtain licensure as a building inspector. Currently, sections 471.045 and 481.222, F.S., enacted in 1998, allow engineers and architects to perform building inspection duties, upon the request of a local government department or state agency, without having to obtain licensure as a building inspector. The licensed professionals' respective board not the Board of Building Code Administrators and Inspectors retains disciplinary authority. Plans review may not be performed for projects conducted by the engineer or architect or an associated firm. There is no similar authority for these professionals to provide inspection services without additional licensure unless affiliated with a government client.

C. EFFECT OF PROPOSED CHANGES:

This bill implements the recommendations of the Florida Building Commission providing for a state product approval system, the applicability of the Florida Building Code to storage sheds, plan review of prototype buildings, license fees to fund research and education relating to the construction industry, construction permits, Code Commentary on the Florida Building Code, exemptions from fire safety provisions, the effective date of the code, and other issues relating to the Florida Building Code.

The bill also contains provisions relating to water well contractors, inspection of factory-built school buildings, construction of swimming pools, technical amendments to the Florida Building Code, the

Building Code Training Program, development of a rehabilitation code, a study of the necessity for universal elevator keys for emergency personnel, and appointments to the Education Technical Advisory Committee of the Florida Building Commission.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 373.323, F.S., is amended to provide that water well contractors are authorized to install, repair, and modify pumps and tanks in accordance with applicable provisions of the Florida Building Code. In addition, licensees are authorized to install pumps, tanks and water conditioning equipment of all water well systems.

Section 2. Section 489.509, F.S., is amended to require \$4 from the application or renewal fee paid by electrical contractors and alarm system contractors be transferred to the Department of Community Affairs, rather than the Department of Education, to fund research projects relating to the building construction industry or continuing education programs to persons engaged in the building industry in Florida. It is further amended to eliminate specifications for the use of those funds – 50% to a graduate program at a Florida University and 50% to all accredited private and state universities offering courses in building construction. This change is consistent with changes made in section 40 of ch. 2000-141, L.O.F. to s. 489.109(3), which applies to application and renewal fees paid by other contractors in the construction industry.

Section 3. Present subsections (7) through (15) of s. 553.36, F.S., are renumbered as subsections (8) through (16), and a new subsection (7) is added to define "factory built school shelter."

Section 4. Subsection (7) of s. 533.415, F.S., is amended to direct DCA, or its designated representative, to determine if plans for factory-built schools qualify for purposes of a factory-built school shelter. Subsection (9) is amended to allow an approved inspection agency, certified by DCA, to conduct periodic inspections of factory built school buildings and to allow the school or community college districts to charge the manufacturer for such inspections. Subsection (13) is amended to delay, from July 1, 2000 to January 1, 2002, the deadline for inspecting factory-built school buildings currently in use.

Section 5. Effective July 1, 2001, s. 553.505, F.S., is amended to correct a cross-reference to s. 316.1955, F.S., which was renumbered by ch. 2000-141, F.S., L.O.F., as s. 553.5041, F.S. This law transferred the accessible parking requirements from the Department of Transportation statutes (ch. 316, F.S.) to the Florida statute governing accessibility by handicapped persons (Part V of ch. 553, F.S.).

Section 6. Effective July 1, 2001, s. 553.507, F.S., is amended to delete a cross-reference to s. 316.1955, F.S., which was renumbered by ch. 2000-141, F.S., L.O.F., as s. 553.5041, F.S. This law transferred the accessible parking requirements from the Department of Transportation statutes (ch. 316, F.S.) to the Florida statute governing accessibility by handicapped persons (Part V of ch. 553, F.S.).

Section 7. Section 553.73, F.S., is amended to address provisions relating to the State Minimum Building Code. Subsection (2) is amended to require the Florida Building Code to provide for uniform implementation of the standards and criteria for residential swimming pool barriers, pool covers, latching devices, door and window exit alarms, and other equipment required by chapter 515, F.S., the Residential Swimming Pool Safety Act, consistent with the intent of s. 515.23, F.S.

Currently, subsection (3), F.S., requires the Florida Building Commission to modify the model codes used in the development of the Florida Building Code. The Commission is authorized to modify the code as needed to accommodate the specific need of this state. This subsection is amended to clarify that "specific needs" means "needs identified as a unique physical characteristic that relate to

Florida's geography, climatic condition, soil, topography or other conditions that are measurably different from other areas of the nation and when the commission determines that model code does not adequately provide a standard of safety or protection for the state."

