

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 104

SPONSOR: Comprehensive Planning Local and Military Affairs Committee and Senator Constantine

SUBJECT: The Florida Building Code

DATE: March 6, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute (CS) for SB 104:

- Requires the Florida Building Commission to develop building code provisions to facilitate rehabilitation and use of existing structures;
- Amends ch. 399, F.S., to transfer from DBPR to the private sector the responsibility for inspecting elevators for temporary use while it is installed or under alteration; to allow a local government that assumes elevator inspection duties to hire a private inspector to conduct inspections; to require an annual inspection for all elevators, regardless as to whether they are under service maintenance contracts; to restrict the use of elevator inspection program revenue to program uses; and to make a number of technical changes and clarifications;
- Creates three new categories of building code enforcement officials in chapter 468, F.S., specifically designated for public educational facilities: a public educational building inspector, plans examiner, and code administrator; establishes criteria for licensure; provides for a provisional educational certificate; expands the Florida Building Code Administrators and Inspectors Board to include an educational building code administrator; and provides an appropriation for public educational certifications;
- Specifies additional criteria for local amendments to the Florida Building Code;
- Changes the membership of the Florida Building Commission; and
- Narrows the definition of non-residential farm buildings, which are exempt from the requirements of the Florida Building Code.

This CS substantially amends the following sections of the Florida Statutes: 399.01, 399.02, 399.03, 399.049, 399.061, 399.07, 399.105, 399.106, 399.125, 399.13, 468.603, 468.604, 468.605, 468.609, 468.613, 468.627, 509.072, 553.73, 553.74, and 604.50.

This PCS creates an unspecified section of Florida Law.

II. Present Situation:

Building Codes

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, promotes innovation and new technology, and helps 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.

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.

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 and the renaming of the Board of Building Codes and Standards as the Florida Building Commission (commission).

On February 14, 2000, the 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.

In response, the Legislature directed the commission to incorporate specific changes to the adopted Florida Building Code, and directed the commission to recommend a statewide product approval system to the Legislature by February 2001. [Chapter 2000-141, L.O.F.]

In the 2001 session, the Legislature delayed implementation of the Florida Building Code from July 1, 2001, to January 1, 2002. In addition, it adopted recommendations of the commission providing for a state product approval system and other issues relating to the Florida Building Code. [Chapter 2001-186, L.O.F.]

In the 2001 special session "C", the Legislature enacted ch. 01-372, L.O.F., to delay the effective date of the Florida Building Code to March 1, 2002.

Rehabilitation Code: Report of the Florida Building Commission

Currently, the Florida Building Code contains provisions that pertain to the alteration, modification, and repair of all public and private buildings in the state. Section 3401.5 provides that the provisions of the technical codes within the Florida Building Code relating to the alteration, repair, restoration or moving of buildings or structures shall not be mandatory of existing buildings or structures identified as qualified historic buildings when such buildings are judged by the building official to be safe and in the public interest or health, safety and welfare regarding any proposed alteration, repair, restoration, relocation or mobbing of buildings within fire districts. Section 3401.5.2 lists the criteria for qualifying historic buildings that may be exempted from the requirements of the code.

Section 3401.7.1 addresses additions to existing buildings:

- When additions, or alterations increasing floor area, are made to an existing building, and the addition and existing buildings are separated by a firewall, the addition must conform to all the requirements of the Florida Building Code applicable to a building of the area of the addition.
- Where the existing building and the addition are not separated by a firewall and the area of the addition is is 25 percent or more of the area of the existing building, the existing building and the addition must comply with all requirements of the Florida Building Code.
- Where the existing building and the addition are not separated by a fire wall and the area of the addition is less than 25 percent of the area of the existing building, the addition must conform to all requirements of the Florida Building Code, and the existing building

must conform to the requirements of this code applicable to facilities for means of egress and automatic fire-extinguishing systems.

Section 3401.7.2 addresses repairs and alterations to existing buildings:

- Structural repairs and alterations, the cost of which does not exceed 25 percent of the value of the existing building, must comply with the requirements for new buildings except that minor structural alterations, with the approval of the building official, may be made of the same material and degree of fire-resistivity of which the building is constructed.
- Non-structural repairs and alterations exclusive of fixtures and furniture, the cost of which does not exceed 25 percent of the value of the existing building and which does not affect egress or fire-resistivity, may be made of the same material or which the building or structure is constructed.
- Repairs and alterations amounting to over 25 percent but not exceeding 50 percent of the value of the existing building may be made during any 12 month period without making the entire existing building comply provided such repairs and alterations comply with the requirements of the Florida Building Code for a building or like area, height and occupancy.
- When repairs and alterations amounting to more than 50 percent of the value of the existing building are made during any 12-month period, the entire building must be made to comply with the requirements for a new building or be entirely demolished.