Subsection (3) is also amended to incorporate procedural changes agreed to in a settlement agreement between the Florida Building Commission and the Florida Home Builders Association, resulting from a rule challenge by the association. The Commission is authorized to approve technical amendments to the Florida Building Code provided the following conditions are met:

- The amendment is published on the commission's website for at least 45 days and all associated documentation is made available to any interested party by any Technical Advisory Committee (TAC) of the commission;
- The amendment receives a $\frac{3}{4}$ vote of approval by members of the TAC, with at least $\frac{1}{2}$ of the regular members present;
- Subsequent to TAC approval, the amendment is published on the commission's website for at least 45 days; and
- Any subsequent modification of the amendment by the commission is based on public testimony and evidence from a public hearing held in accordance with chapter 120, F.S.

Subsection (4) is amended to provide a specific cross-reference to chapter 120 and the uniform rules of procedure, specifically requiring that the commission conduct hearings pursuant to the Administrative Procedures Act and its implementing rules. This provision informs all affected interests of the rules and procedures that will apply to appeals of local government actions on the code.

Subsection (5) of s. 553.73, F.S., is amended to separate the subsection into two separate subsections, thereby clarifying that subsection (5) relates to the adoption of the code and its effectiveness, and new subsection (6) relates to the commission's duty to update and amend the code on a three-year cycle. Language is added to subsection (5) providing that for a building permit for which an application is submitted prior to the effective date of the Florida Building Code, the state minimum building code in effect in the permitting jurisdiction on the date of the application governs the permitted work for the life of the permit and any extension granted to the permit. New subsection (6) is amended to specify that the commission may incorporate changes made to any selected model code into the Florida Building Code "no sooner than six months after such model code has been adopted by the promulgating organization ..."

Present subsections (6), (7), (8), (9) and (10) are renumbered as (8) through (11). Paragraph (a) of subsection (7) is amended to clarify that annual technical amendments to the Florida Building Code are subject to the provisions added in subsection (3), which require such amendments meet new criteria for adoption. Subsection (8) is amended to specifically exempt storage sheds that are manufactured and assembled offsite, that are not designed for human habitation and have a floor area of 720 square feet or less, from the mandatory wind-borne-debris-impact standards of the code.

Section 8. Section 553.77(1), F.S., is amended to clarify that the commission is authorized to issue declaratory statements relating to construction provisions in the Residential Swimming Pool Safety Act in chapter 515, F.S. In addition, paragraph (h) is amended to clarify that all commission hearings relating to appeals of decisions of local boards of appeal will be conducted pursuant to the Administrative Procedures Act and the uniform rules of procedure.

Subsection (6) is amended to implement the commission's recommendations on a prototype buildings program. The commission is authorized to provide by rule for the review and approval of plans for prototype buildings, either by a public or private entity, and to charge reasonable fees to cover the costs of administration. This section is further amended to correct a conflict between 553.73, F.S., and this section, to clarify that prototype buildings are exempt from locally adopted amendments to the code.

Subsection (7) is added to authorize the commission to produce a commentary document to accompany the code and to provide that the commentary does not constitute binding interpretations of the code.

Section 9. Section 553.79(2), F.S, is amended to cross-reference the plan review requirements of the Florida Building Code and a new provision in subsection (6), which provides that the statutory requirement for complete plans review prior to permit issuance is not absolute, but is governed by the Commission through the code itself. This addresses the issue of varying plans and specifications for residential versus commercial construction. The commission determined that for residential construction, the applicant is not required to submit detailed electrical, mechanical and plumbing documents, as they are for commercial construction, prior to the issuance of any permit. The administrative requirements of the code reflect the different requirements for different types of construction. This amendment directs code users to the plan review requirements of the code and clarifies the Commission's authority to establish those requirements.

Subsection (6) is amended to authorize the Commission to establish standards and criteria for issuance of permits for preliminary construction prior to the completion of plan review, including specific authority for permits for building foundations. These standards are to take effect concurrent with the effective date of the Florida Building Code.

Section 10. Effective upon this act becoming a law, a new s. 553.8412, F.S., is created to provide legislative intent regarding training for the Florida Building Code, and to direct the Commission and DCA to, not more than 60 days after the effective date of the section, to provide for statewide outreach for training on the Florida Building Code. A sunset date of June 30, 2003 is provided for this section.

Section 11. Effective July 1, 2001, s. 553.842, F.S., is substantially amended to reflect the Florida Building Commission's product approval recommendations, as presented in its February, 2001 report to the Legislature. These changes provide for either state or local approval for all products for which the code establishes standards. Approval of a product by the State would be voluntary and at the manufacturer's discretion. Approval is based on the evaluation of a product's compliance with the standards established by the code and validation of the information supporting compliance presented to the approving entity. Manufacturers are also required to operate quality assurance programs to ensure approved products continue to comply with the requirements of the code.