Section 32 of ch. 2001-186, L.O.F., required the commission to research the issue of adopting a rehabilitation code for the state and to report to the Legislature before the 2002 Regular Session regarding the feasibility of adopting such a code. The following is taken from this report, submitted January 2002.

Identification and Research of Issues

The Rehabilitation Code Ad Hoc Committee, appointed by Chairman Rodriguez, was charged with identifying and researching issues critical to the feasibility of developing a rehabilitation code. The committee identified and researched other states' experience with rehabilitation codes. The states included in the study were Maryland, Rhode Island, New Jersey, and Massachusetts. Other regulatory entities and documents were also included in the research: the U.S. Department of Housing and Urban Development; the International Existing Building Code; Chapter 34, Existing Buildings, of the Florida Building Code; and the Florida Fire Prevention code.

The committee then identified and considered in the research, other issues involved in the development of a rehabilitation code. Those areas considered included:

- Commercial and residential structures;
- Technical scope of a rehabilitation code;
- Affordable housing;
- Urban blight;
- Aging Infrastructure;

- Redevelopment;
- Cost versus benefits;
- Historic preservation;
- Insurance; and
- Code enforcement.

The research showed that numerous other states and local jurisdictions have realized the benefits of developing and adopting a rehabilitation code. It was discovered that rehabilitation codes encourage the use and reuse of existing buildings, as well as offset the negative effects of urban blight. Rehabilitation codes promote community redevelopment and promote the rehabilitation of affordable housing.

Rationale for Feasibility of Developing a Rehabilitation Code

The Ad Hoc committee's rationale for feasibility of developing a rehabilitation code is based on the predictability and proportionality of the alteration projects; defining scopes of work more concisely including renovation, alteration, and reconstruction by levels of alteration, using the percentage of the altered area as criteria. Egress and hazardous levels were also considered. It was determined that low-income housing and urban blight are critical elements in the need for a rehabilitation code. A code should facilitate the ability to rehabilitate existing buildings.

Recommendations

The Florida Building Commission concluded that development of a rehabilitation code is feasible and considers the benefits warrant developing such a code. The commission recommends:

- That the new Florida Building Code and building rehabilitation related issues be evaluated for one year.
- That a summary be provided to the Legislature regarding the effectiveness of appropriate sections of the Florida Building Code and that changes be made as needed based on the evaluation.
- That the Legislature endorse the development and implementation of a one and two family dwelling code immediately, separate from a rehabilitation code, in order to preserve and enhance homestead properties.
- That it investigate rehabilitation thresholds and compare the Florida Building Code to the International Residential Code and other appropriate model codes as part of the evaluation and development of a rehabilitation code.

Building Code Administration and Inspection

Until 2001, Florida law granted building construction and inspection responsibilities to local governments, 14 state agencies, and local school boards. In 1998, the Legislature assigned building code enforcement responsibilities, effective 2001, to local governments. Only public school, community college, and state university facilities, as well as plans review for manufactured buildings and prototype buildings approved by the Florida Building Commission, were exempted from this requirement. However, inspectors, plans reviewers, and administrators for public schools, community colleges, and state universities were required to become certified

under Part XII of ch. 468, F.S., if they wanted to continue their employment. Notwithstanding this requirement, s. 468.609(6)(e), F.S., allows such officials to continue working in their current position without obtaining a standard certificate, provided they obtain a limited certificate from the board. However, if such persons wish to advance to another position, or to work in a different jurisdiction, they must obtain a standard certification. In addition, such persons must submit an application for the limited certificate by March 1, 2003.

Currently, s. 553.72, F.S., preempts to local governments the power to inspect all buildings, structures, and facilities within their jurisdiction. Section 553.73(1)(e), F.S., places the responsibility for enforcement, interpretation, and regulation of the Florida Building Code with specified local board or agencies. Section 553.71(5), F.S., defines "'Local enforcement agency" as:

“an agency of local government, a local school board, a community college board, or a university in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.”

Part XII of ch. 468, F.S., provides for the certification of building code administration and inspection personnel. Section 468.602, F.S., exempts fire certified fire-safety inspectors, certified architects, certified engineers, and certified contractors from the requirements of Part XII. Section 468.603, F.S., provides definitions. Section 468.604, F.S., specifies the responsibilities of building code administrators, plans examiners, and inspectors. Section 468.605(2), F.S., creates Florida Building Code Administrators and Inspectors Board, which consists of nine members of various certification categories.