Subsection (1) is amended to require the commission adopt by rule a product evaluation and approval system that applies statewide. Paragraph (c) is amended to require the system provide "product evaluation entities, quality-assurance agencies, certification agencies, and validation entities", as well as independent, third-party qualified and accredited testing and laboratory facilities, as required in current law. Paragraph (f) is amended to stipulate that state and local approvals of products are valid until the requirements of the code on which the approval is based change, the product changes, or the approval is revoked.

Subsection (3) is amended to provide that products or methods or systems of construction "that require approval under s. 553.77," that have standardized testing or comparative or rational analysis methods established in the code, and that are certified by an approved product evaluation

entity as complying with the standards specified in the code shall be approved for local or statewide use by one of the methods established in subsection (6) without further evaluation.

Subsection (4) is amended to establish an effective date of October 1, 2003, for the new product approval system established by this act.

Subsection (5) is amended to establish the first method in which local officials approve products or methods or systems of construction. Through building plans review and inspection, local building officials may determine whether such products or methods or systems of construction comply with the prescriptive standard established in the code. However, this method does not apply to the following categories of products: structural components as established by the commission by rule, panel walls, exterior doors, roofing, skylights, windows and shutters. In addition, local building officials may approve products or methods or systems of construction under the same methods required to be used by the state as specified in proposed subsection (6).

Subsection (6) is created to establish a method of approving products by the state and alternative method for approval by local building officials. One of these methods must be used in the approval of the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters and structural components, as established by the Commission by rule.

Products for which the code establishes standardized testing or comparative or rational analysis methods must be approved by submittal and validation of one of the following reports or listings indicating the product or method or system of construction was evaluated to be in compliance with the Florida Building Code and the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity; or
- A product evaluation report based upon testing or comparative or rational analysis, or a combination thereof, signed and sealed by a professional engineer or architect, licensed in this state, who has no conflict of interest, as established by Commission rule.

Products, methods or systems of construction for which there are no specific standardized testing or comparative or rational analysis methods established in the code may be approved by submittal and validation of one of the following:

- A product evaluation report, which is based upon testing or comparative or rational analysis, or a combination thereof, from an approved product evaluation entity. The report must indicate the product or method or system of construction was evaluated to be in compliance with the intent of the Florida Building Code and the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code.
- A product evaluation report, which is based upon testing or comparative or rational analysis, or a combination thereof, developed and signed and sealed by a professional engineer or architect, licensed in this state, who has no conflict of interest, as established by the Commission by rule. The report must indicate the product or method or system of construction was evaluated to be in compliance with the intent of the Florida Building Code

and the product or method or system of construction is, for the purpose intended, at least equivalent to that required by the Florida Building Code.

Subsection (7) is created to require the commission ensure that product manufacturers operate quality-assurance programs for all approved products. The Commission is required to adopt by rule criteria for operation of such quality-assurance programs.

Subsection (8) is created to specify that for local approvals, validation is to be performed by the local building official. The Commission is directed to adopt by rule criteria constituting complete validation by the local official. For state approvals, validation is to be performed by validation entities approved by the Commission. The Commission is directed to adopt by rule criteria for approval of validation entities. Furthermore, such validation entities must be third party entities independent of the product's manufacturer.

Subsection (9) is created to direct the commission to adopt rules to approve the following types of entities that produce information on which product approvals are based:

- Evaluation entities that meet the criteria for approval adopted by the commission by rule. The commission is directed to specifically approve the National Evaluation Service, the International Conference of Building Officials Evaluation Services, the Building Officials and Code Administrators International Evaluation Services, the Southern Building Code Congress International Evaluation Services, and the Miami-Dade County Building Code Compliance Office Product Control.
- Testing laboratories accredited by national organizations such as A2LA and National Voluntary Laboratory Accreditation Program that are accredited by evaluation entities approved by rule, and laboratories that comply with other guidelines for testing laboratories selected by the commission and adopted by rule.
- Quality assurance entities approved by evaluation entities approved by rule, and by certification agencies approved by rule, and other quality assurance entities that comply with guidelines selected by the commission and adopted by rule.
- Certification agencies accredited by nationally recognized accreditors and other certification agencies that comply with guidelines selected by the commission and adopted by rule.
- Validation entities that comply with accreditation standards established by the commission by rule.

Subsection (6) is renumbered as subsection (10), and is amended to clarify that denials by building officials are subject to the provisions of s. 553.77, F.S., governing appeal of the building official's interpretation of the code.

Subsection (8) is renumbered as subsection (12), and is amended to specify that the commission conduct hearings of appeals of required approvals of a product or method or system of construction "pursuant to chapter 120 and the uniform rules of procedure" and that such appeals be handled "in an expedited manner."

Subsection (9) is renumbered as subsection (13), and is amended to require that hearing of appeals of decisions by local building officials to the commission be conducted "pursuant to chapter 120 and the uniform rules of procedure."

Subsection (10) is renumbered as subsection (14), and is amended to require the commission to maintain a list of the state-approved products, testing laboratories, quality assurance agencies, certification agencies and validation entities.

Subsection (15) is created to require the commission by rule establish criteria for revocation of product approvals as well as approvals of product evaluation entities, testing laboratories, quality assurance entities, certification agencies and validation entities. Revocation is to be governed by section 120.60, F.S., and the uniform rules of procedure.

Subsection (16) is created to require the commission establish a schedule for adoption of the rules required by this part to ensure that the product manufacturing industry has sufficient time to revise products to meet the requirements for approval and submit them for testing or evaluation prior to the system taking effect on October 1, 2003, and to ensure that the availability of statewide approval is not delayed.

Section 12. Section 553.895(2), F.S., which provides for the installation of automatic sprinkler systems and smoke detectors., is amended. Telecommunications spaces within telecommunications buildings are exempted from the sprinkler requirements of that subsection, if those facilities are equipped to meet an equivalent fire prevention standard approved by both the commission and the State Fire Marshal. In addition, the subsection is amended to provide that in a building less than 75 feet in height which is protected throughout with an approved and maintained fire sprinkler system, a manual wet standpipe as defined in the National Fire Protection Association Standard 14, Standard for the Installation of Standpipe, Private Hydrant, and Hose System, shall be allowed.

Section 13. This section addresses the issue of a construction rehabilitation code. Currently, reconstruction of existing buildings is subject to the requirements of the various building codes adopted by the respective jurisdictions in Florida . Upon the effective date of the Florida Building Code, such structures will be subject to the new statewide building code. This section requires the Commission to research the issue of adopting a rehabilitation code for the state, and to report its recommendation to the Legislature before the 2002 session.

Section 14. This section addresses the issue of emergency elevator access. The Department of Business and Professional Regulation estimates that there are approximately 50,000 to 55,000 elevators in the state. Currently, all elevators must have a key available to emergency personnel. This key is either in a lock-box or in the elevator machine room. In addition, some emergency personnel have keys to the most common elevators in use. This section requires the Commission to research the issue of requiring all primary elevators in buildings with more than five levels to operate with a universal key, which allows access and operation of elevators by emergency personnel. The Commission is directed to report its recommendations to the Legislature before the 2002 session.

Section 15. Effective upon the earlier of June 30, 2001, or the date this act becomes a law, this section delays the effective date of specified sections of chapter 98-287, L.O.F and chapter 98-419, L.O.F., as amended by chapter 2000-141, L.O.F., and specified sections of chapter 2000-141, L.O.F., from July 1, 2001, to October 1, 2001.

Section 16. Effective upon this act becoming a law, this section amends section 135 of chapter 2000-141, L.O.F., to change the effective date from July 1, 2001, to October 1, 2001, of the repeal of subsection (2) of s. 255.21, F.S., and paragraphs (d) and (e) of subsection (1) of s. 395.1055, F.S., and subsection (1) of s. 553.79, F.S.

Section 17. Effective upon this act becoming a law, subsection (2) of section 62 of chapter 98-287, L.O.F., as amended by section 107 of chapter 2000-141, L.O.F., is amended to delay from July 1,

2001, to October 1, 2001, the repeal of all existing local technical amendments to any building code adopted by any local government, except for local ordinances setting forth administrative requirements which are not in conflict with the Florida Building Code.

Section 18. Effective upon this act becoming a law, the effective date of section 68 of chapter 98-287, L.O.F., as amended by section 108 of chapter 2000-141, L.O.F., is amended to delay from July 1, 2001, to October 1, 2001, the repeal of parts I, II, and III of chapter 553, F.S, and the transfer and renumbering of s. 553.141, F.S, as s. 553.86, F.S.