Section 468.609, F.S., provides the standards for certification of building code administrators, plans examiners, and inspectors. Subsection (4) provides that no person may engage in the duties of these positions unless they have either a standard, a limited, or a provisional certificate, currently valid, issued by the board attesting to the person's qualifications to hold such position. To obtain a standard certificate, subsection (5) requires an individual pass an examination approved by the board which demonstrates that the applicant has fundamental knowledge of the state laws and codes relating to the construction of buildings for which the applicant has building code administration, plans examination, or building code inspection responsibilities.

Subsection (6) allows a building code administrator, plans examiner, or building code inspector holding office on July 1, 1993, to continue working in that position without obtaining a standard certificate, provided they obtain a limited certificate from the board. However, if such persons wish to advance to another position, or to work in a different jurisdiction, they must obtain a standard certification. Paragraph (6)(e) provides a similar “grandfather” provision for persons employed by an educational board, the Department of Education, or the State University System, as building code administrators, plans examiners, and inspectors. However, such persons must submit an application for the limited certificate by March 1, 2003.

Section 468.613, F.S., provides the board authority to grant certificates by endorsement when the board determines other certificates or training programs are comparable to those required under this chapter.

Section 468.627(4), F.S., provides that employees of local government agencies having responsibility for building code inspection, building construction regulation, and enforcement of building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes are exempt from application fees or examination fees.

Amendments to the Florida Building Code

Section 553.73(4)(b), F.S., allows local governments to adopt amendments to the technical provisions of the Florida Building Code. However, such amendments may not be adopted more than once every 6 months, and the amendment must impose more stringent requirements than those specified in the Florida Building Code. To adopt such amendments, the local government must determine, following a public hearing, that there is a need to strengthen the requirements of the Florida Building Code. This determination must be based upon a review of local conditions which demonstrates that local conditions justify more stringent requirements than those specified in the Florida Building Code for the protection of life and property.

Membership of the Florida Building Commission

Section 553.74(1), F.S., establishes the Florida Building Commission. The commission is composed of 23 members, consisting of the following:

- One architect registered to practice in this state and actively engaged in the profession;
- One structural engineer registered to practice in this state and actively engaged in the profession;
- One mechanical contractor certified to do business in this state and actively engaged in the profession;
- One electrical contractor certified to do business in this state and actively engaged in the profession;
- One member from fire protection engineering or technology who is actively engaged in the profession;
- One general contractor certified to do business in this state and actively engaged in the profession;
- One plumbing contractor licensed to do business in this state and actively engaged in the profession;
- One roofing, sheet metal, or air-conditioning contractor certified to do business in this state and actively engaged in the profession;
- One residential contractor licensed to do business in this state and actively engaged in the profession;
- Three members who are municipal or district codes enforcement officials, one of whom is also a fire official;
- One member who represents the Department of Insurance;
- One member who is a county codes enforcement official;
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state;

- One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry;
- One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession;
- One member who is a representative of a municipality or a charter county;
- One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry;
- One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management;
- One member who is a representative of the insurance industry;
- One member who is a representative of public education; and
- One member who shall be the chair.

All appointments are for terms of 4 years, except that of the chair who serves at the pleasure of the Governor. Any member who, during his or her term, ceases to meet the qualifications for the original appointment, through ceasing to be a practicing member of the profession indicated or otherwise, must forfeit membership on the commission.

Elevator Inspections

Chapter 399, F.S., provides that the Department of Business and Professional Regulation (DBPR) is responsible for the administration and operation of all laws and rules relating to the inspection of elevators. Before the chapter was amended in the 2000 and 2001 Legislative Session, DBPR performed all elevator inspection services required by law, and elevator and inspection companies were required, regardless of the number of their employees, to have only one person certified to construct and inspect elevators.

Sections 24 through 27 of ch. 2000-141, L.O.F., amended ch. 399, F.S., to allow the private inspectors, with DBPR oversight, limited authority to provide periodic inspections of elevators. Sections 5 through 17 of ch. 2001-186, L.O.F., created the Elevator Safety Act in ch. 399, F.S., which, among other things, expanded professional certification categories and authorized private inspectors to provide final inspections on new construction, alterations, or modifications of elevators. The law also created the Elevator Safety Technical Advisory Committee. DBPR retained the responsibility for inspecting and granting temporary operation permits for elevators in buildings under construction or renovation.

Section 399.01, F.S., provides definitions for the Elevator Safety Act. It specifies what constitutes an elevator, to include escalators, and establishes various categories of permits and professional certifications required to construct, install, inspect, maintain and repair elevators.

Section 399.02, F.S., provides for general requirements of the act. Paragraph (5)(c) requires elevator owners to report to DBPR whether they have a service maintenance contract on their elevators. DBPR is required to “determine whether the provisions of the service maintenance contract and its implementation ensure the safe operation of the elevator.”

Section 399.03, F.S., governs the design, installation and alteration of elevators. Subsection (1) states the elevators may not be erected, constructed, installed, or altered within buildings or

structures unless a permit has been obtained from the department before the work is commenced. Subsection (5) requires that new elevator installations must be performed by a person to whom a license to install or service an elevator has been issued. After installation, the licensed person, firm, or company must certify compliance with the applicable sections of this chapter and the Florida Building Code. Before any elevator is used, except those in a private residence, it must be inspected by a licensed inspector not employed or associated with the elevator construction permit-holder and certified as meeting the safety provisions of the Florida Building Code. Subsection (7) requires permit-holders to notify DBPR, in writing, at least 7 days before completion of the work and must, in the presence of a licensed elevator inspector not associated with or employed by the installing company or contractor, subject the newly installed, relocated, or altered portions of the elevator to tests required to show that the elevator meets the applicable provisions of the Florida Building Code.

Upon successful inspection, the owner or lessee must apply to the department for a certificate of operation. Subsection (6) requires that certificates of operation be annually renewed, provided that each elevator has a current satisfactory inspection. These certificates must be clearly displayed on or in each elevator or in the machine room for use by and for the benefit of inspectors and code enforcement personnel.

Section 399.049, F.S., provides DBPR with the authority to suspend or revoke professional licenses or certificates of competency, and to impose administrative penalties for specific violations.

Section 399.061(1), F.S., requires all elevators be subject to annual inspections by a certified elevator inspector or by a municipality or county under contract with DBPR. However, if the elevator is maintained pursuant to a service maintenance contract continuously in force, it only needs to be inspected once every 2 years. However, DBPR has the authority to inspect an elevator whenever necessary to ensure its safe operation or when a third-party inspection service is not available for a routine inspection. Subsection (2) authorizes DBPR to employ state elevator inspectors to conduct the inspections and to charge an inspection fee for each inspection in an amount sufficient to cover the costs of that inspection, as provided by rule. Each state elevator inspector is required to hold a certificate of competency issued by DBPR.

Section 399.07, F.S., provides for certificates of operation and temporary operation permits. Paragraph (1)(a) states that a certificate of operation may not be issued until the elevator company supervisor signed an affidavit stating that the elevator company supervisor directly supervised construction or installation of the elevator. Certificates of operation are valid for 1 year unless sooner suspended or revoked. DBPR is required to adopt by rule a fee schedule for the renewal of certificates of operation. The certificate of operation must be posted in a conspicuous location on the elevator and must be framed with a transparent cover. All fees must be deposited into the Hotel and Restaurant Trust Fund.

Subsection (2) authorized DBPR to issue a temporary operation permit authorizing the temporary use of an elevator during installation or alteration to an elevator company or general contractor acting as a general agent of an elevator company. Temporary operation permits are limited to 30 days, with renewal at the discretion of the department. Temporary permits, and a notice bearing a statement that the elevator has not been finally approved by a state elevator inspector, must be

conspicuously posted in the elevator. DBPR is authorized to charge a fee, set by rule in an amount not greater than \$100, for each permit. All fees must be deposited in the Hotel and Restaurant Trust Fund.

Section 399.105, F.S., provides for administrative fines for violations of this chapter. Subsection (2) provides that “no fine may be imposed under this subsection for commencing installation without a construction permit if such permit is issued within 60 days after the actual commencement of installation.”

Section 399.106, F.S., provides for the establishment of an Elevator Safety Technical Advisory Committee.

Section 399.125, F.S., requires that within 5 working days after any accident or incident occurring in or upon any elevator, the certificate of operation holder must report the accident or incident to the division on a form prescribed by the division. Failure to timely file this report is a violation of this chapter and will subject the certificate of operation holder to an administrative fine, to be imposed by the division, in an amount not to exceed \$1,000.

Section 399.13, F.S., authorizes DBPR to enter into contracts with municipalities or counties to issue construction permits, temporary operation permits, and certificates of operation; to provide inspection of elevators; and to enforce the applicable provisions of the Florida Building Code, as required by this chapter. Each such agreement must include a provision that the municipality or county will maintain for inspection by DBPR copies of all applications for permits issued, a copy of each inspection report issued, and proper records showing the number of certificates of operation issued. Each permit must include a provision that each required inspection be conducted by the holder of a certificate of competency issued by DBPR, and may include such other provisions as deemed necessary by DBPR.

Currently, Miami-Dade and Broward Counties, the cities of Miami and Miami Beach, and Reedy Creek Improvement Districts contract with DBPR to inspect elevators in their respective jurisdictions.

Section 509.072, F.S., creates the Hotel and Restaurant Trust Fund to be used by the Division of Hotels and Restaurants of DBPR for expenses of administration and operation and carrying out all laws and rules relating to public lodging and public food services establishments and inspection of elevators. All funds collected and the amounts paid for licenses and fees are to be deposited into the trust fund.

Non-Residential Farm Buildings

Section 604.50, F.S., provides that a non-residential farm building means any building or structure located on a farm that is not used as a residential dwelling. Both this provision and s. 553.73(8)(c), F.S., exempts “nonresidential farm buildings on farms” from the requirements of the Florida Building Code. Section 553.73(8)(i), F.S., grants the Department of Agriculture and Consumer Services the authority to adopt by rule, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. To date, the department has not adopted such a rule.

The Attorney General was recently asked whether building permits were required for nonresidential farm buildings in light of s. 604.50, F.S. He responded as follows:

The plain language of sections 553.73(7)(c) and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm. (AGO 01-71)

III. Effect of Proposed Changes:

Rehab Code

Section 1 creates an unspecified section of Florida Law to require the Florida Building Commission to develop building code provisions to facilitate rehabilitation and use of existing structures. The commission must identify legislative changes required to implement the provisions and report to the Legislature the activities undertaken in response to this charge before January 1, 2003.

Elevator Safety

Sections 2 through 11 amend ch. 399, F.S., to transfer from DBPR to the private sector the responsibility for inspecting elevators for temporary use while it is installed or under alteration; to allow a local government that assumes elevator inspection duties to hire private inspector to conduct inspections; to require an annual inspection for all elevators, regardless as to whether they are under service maintenance contracts; to restrict the use of elevator inspection program revenue to program uses; and to make a number of technical changes and clarifications.

Section 2 amends s. 399.01, F.S., which provides the definitions for the Elevator Safety Act:

- It deletes the definition of “certificate of competency” as this term is replaced by “elevator certificate of competency” throughout the chapter.
- It deletes the definition of “escalator” at subsection (8).
- It amends the definition of “service maintenance contracts” to include a clause specifying that it be “made available upon request of the department for purposes of oversight and monitoring.”
- The term “Temporary operation permit” is renamed “Temporary operation inspection” and is redefined as “an inspection performed by a certified elevator inspector, the successful passage of “which permits the temporary use of a noncompliant elevator as provided by rule. This change is consistent with the delegation of inspection and certification of temporary elevators from DBPR to private inspectors provided for in section 399.03(10)(a), F.S., as proposed in this bill.
- It amends the definition of “certified elevator inspector” to require inspectors acquire the credentials of the American Society of Mechanical Engineers as opposed to the National Association of Elevator Safety Authorities.
- It amends the definition of “elevator helper” to requires they be under the supervision of an elevator certificate-of-competency holder rather than a certified elevator inspector or elevator technician. Elevator technicians must, by definition, have a certificate-of-competency.

- It amends the definition of “elevator certificate of competency” to specify the qualifications to obtain the certificate.
- Finally, it specifies that a licensed mechanical engineer whose license is in good standing may be granted an elevator certificate of competency.

Section 3 amends s. 399.02, F.S., to delete a requirement that the department review service maintenance contracts and determine whether they ensure safe operation of the elevator. Under proposed changes to s. 399.061, F.S., in Section 6, such contracts must continue to be submitted to DBPR to verify such contracts are being maintained. The section also makes each elevator owner responsible for inspections after a certificate of operation has been issued.

Section 4 amends s. 399.03(1), F.S., to specify that construction, installation, and alteration permits must be applied for by a registered elevator company, rather than a “person, firm, or corporation holding a current elevator contractor’s license.” Registered elevator companies are typically a “person, firm, or corporation holding a current elevator contractor’s license.” Application requirements are also specified, to include construction plans and a statement attesting that the plans meet the applicable codes. Similarly, subsection (5) is amended to require that elevator installations must be performed by a registered elevator company. This subsection is further amended to include additional safeguards relating to conflict of interest between the certified elevator inspectors performing final inspections and the elevator construction permit-holder or owner of the elevator. In addition, the inspector must provide DBPR with the original inspection report within 5 days after the inspection. Finally, the certificate of operation may not be issued until the permit-holder provides an affidavit signed by the construction supervisor attesting that the supervisor directly supervised the construction or installation of the elevator.

Subsection (6), which provided that certificates of operation be annually renewed, and that these certificates be clearly displayed on or in each elevator or in the machine room for use by and for the benefit of inspectors and code enforcement personnel, is deleted. This provision is currently required in s. 399.06, F.S., without the option for posting in the machine room.

Subsection (7) is re-designated as subsection (6) and is amended to require the permit-holder to notify DBPR of the scheduled final inspection date and time, at DBPR’s request. The provision requiring the permit-holder to notify DBPR, in writing, at least 7 days before completion of the work, is deleted. In addition, the requirement that the permit-holder, in the presence of a licensed elevator inspector not associated with or employed by the installing company or contractor, subject the newly installed, relocated, or altered portions of the elevator to tests required to show that the elevator meets the applicable provisions of the Florida Building Code, is deleted. A similar requirement is specified in subsection (5).

Subsection (10) is created to transfer to this section modified provisions for inspections for the temporary use of elevators during installation or alteration, from s. 399.07(2), F.S. However, it is implied that the required inspection is to be done by a private inspector, not a state elevator inspector. (See the definition of temporary operation inspection in proposed s. 399.01(12), F.S.) As these were the last inspections required of state elevator inspectors, this completes the privatization of elevator inspections by DBPR. Criteria for satisfying the inspection are specified. The inspection report must and a DBPR approved notice must be conspicuously posted in the elevator.

Section 5 amends s. 399.049, F.S., to revise the grounds for suspension or revocation of certification or registration. New grounds include failure of a certified elevator inspector to file a copy of an elevator inspection report within 5 days of the inspection and fraud, misrepresentation, or bribery in the practice of the profession. The ground of a failure to notify the department and the certificate of operation holder of an elevator that is out of compliance with the elevator safety code is deleted.

Section 6 amends s. 399.061(1), F.S., to delete the current exception to the requirement for annual inspections. This deleted provision allows inspections every two years for elevators that are subject to service maintenance contracts. Consequently, an annual inspection is now required for all elevators. The requirement that a statement verifying the existence and performance of a service maintenance contracts be filed at least annually is retained in new paragraph (b).

Subsection (2) is amended to retain the authority of DBPR to employ state elevator inspectors, but with the condition that this authority only exists “when a private certified elevator inspector is not available.” Implementing this provision may be problematic for DBPR, as the intent of these changes appears to be to allow DBPR the flexibility to use state employees, on short notice, when private inspectors are unavailable.

Section 7 amends s. 399.07, F.S., to delete the requirement that (1) that a certificate of operation may not be issued until the elevator company supervisor signed an affidavit stating that the elevator company supervisor directly supervised construction or installation of the elevator. This requirement is transferred to proposed s. 399.03(5), F.S. Paragraph (1)(b) is re-designated as subsection (1) and is amended to extend the period of validity of a certificate of operation from one to two years. The annual inspection, on which the certificate is contingent upon, is still required. (See s. 399.061(1)(a), F.S.) The provisions on certificates of operation in paragraph (1)(d), to include fee schedules, are reorganized and moved to this newly designated subsection (1).

The section also deletes subsection (2), the provisions on temporary use permits, which are modified and transferred to s. 399.03(10)(a), F.S. Among the modifications is requiring inspection by a private inspector, not a state elevator inspector. As the state is no longer conducting these inspections, an inspection fee provided in current paragraph (2)(d) is deleted.

Subsection (6) is amended to specify that suspensions of certificate of operation remain in effect until DBPR “receives satisfactory results of an inspection performed by a certified elevator inspection indicating” the elevator has been brought into compliance. This change is consistent with the transfer of elevator inspections from DBPR to the private sector.

Section 8 amends s. 399.105, F.S., to delete a restriction on issuance of a fine for commencing installation of an elevator without a construction permit; to shorten the time for correction of a violation from 60 days to 30 days, with discretion to extend the time for good cause shown; and to subject an elevator owner who continues to operate an elevator after it has been sealed by DBPR to civil fine.

Section 9 amends s. 300.106, F.S., to make a technical correction. The term “commission” is replaced with “committee.”

Section 10 amends s. 399.125, F.S., to delete a requirement that an “incident” occurring in or upon any elevator be reported to the division, with “accidents” still to be reported.

Section 11 amends s. 399.13, F.S., to allow a local government that assumes elevator inspection duties to hire private inspectors to conduct inspections.

Building Code Administration and Inspection

Sections 12 through 17 amend Part XII of ch. 468, F.S., to create three new categories of building code enforcement officials specifically designated for public educational facilities; to expand the Florida Building Code Administrators and Inspectors Board to include an educational building code administrator; and to provide an appropriation for public educational certifications.

Section 12 amends s. 468.603, F.S., to expand the definitions in Part XII of ch. 468, F.S., which provides for the certification of building code administration and inspection personnel. The definition of “building code inspector” is amended to include employees of educational boards. The definition of “plans examiner” in subsection (7) is amended to include the category of public educational building plans examiner. Three new definitions are added to the section. Paragraph (6)(i) is created to define public educational building inspector, who is any person qualified to inspect and determine that public educational buildings constructed by educational boards are in accordance with the building codes and accessibility laws. Subsection (9) is created to define public educational building code administrator, who is any employee of an educational board with building construction regulation responsibilities charged with direct administration or supervision of building plan review, enforcement, or inspection responsibilities. This term is synonymous with “building official” as used in the Florida Building Code. Subsection (10) is created to define educational board, which means a district school board, a community college board, a university board, the Florida School for the Deaf and Blind, or the Florida Board of Education.

Section 13 creates s. 468.604(4), F.S., to specify the responsibilities of public educational building code administrators, plans examiners, and inspectors. Such persons must ensure that public educational buildings are constructed in accordance with the Florida Building Code, applicable rules, and statutes and, to the extent of the assigned licensed responsibility, to ensure that public money is expended appropriately.

Section 14 amends s. 468.605(2), F.S., to change the composition of the Florida Building Code Administrators and Inspectors Board, to require that one of the two members serving as building code administrators be an educational building code administrator, a certification category created in section 15 of the CS.

Section 15 creates subsections (4) and (5) of s. 468.609, F.S., to specify requirements for certification as a public educational building code administrator, plans examiner, and inspector. To qualify to take the examination to become certified as a plans examiner or building inspector, the person must be at least 18 years old, be of good moral character, successfully complete the

building code training program core curriculum appropriate to the licensing category sought, and meet one of the following criteria:

- Have 5 years experience in construction or a related field, building code inspection, or plans review corresponding to the certification category sought, with at least 1 year of this experience in public educational construction, inspection, or plans review;
- Have a combination of postsecondary education in construction or a related field and experience totaling four years, with at least 1 year of experience in public educational construction, inspection, or plans review;
- Have a combination of technical education in construction or a related field and experience totaling four years, with at least 1 year of experience in public educational construction, inspection, or plans review; or
- Currently hold a standard certificate issued by the board and successfully complete a training program of not less than 100 hours, as established by the board.

To qualify to take the examination to become certified as a public educational building code administrator, the person must be at least 18 years old, be of good moral character, successfully complete the building code training program core curriculum appropriate to the licensing category sought, and meet one of the following criteria:

- Have 10 years experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years in a supervisory position, and have at least 2 years of this experience in public educational construction;
- Have a combination of postsecondary education in construction or a related field, no more than 5 years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, which combination totals 10 years, with at least 5 years in a supervisory position, and have at least 2 years of this experience in public educational construction; or
- Currently hold a standard certificate issued by the board and successfully complete a training program of not less than 100 hours in the certification category sought, as established by the board.

Subsection (6) is re-designated as subsection (8) and is amended to provide that by March 1, 2008, or 5 years after the closing of the limited educational license date, all limited certificate qualified individuals must have applied for standard educational certifications in the class, and at the performance level of the individual, and must have successfully completed the application, testing, and certification process for standard educational certifications.

Subsection (7) is re-designated as subsection (9) and is amended to create new paragraph (b), to require the board to provide for a new category of certificate: the provisional educational certificate for code administrators, plans examiners, and inspectors. Such certificates are to be valid for 3 to 5 years, to any newly employed or promoted educational building code inspector or educational plans examiner who meets the eligibility requirements for standard certification, without the educational experience, and any newly employed or promoted educational building

code administrator who meets the eligibility requirements for standard certification, without the educational experience. However, such applicants must have at least one of the required years experience in commercial construction.

Section 16 amends s. 468.613, F.S., which provides the board authority to grant certificates by endorsement. Subsection (2) is created to require the board to review, coordinate, and incorporate into the public educational classifications certifications information and testing data currently under the responsibility of the Department of Education (DOE). The board is authorized to contract with DOE for any of the services necessary to provide public educational certification. A deadline for incorporating licensure and certification programs by rule is imposed. Finally, \$25,000 is transferred to the Building Administrators and Inspectors Board budget from the Public Educational Capital Outlay administrative budget to fund a one-time testing program startup for public educational certification.

Section 17 amends s. 468.627(4), F.S., to provide that employees of educational boards having responsibility for building code inspection, building construction regulation, and enforcement of building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes are exempt from application fees or examination fees.

Hotel and Restaurant Trust Fund

Section 18 creates subsection (2) of s. 509.072, F.S., to require DBPR to maintain a separate account within the Hotel and Restaurant Trust Fund for funds collected for inspection of elevators. It requires that, to the maximum extent possible, DBPR directly charge all expenses to the account for elevator inspections. "Direct charge expenses" include, but are not limited to, costs for investigations, examinations, or legal services. DBPR is to proportionately allocate expenses that cannot be directly charged among the accounts of expenses it incurred. DBPR is required to maintain adequate records to support its allocation of expenses. This provision prohibits using elevator inspection funds to pay for hotel and restaurant regulation expenses, and prohibits transfer of the funds to any other trust fund.

Local Amendments to the Florida Building Code

Section 19 amends s. 553.73(4)(b), F.S., to require that when local governments adopt local amendments to the Florida Building Code, their review of local conditions must demonstrate "by evidence or data" that:

- The geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code;
- The local need is addressed by the proposed local amendment; and
- The amendment is no more stringent than necessary to address the local need.

In addition, the local government adopting the amendment, if challenged before the compliance review board or the commission, must bear the burden of proving that the amendment complies with these conditions.

Membership of the Florida Building Commission

Section 20 amends s. 553.74, F.S., to change the membership of the Florida Building Commission. The mechanical contractor member is changed to require either an “air-conditioning or” mechanical contractor. The roofing, sheet metal, or air-conditioning contractor member is changed to delete the air-conditioning contractor option. Notwithstanding this change in membership designation, persons serving in these two member positions “may remain on the commission until their term has expired, and shall be eligible for reappointment to that position for a second term...” This is to allow current members in these positions to continue serving through their current or optional second terms.

Non-Residential Farm Buildings

Section 21 amends s. 604.50, F.S., to narrow the definition of non-residential farm buildings, which are exempt from the requirements of the Florida Building Code. (See s. 553.73(8)(c), F.S.) Under this provision, a non-residential farm building means

“any building or support structure that is used for agricultural purposes, is located on a farm that is not used as a residential dwelling, and is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S.

Section 193.461, F.S., governs the classification of agricultural land for ad valorem tax purposes. Current law provides that a non-residential farm building means any building or structure located on a farm that is not used as a residential dwelling.

Section 22 provides that, unless otherwise provided, the CS will become effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS requires the Florida Building Commission to develop building code provisions to facilitate rehabilitation and use of existing structures. To the extent a rehabilitation code reduces the cost of rehabilitating existing structures, the owners of such structures will benefit from this bill.

This CS privatizes inspections for temporary elevator use, thereby creating new opportunities for private sector employment.

This CS also narrows the definition of non-residential farm buildings, which are exempt from the requirements of the Florida Building Code. Consequently, additional buildings are likely to be subject to the oversight of local building inspectors.

C. Government Sector Impact:

This CS requires the Florida Building Commission to develop building code provisions to facilitate rehabilitation and use of existing structures. This requirement will increase the commission's workload.

This CS relieves DBPR of the responsibility for inspecting elevators for temporary use, transferring such responsibilities to the private sector.

This CS requires DBPR to maintain a separate account within the Hotel and Restaurant Trust Fund for funds collected for inspection of elevators. DBPR reports that they will result in a minimal workload increase in accounting.

VI. Technical Deficiencies:

Subsection 399.061(2), F.S., is amended to retain the authority of DBPR to employ state elevator inspectors, but with the condition that this authority only exists "when a private certified elevator inspector is not available." Implementing this provision may be problematic for DBPR, as the intent of this change appears to be to allow DBPR the flexibility to use state employees to provide inspections, on short notice, when private inspectors are unavailable.

VII. Related Issues:

Section 16 provides for the transfer of \$25,000 to the Building Administrators and Inspectors Board budget from the Public Educational Capital Outlay administrative budget to fund a one-time testing program startup for public educational certification.

VIII. Amendments:

None.