Section 19. This section requires the Florida Building Commission to appoint the current members of the Building Construction Industry Advisory Committee, as established by Rule 6A-10.029, F.A.C., to the Education Technical Advisory Committee of the Florida Building Commission. The committee membership must be broadly representative of the building construction industry and must consist of not less than ten members. The committee has the following duties:

- To advise the commission on any policies or procedures needed to implement the provisions of sections 489.109 (3), 489.509(3), F.S., which relate to the \$4 fee contractors pay upon application and renewal for certification and registration that is used to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the construction industry;
- To advise the commission on implementing section 553.841, F.S., which relates to the building code training program administered by the commission;
- To advise the commission areas of priority for which research and continuing education funds should be expended; and
- To review all proposed research and continuing education projects and recommend to the commission those projects which should be funded and the amount of funds to be provided for each.

The Commission is also directed, upon receipt of funds by DCA from the Construction Industry Licensing Board and the Electrical Contractors Licensing Board, to determine the amount of funds available for research projects from contractor license fees; and to identify, solicit, and accept funds from other sources for construction and building code issues.

Section 20. This section directs the Florida Building Commission to convene an ad hoc subcommittee to recommend a procedure by which the public could elect to engage an engineer or architect to perform plans review and inspection for the construction, alteration, repair, or improvement of real property, and the appropriate role of the local building official in such alternative plans review and inspection procedure and in the resulting issuance of a building permit and certificate of occupancy. The section provides for the membership of the ad hoc subcommittee, and directs the ad hoc subcommittee to make recommendations addressing specific topics. The ad hoc subcommittee is required to submit its recommendations to the Commission by January 1, 2002, and the Commission is required to submit, prior to the beginning of the next regularly scheduled session of the Legislature, a report of its findings, which must include the recommendations of the ad hoc subcommittee. DCA is directed to provide logistical and staff support for the ad hoc subcommittee.

Section 21. Subsection (14) of s. 316.515, F.S., is amended to conform a cross-reference to s. 553.36(12), F.S.

Section 22. Subsections (1) and (5) of s. 627.702, F.S., are amended to conform a cross-reference to s. 553.36(12), F.S.

Section 23. Subsection (2) of s. 553.77, F.S., as amended by chapters 98-287 and 2000-141, L.O.F., is repealed.

Section 24. An effective date of October 1, 2001, unless otherwise provided, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 2 amends s. 489.509, F.S., to require \$4 from the application or renewal fee paid by electrical contractors and alarm system contractors be transferred to the Department of Community Affairs, rather than the Department of Education, to fund research projects relating to the building construction industry or continuing education programs to persons engaged in the building industry in Florida.

2. Expenditures:

Provisions relating to the implementation of a state product approval system will require additional resources for the Commission. Estimates of the impact are not available at this time. Section 20 requires DCA to provide logistical and staff support for the ad hoc subcommittee the section directs the Commission create to examine alternative plans review and inspection procedures. This provision will place additional workload on DCA staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill contains several provisions that clarify the code amendment, plans review and permitting processes. To the extent this change eliminates confusion and redundancies, building industry professionals will benefit.

Implementation of the state product approval system is likely to allow better access to product approval for manufacturers of construction industry related products. Delaying the effective date of the code will allow contractors more time to become familiar with the new Florida Building Code. Manufacturers of lawn-storage sheds will not be required to meet the impact standards of the South-Florida Building Code, which should result in a cost savings to both the manufacturers and consumers.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of countries and municipalities to raise total aggregate revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2001, the Committee on Local Government & Veterans Affairs considered HB 1255, adopted one strike-everything after the enacting clause amendment, and passed the bill as a committee substitute. CS/HB 1255 includes the following provisions not included in HB 1255:

- Water well contactors (section 1);
- Inspection of factory-built school buildings and the use of such buildings as shelters (sections 3 and 4);
- Construction of swimming pools (section 7 and 8);
- Provisions governing modifications to the model codes by the Florida Building Commission (section 7);
- Procedural requirements governing technical amendments to Florida Building Code (section 7);
- Provisions governing the treatment of permit applications submitted prior to the effective date of the Florida Building Code. [HB 1255 authorized the Commission to adopt rules addressing this issue. CS/HB 1255 explicitly addresses how such applications are to be treated.] (section 7);
- Timing of the adoption of new versions of model codes (section 7);

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- A requirement for the Commission and DCA to provide for statewide outreach for training on the Florida Building Code (section 10);
- The use of a manual wet standpipe in specified circumstances (section 12);
- A study of the development of a rehabilitation code (section 13);
- A study of the necessity for universal elevator keys for emergency personnel (section 14);
- The creation of an ad hoc committee by the Florida Building Commission to make recommendations regarding alternative plans review and inspection procedures (section 20).

In addition, CS/HB 1255 modifies provisions in HB 1255 relating to product approval to better reflect the Commission's recommendations and agreements reached with interested parties (section 11).

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith