

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 911 w/CS Florida Building Code  
**SPONSOR(S):** Cretul  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 494

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Mitchell</u>	<u>Cutchins</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	<u>20 Y, 0 N w/CS</u>	<u>Mitchell</u>	<u>Cutchins</u>
3) <u>Appropriations</u>	<u></u>	<u>Hawkins</u>	<u>Baker</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill makes numerous changes related to the Florida Building Code and the Florida Building Commission:

- Provides that lawn storage buildings and storage sheds bearing the approval of the Department of Community Affairs may be delivered and installed without need of a contractor's or specialty license.
- Requires the Commission to select the most current version of the certain codes as the foundation codes of the updated Florida Building Code and changes the ability to modify the foundation codes.
- Makes changes related to technical amendments including prohibiting consideration of amendments rejected by staff.
- Allows the Governor to appoint Commission members from lists of candidates submitted by professional organizations or any other qualified person and changes the qualifications for most of the members
- Moves and expands into a new section existing provisions on interpreting the Florida Building Code;
- Modifies the requirements for truss-placement plans;
- Changes provisions related to the use of a private provider to provide building code inspection services and provides that a local government ordinance or local policy may not prohibit such use;
- Permits governing bodies of local governments to provide a schedule of reasonable fees for enforcing the Florida Building Code, subject to certain restrictions;
- Provides for the Florida Building Commission to expedite the adoption and implementation of the State Existing Building Code as part of the Florida Building Code;
- Changes the Building Code Training Program; and
- Modifies existing product approval and evaluation provisions including removing the authority for local approval of products, methods, or systems of construction.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0911c.ap.doc  
**DATE:** April 22, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |                                         |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

Part IV of chapter 553, Florida Statutes, sets forth the requirements for the Florida Building Code. The intent of the Legislature in providing for the Florida Building Code was to create a “mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code.”<sup>1</sup>

The Florida Building Commission (“Commission”) has adopted the Florida Building Code:

which shall 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, except as otherwise provided in this section.<sup>2</sup>

#### Lawn Storage Buildings and Storage Sheds

Currently manufactured buildings, except for custom or one-of-a-kind prototype manufactured buildings, must be approved and bear the insignia of approval of the Department of Community Affairs in order to be installed in Florida.<sup>3</sup> This insignia of approval indicates compliance with the Florida Building Code and provides an exemption from local amendments enacted by any local government.<sup>4</sup>

This bill expands the scope of this section to provide that lawn storage buildings and storage sheds bearing the approval of the Department of Community Affairs may be delivered and installed without need of a contractor’s or specialty license.

#### Updating the Florida Building Code

The Commission is required to update the Florida Building Code every three years.<sup>5</sup> The Florida Building Commission must consider changes made by the adopting entity of any selected model code for any model code incorporated into the Florida Building Code, and may subsequently adopt the new edition or successor of the model code or any part of such code, no sooner than 6 months after such

<sup>1</sup> See Fla. Stat. §553.72(1) (2003).

<sup>2</sup> See Fla. Stat. §553.73(1) (2003).

<sup>3</sup> See Fla. Stat. § 553.37(2) (2003).

<sup>4</sup> See Fla. Stat. § 553.37(3) (2003).

<sup>5</sup> See Fla. Stat. § 553.73(6) (2003).

model code has been adopted by the adopting organization.<sup>6</sup> The Commission is also empowered to modify any model code for Florida.<sup>7</sup>

This bill requires the Commission to select the most current version of the following codes adopted by the International Code Congress as the foundation codes of the updated Florida Building Code: the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, the International Code Council Electrical Code. The bill provides that the most current version must have been adopted by the International Code Congress and made available to the public at least 6 months prior to its selection by the Commission.

The bill changes the ability of the Commission to modify the foundation codes. Under the bill, modification is permitted “only as needed to accommodate the specific needs of the state.” The bill further provides that standards or criteria referenced by the codes shall be incorporated by reference and that only the amplification or modification shall be set forth in the Florida Building Code, if a referenced standard or criterion requires amplification or modification to be appropriate for use in this state. The bill requires amendments to the foundation codes that are Florida-specific to be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.

The bill continues to provide that the interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments of the Commission must be considered in updating the Florida Building Code. The bill adds language requiring these interpretations, statements, decisions, and amendments to be incorporated into the updated Florida Building Code only to the extent that they are needed to modify the foundation codes to accommodate the specific needs of the state.

The bill also provides that a rule updating the Florida Building Code may not take effect any sooner than 6 months after completion of the rule adoption process.

#### Technical Amendments to the Florida Building Code

The bill continues to allow the Commission to approve technical amendments to the Florida Building Code, but adds to the existing approval requirements for technical amendments to require that any such amendment must be needed in order to accommodate the specific needs of the state.

The Commission is still authorized to approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions and declaratory statements.<sup>8</sup> This bill, however, expands the sources of the “interpretations of the code” to include “final orders” and the “interpretations of hearing officer panels”

Currently the Commission may not approve amendments that do not “accurately and completely address all requirements for amendment.”<sup>9</sup> This bill expands those amendment requirements to require that all proposed amendments and information submitted with proposed amendments must be reviewed by Commission staff prior to consideration by any technical advisory committee. The bill provides that the staff reviews are for sufficiency only and are not intended to be qualitative in nature. The bill requires staff members to reject any proposed amendment that fails to include a fiscal impact statement providing information responsive to all criteria identified and prohibits proposed amendments rejected by members of the staff from being considered by the Commission or any technical advisory committee.

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<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

The bill also provides that within 60 days of the adoption by the International Code Council of permitted standards and conditions for unvented attic assemblies in the International Residential Code, the Commission shall initiate rulemaking to incorporate such permitted standards and conditions in the Florida Building Code.

#### Changes to the Appointment Process for the Florida Building Commission

The Commission is composed of 23 members.<sup>10</sup> Members of the Commission are appointed by the Governor, subject to confirmation by the Senate.<sup>11</sup> This bill allows the Governor to appoint Commission members from lists of candidates submitted by professional organizations or any other qualified person. This bill also changes the qualifications for most of the members of the Commission:

- The member who is an architect registered to practice in this state and actively engaged in the profession must come from a list of three candidates provided by the American Institute of Architecture, Florida Section.
- The member who is a structural engineer registered to practice in this state and actively engaged in the profession must come from a list of three candidates provided by the Florida Engineering Society.
- The member who is an air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession must come from a list of three candidates provided by the Florida Air Conditioning Contractors Association and the Florida Refrigeration and Air Conditioning Contractors Association.
- The member who is electrical contractor certified to do business in this state and actively engaged in the profession must come from a list of three candidates provided by the Florida Association of Electrical Contractors.
- The member from fire protection engineering or technology who is actively engaged in the profession must come from a list of three candidates provided by the Florida Fire Protection Engineers Society, Fire Marshals and Inspectors Association, and the Florida Fire Chiefs Association.
- The member who is a general contractor certified to do business in this state and actively engaged in the profession must come from a list of three candidates provided by the Associated Builders and Contractors of Florida and the Florida Associated General Contractors Council.
- The member who is a plumbing contractor licensed to do business in this state and actively engaged in the profession must come from a list of three candidates provided by the Florida Association of Plumbing, Heating, and Cooling Contractors.
- The member who is roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession from a list of three candidates provided by the Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association.
- The member who once had to be a “residential contractor” is only required to be a “contractor” licensed to do business in this state and actively engaged in the profession who must come from a list of three candidates provided by the Florida Home Builders Association.
- Two of the three members who are municipal or district codes enforcement officials must come from a list of four candidates provided by the Building Officials Association of Florida; the third

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<sup>10</sup> See Fla. Stat. § 553.74(1) (2003).

<sup>11</sup> See *id.*

member, who must be a fire official, must come from a list of three candidates provided by the Florida Fire Marshals and Inspectors Association.

- The member who is a county codes enforcement official must come from a list of three candidates provided by the Building Officials Association of Florida.
- The member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry from a must come from list of three candidates provided by the Florida Manufactured Housing Association.
- The member who is a mechanical or electrical engineer registered to practice in this state and actively engaged in the profession from a must come from a list of three candidates provided by the Florida Engineering Society.
- The member who is a representative of a municipality or a charter county must come from a list of three candidates provided by the Florida League of Cities and the Florida Association of Counties.
- The member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry must come from a list of three candidates provided by the Florida Building Materials Association, the Florida Concrete and Products Association, and the Fenestration Manufacturers Association.
- The member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management must come from a list of three candidates provided by the Building Owners and Managers Association.
- The member who is a representative of the insurance industry must come from a list of three candidates provided by the Florida Insurance Council.

Currently a person who was serving on the Commission on October 1, 2003, as the member who is an air-conditioning or mechanical contractor certified to do business in this state and actively engaged in the profession, or the member who is roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession, is eligible for reappointment to the Commission regardless of whether he or she meets the new appointment requirements as long as he or she has served less than two full terms.<sup>12</sup> This bill changes this qualifying date to October 1, 2004.

#### Changes to the Specific Powers of the Commission

This bill moves, and changes, some of the specific powers of the Commission related to interpreting the Florida Building Code into a new section relating to the same.

The bill also changes the specific power of the Commission to “determine the types of products requiring approval for local and statewide use” to “determine the types of products which may be approved by the Commission for statewide use.”<sup>13</sup>

#### Interpretations of the Florida Building Code

The bill creates a new section of the statute providing for the Florida Building Code related to interpretations.

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<sup>12</sup> See *id.*

<sup>13</sup> See Fla. Stat. § 553.77(1)(f) (2003).

The bill provides the intent of the Legislature as it relates to the interpretation of the Florida Building Code:

It is the intent of the Legislature that the Florida Building Code be interpreted by building officials, local enforcement agencies, and the Commission in a manner that protects the public safety, health, and welfare at the most reasonable cost to the consumer by ensuring uniform interpretations throughout the state and by providing processes for resolving disputes regarding interpretations of the Florida Building Code which are just and expeditious.

The bill then authorizes local enforcement agencies, local building officials, state agencies, and the Commission to interpret provisions of the Florida Building Code in a manner that is consistent with declaratory statements and interpretations entered by the Commission. The bill provides for resolution of conflicts between the Florida Fire Prevention Code and the Florida Building Code.

The bill establishes procedures that *may* be invoked regarding interpretations of the Florida Building Code:

- The Commission will issue declaratory statements pursuant to section 120.565, Florida Statutes, relating to the enforcement or administration by local governments of the Florida Building Code, upon written application by any substantially affected person, state agency or by a local enforcement agency.
- The Commission will issue declaratory statements pursuant to section 120.565, Florida Statutes, relating to part IV of chapter 553, Florida Statutes, the Florida Building Code, and sections of Chapter 515, the Residential Swimming Pool Safety Act, upon written application by any substantially affected person, state agency, or a local enforcement agency and subject to judicial review pursuant to section 120.68, Florida Statutes;
- The Commission will review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code after the local board of appeals has considered the decision, provided that such a board exists and its process is concluded within ten days. The bill provides the following procedures for review of local interpretations by the Commission:
  - As part of this review, the Commission must coordinate with the Building Officials Association of Florida, Inc., to designate panels composed of five members to hear requests to review decisions of local building officials. The members must be licensed as building code administrators under part XII of chapter 468, Florida Statutes, and must have experience interpreting and enforcing provisions of the Florida Building Code.
  - The requests to review a decision of a local building official interpreting provisions of the Florida Building Code may be initiated by any substantially affected person, including an owner or builder subject to a decision of a local building official, or an association of owners or builders with members who are subject to a decision of a local building official. In order to initiate this review, the substantially affected person must file a petition with the Commission, which the Commission shall adopt and publish on the Building Code Information System. The bill provides the minimum requirements of the form.
  - The petitioner must submit the petition to the local building official, who will place the date of receipt on the petition. The local building official must respond to the petition in accordance with the form and shall return the petition along with his or her response to the petitioner within 5 days after receipt, exclusive of Saturdays, Sundays, and legal holidays. The petitioner may file the petition with the Commission at any time after the local building official provides a response. If no response is provided by the local building official, the petitioner

may file the petition with the Commission 10 days after submission of the petition to the local building official and shall note that the local building official did not respond.

- Upon receipt of a complete petition, the Commission must immediately provide copies of the petition to a panel. The Commission must also publish the petition, including any response submitted by the local building official, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.
  - The panel must conduct proceedings as necessary to resolve the issues. The panel must give due regard to the petitions, and the response, and to comments posted on the Building Code Information System and must issue an interpretation regarding the provisions of the Florida Building Code within 21 days after the filing of the petition. The panel must render a determination based upon the Florida Building Code or, if the code is ambiguous, the intent of the code. The interpretation of the panel must be provided to the Commission, which shall publish the interpretation on the Building Code Information System and in the Florida Administrative Weekly. The interpretation must be considered an interpretation entered by the Commission, and is binding upon the parties and upon all jurisdictions subject to the Florida Building Code, unless it is superseded by a declaratory statement issued by the Florida Building Commission or by a final order entered after an appeal proceeding.
  - Given the intent of the Legislature that review proceedings be completed within 21 days after the date that a petition seeking review is filed with the Commission, the time periods set forth can only be waived upon consent of all parties.
  - Any substantially affected person may appeal an interpretation rendered by a “hearing officer panel” by filing a petition with the Commission. Such appeals shall be initiated in accordance with chapter 120, Florida Statutes, and the uniform rules of procedure and must be filed within 30 days after publication of the interpretation on the Building Code Information System or in the Florida Administrative Weekly. Hearings shall be conducted pursuant to chapter 120, Florida Statutes, and the uniform rules of procedure. The burden of proof in any such proceeding is on the party who initiated the appeal and the fact that an owner or builder has proceeded with construction shall not be grounds for determining an issue to be moot if the issue is one that is likely to arise in the future. Decisions of the Commission are subject to judicial review pursuant to section 120.68, Florida Statutes. The final order of the Commission is binding upon the parties and upon all jurisdictions subject to the Florida Building Code.
  - These “hearing officer panels” and the Commission are permitted to conduct proceedings to review decisions of local building code officials, notwithstanding sections 120.565, 120.569, and 120.57.<sup>14</sup>
- The Commission must issue a declaratory statement pursuant to section 120.565, Florida Statutes, relating to an agency's interpretation and enforcement of the specific provisions of the Florida Building Code which the agency is authorized to enforce, upon written application by any substantially affected person. The Commission, however, only has advisory powers with respect to any decision of the State Fire Marshal made pursuant to chapter 633, Florida Statutes.
  - The Commission must establish an informal process, by rule, of rendering nonbinding interpretations of the Florida Building Code.<sup>15</sup>

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<sup>14</sup> See HB 911 § 9 (2004) (creating a new paragraph (c) of subsection (17) of section 120.80, Florida Statutes).

<sup>15</sup> See Fla. Stat. § 553.77(7) (2003). This paragraph specifically authorizes the Commission to refer interpretive issues to organizations that represent those engaged in the construction industry. This subsection also provides the intent of the Legislature: (1) that the commission create a process to refer questions to a small, rotating group of individuals licensed

As it relates to the procedures that *may* be invoked regarding interpretations of the Florida Building Code, the bill also provides that local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review and may not be appealed to the Commission if the local governing body finds that there is an immediate danger to the health and safety of the public.

The bill also permissively authorizes the Commission to designate a Commission member with demonstrated expertise in interpreting building plans to attend each meeting of the advisory council created in section 553.512, Florida Statutes. The Commission member may vary from meeting to meeting, shall serve on the council in a nonvoting capacity, and shall receive per diem and expenses as provided in section 553.74(3), Florida Statutes.

#### Provisions for Truss-Placement Plans

Part of section 553.79, Florida Statutes, currently permits the certifications by certain contractors<sup>16</sup> to be considered equivalent to sealed plans and specifications by a person licensed under chapter 471<sup>17</sup> or chapter 481, Florida Statutes,<sup>18</sup> by local enforcement agencies for plans review for permitting purposes relating to compliance with the wind resistance provisions of the code or alternate methodologies approved by the Commission for one and two family dwellings.

Local enforcement agencies are permitted to rely upon such certification by contractors that the plans and specifications submitted conform to the requirements of the code for wind resistance. Upon good cause shown, local government code enforcement agencies may accept or reject plans sealed by persons licensed under chapter 471, chapter 481, or chapter 489, Florida Statutes.

This bill amends this provision to provide that a truss-placement plan is not required to be signed and sealed by an engineer or architect unless prepared by an engineer or architect or specifically required by the Florida Building Code.

#### Alternative Plans Review and Inspection

Section 553.791, Florida Statutes, currently permits the fee owner of a building, notwithstanding any other provision of law, to use a private provider to provide building code inspection services. The bill makes a number of changes related to this alternative plans review and inspection:

- provides that a local government ordinance or local policy may not prohibit the use of a private provider to provide building code inspection services;
- permits the *contractor* of a fee owner to also use a private provider to provide building code inspection services *upon written authorization from the fee owner*;
- allows a fee owner or the contractor of a fee owner to notify the local building official as to the use of a private provider either at the time of application or no less than 1 week prior to the provision of building code inspection services by a private provider;
- changes the insurance requirement for private providers of building code inspection services from having to maintain insurance for professional and comprehensive general liability with

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under part XII of chapter 468, Florida Statutes, to which a party could pose questions regarding the interpretation of code provisions; and (2) that the process provide for the expeditious resolution of the issues presented and publication of the resulting advisory and nonbinding interpretation on the Building Code Information System.

<sup>16</sup> See Fla. Stat. § 553.79 (2003) (applies to contractors authorized under the provisions of section 489.115(4)(b), Florida Statutes).

<sup>17</sup> See Fla. Stat. ch. 471 (2003) (regulates the practice of engineering).

<sup>18</sup> See Fla. Stat. ch. 481 (2003) (regulates architecture, interior design, and landscape architecture).

minimum policy limits of \$1 million per occurrence including tail coverage for a minimum of five years by eliminating the comprehensive general liability requirement and the tail coverage requirement and providing that if the private provider chooses to secure "claims-made" coverage to fulfill the insurance requirement, then the provider must maintain the tail coverage while occurrence-based coverage is not subject to any tail coverage requirement

### Enforcement

Section 553.80, Florida Statutes, relates to enforcement of the Florida Building Code. Each local government must regulate building construction and enforce the Florida Building Code for all public or private buildings, structures, and facilities, unless such responsibility has been delegated to another unit of government.

This bill permits governing bodies of local governments to provide a schedule of reasonable fees, as authorized, for enforcing the Florida Building Code:

- These fees, and any fines or investment earnings related to the fees, must be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code.
- The total estimated annual revenue derived from fees and the fines and investment earnings related to the fees may not exceed the total estimated annual costs of allowable activities when providing the schedule of reasonable fees.
- Any unexpended balances must be carried forward to future years for allowable activities or to be refunded at the discretion of the local government.
- The fee structure for allowable activities must relate to the level of service provided by the local government
- The fees charged must be consistently applied.
- Recognized management, accounting, and oversight practices must be used to ensure that fees, fines, and investment earnings generated under this subsection are maintained and allocated or used as provided.

The bill defines the phrase "enforcing the Florida Building Code" as includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, building permit processing, and building code enforcement. The phrase also includes training costs associated with enforcement of the Florida Building Code as well as enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees."

The bill expressly prohibits certain costs are expressly prohibited from being financed with these fees: planning and zoning or other general government activities; inspections of public buildings for a reduced fee or no fee; public information requests, community functions, boards, and programs that are not directly related to enforcement of the Florida Building Code; and enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code.

## Expedited Adoption and Implementation of the State Existing Building Code

### *The Florida Building Commission Report to the 2002 Legislature*

Section 32 of chapter 2001-186, Laws of Florida, directed the Commission<sup>19</sup> to “research the issue of adopting a rehabilitation code for the state and shall report to the Legislature before the 2002 Regular Session regarding the feasibility of adopting such a code” and required the Commission to review the rehabilitation codes adopted by other states as part of its research.

In response, the chair of the Florida Building Commission, Raul Rodriquez, appointed the Rehabilitation Code Ad Hoc Committee.<sup>20</sup> This committee was charged with “identifying and researching issues critical to the feasibility of development a rehabilitation code.”<sup>21</sup> The committee researched the experience and rehabilitation codes of other states including: Maryland, Rhode Island, New Jersey, and Massachusetts.<sup>22</sup> The committee also researched related regulatory entities and the other issues involved in the development of a rehabilitation code.<sup>23</sup>

The committee found “that numbers other states and local jurisdictions have realized the benefits of developing and adopting a rehabilitation code.”<sup>24</sup> The rationale of the Ad Hoc committee for developing a rehabilitation code was based on: the predictability and proportionality of the alteration of 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; low-income housing and urban blight.<sup>25</sup>

Based on the work of the Ad Hoc committee, the Commission “concluded that the development of a rehabilitation code is feasible and considers the benefits warrant developing such a code.”<sup>26</sup> The Commission specifically recommended:<sup>27</sup>

- 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 evaluation;
- that the Legislature endorse the development and implementation of a one and two family dwelling rehabilitation code immediately, separate from a rehabilitation code, in order to preserve and enhance homestead properties; and
- 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.

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<sup>19</sup> See Fla. Stat. § 553.74 (2003)(creating the Commission and providing for its membership, terms, and appointments).

<sup>20</sup> See Florida Building Commission, *The Florida Building Commission Report to the 2002 Legislature* (2002) at pp. 9-10 (available at [http://www.dca.state.fl.us/fhcd/fbc/publications/1\\_publications.htm](http://www.dca.state.fl.us/fhcd/fbc/publications/1_publications.htm)).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* Additional findings of the committee included: “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 house.”

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

*The Florida Building Commission Report to the 2003 Legislature*

Based on these initial recommendations, the Commission reported the following actions in *The Florida Building Commission Report to the 2003 Legislature*:

The 2002 Legislature, in [response to these recommendations] turn, directed the Commission to 'develop building code provisions that may be added to the Florida Building Code to facilitate the rehabilitation and use of existing structures.' Lawmakers further directed the Commission to 'select from available national or international model codes or the codes or code provisions adopted by another State to form the foundation for the code provisions.' The Legislature provided that the Commission could modify the selected model codes to meet the specific needs of Florida and that it should seek consensus with fire safety professionals, building officials, land use planners, advocates for persons with disabilities, the construction industry and other interested parties.

The Commission established two committees to work with its Code Administration Technical Advisory Committee in developing draft provisions for the rehabilitation of one and two family dwellings and all other buildings. The International Existing Buildings Code promulgated by the International Code Council was selected as the foundation for these new building requirements. With this as a guide, the Commission then spent several months deliberating the model code provisions and determining appropriate modifications. Their work was facilitated by the Florida Conflict Resolution Consortium and resulted in a proposed draft code. The Code's formula-based approach is based on the ratio of the area of a building being worked on to the total area of the building. The extent to which new construction standards apply increases as the amount of area being worked on increases.<sup>28</sup>

The Commission also explained the need for this provision:

The topic of building rehabilitation is significant enough that the Commission recommends special treatment of it through the adoption of the proposed Existing Buildings Code.

The standard Chapter 120, Florida Statutes, Administrative Rule adoption procedures, coupled with the special procedures for code development and implementation of Section 553.73, Florida Statutes, and the Commission's rules of procedure for amending the Florida Building Code, would result in the new Existing Buildings Code not taking effect until July 2004.

Therefore, the Commission recommends that adoption and implementation be expedited by legislative authorization to waive the procedures of Section 553.73, Florida Statutes, and apply only the standard procedures of Chapter 120, Florida Statutes. This expedited approach would provide for implementation to proceed in the summer of 2003. The new Existing Buildings Code provisions to be included in Chapter 34 of the Florida Building Code, will improve clarity and consistency in application of the Code while providing flexibility for better tailoring of requirements to rehabilitation projects. They will also facilitate greater rehabilitation and reuse of existing structures, including historic buildings.<sup>29</sup>

As such, this bill provides for the Florida Building Commission to expedite the adoption and implementation of the State Existing Building Code as part of the Florida Building Code pursuant only to the provisions of chapter 120, Florida Statutes. The special update and amendment requirements of section 553.73, Florida Statutes, and the administrative rule requiring additional delay time between adoption and implementation of such code are waived.

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<sup>28</sup> See Florida Building Commission, *The Florida Building Commission Report to the 2003 Legislature* (2003) at pp. 8-9 (available at [http://www.dca.state.fl.us/fhcd/fbc/publications/1\\_publications.htm](http://www.dca.state.fl.us/fhcd/fbc/publications/1_publications.htm)).

<sup>29</sup> *Id.*

Waiving these provisions of rule and law will allow the Existing Buildings Code to become effective as soon as the law becomes effective and the Chapter 120 proceedings are complete.

Otherwise, the Existing Building Code provisions will not take effect until the 2004 Edition of the Florida Building Code, of which it is a part, takes effect.<sup>30</sup> The 2004 Edition of the Florida Building Code is being adopted based on the following amendment cycle:<sup>31</sup>

- April 18, 2003 - Deadline for submitting proposed amendments
- Week of June 15-20 - Technical Advisory Committees review proposed amendments
- Week of August 24-29 - Florida Building Commission considers proposed amendments and TAC recommendations for the 2004 Edition of the Florida Building Code
- October 14 - Rule development workshop on amendments to Rule 9B-3.047 adopting the 2004 Edition of the Florida Building Code
- November 18 - Rule adoption hearing on amendments to Rule 9B-3.047 adopting the 2004 Edition of the Florida Building Code
- January 2005<sup>32</sup> - Anticipated effective date for the 2004 Edition of the Florida Building Code

#### Building Code Training Program

Section 553.841, Florida Statutes, currently requires the Commission to establish, by rule, the Building Code Training Program. This bill makes a number of changes to that program:

- eliminates the legislative finding that the effectiveness of the building codes of this state depends on the performance of all participants, as demonstrated through knowledge of the codes and commitment to compliance with code directives and that to strengthen compliance by industry and enforcement by government, a Building Code Training Program is needed;
- removes the requirement that the program 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 and the authorization for the Commission to enter into contracts with the Department of Education, the State University System, the Division of Community Colleges, model code organizations, professional organizations, vocational-technical schools, trade organizations, and private industry to administer the program;
- changes the Building Code Training Program from being a “core curriculum and advance module courses” to a core curriculum and “voluntary accreditation of advance module courses;”

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<sup>30</sup> See Florida Department of Community Affairs, *DRAFT 2004 Florida Building Code* (visited Feb. 11, 2004) <[http://www.dca.state.fl.us/fhcd/fbc/thecode/2\\_thecode.htm](http://www.dca.state.fl.us/fhcd/fbc/thecode/2_thecode.htm)> and specifically chapter 34 of the document which highlights the changes in the draft code by clicking on the hyperlink labeled “2003 IBC Chapters 1 – Appendices” <[http://www.dca.state.fl.us/fhcd/fbc/thecode/2004%20FBC%20Draft/2004\\_FBC\\_IBC.rtf](http://www.dca.state.fl.us/fhcd/fbc/thecode/2004%20FBC%20Draft/2004_FBC_IBC.rtf)>.

<sup>31</sup> See Florida Department of Community Affairs, *Florida Administrative Code Rule Development* (visited Feb. 11, 2004) <[http://www.dca.state.fl.us/fhcd/fbc/rules/1\\_rules.htm](http://www.dca.state.fl.us/fhcd/fbc/rules/1_rules.htm)>.

<sup>32</sup> Telephone conversation with legal counsel for the Commission indicated that the effective date would be January 2005 and not July 2004 (Jan. 29, 2004); telephone conversation with staff of the Commission to verify effective date as January 2005 (Feb. 11, 2004).

- provides that professional licensing boards may make the core curriculum a prerequisite to initial licensure for those licensees not subject to testing on the Florida Building Code as a condition of licensure and requires these boards to identify subject areas that are inadequately addressed by specialized and advanced courses;
- amends the date by which the core curriculum must be completed by certain licensed individuals from “within the first two-year period after establishment of the program” to “by date of license renewal in 2004;”
- provides that “all approved courses,” not just core course hours, count toward fulfilling certain continuing education requirements.
- deletes the provision which required the Commission, in consultation with the Department of Business and Professional Regulation and the respective licensing boards, to develop or cause to be developed an equivalency test for each category of licensee which could be taken in lieu of the core curriculum and, upon obtaining a passing score, be the equivalent to completion of the core curriculum and credited toward the required number of hours of continuing education;
- modifies the responsibilities of the Commission and the Department of Business and Professional Regulation to develop or approve “appropriate courses” rather than a “core curriculum and specialized or advanced module coursework;” and
- provides the courses approved by the Department of Business and Professional Regulation, as required by their respective practice acts and chapter 455, Florida Statutes, are deemed approved by the Florida Building Commission.

#### Product Evaluation and Approval

Section 553.842, Florida Statutes, authorizes the Commission to develop and implement a product evaluation and approval system that applies statewide to operate in coordination with the Florida Building Code.

Products or methods or systems of construction that require approval under section 553.77, Florida Statutes, that have standardized testing or comparative or rational analysis methods established by the code, and that are certified by an approved product evaluation entity, testing laboratory, or certification agency as complying with the standards specified by the code must be approved for local or statewide use by one of the established methods and without further evaluation.<sup>33</sup> This bill provides for approval once certified by an approved product evaluation entity, testing laboratory, or certification agency and removes the requirement for approval by one of the established methods. The bill, however, requires products for statewide use to be by one of the established methods.

The bill removes the provisions related to local approval of products, methods, or systems of construction.

The bill permits products bearing a certification mark or listing from an approved certification agency to be validated by inspection of the certification mark or listing.

The bill also removes an obsolete date and provision related to a schedule of adoption.

#### C. SECTION DIRECTORY:

Section 1: Amends subsection (3) of section 553.37, Florida Statutes.

<sup>33</sup> See Fla. Stat. § 553.842(3) (2003).

- Section 2: Amends paragraph (c) of subsection (4), subsection (6), and paragraphs (a) and (c) of section 7 of section 553.73, Florida Statutes.
- Section 3: Amends subsection (1) of section 553.74, Florida Statutes.
- Section 4: Amends section 553.77, Florida Statutes.
- Section 5: Creates section 553.775, Florida Statutes.
- Section 6: Amends subsection (14) of section 553.79, Florida Statutes.
- Section 7: Amends section 553.791, Florida Statutes - subsection (2), subsection (4), paragraph (a) of subsection (6), subsection (11), paragraphs (b) and (c) of subsection (12), subsection (14), and subsection (15).
- Section 8: Amends paragraph (d) of subsection (1) and creates subsection (7) of section 553.80, Florida Statutes.
- Section 9: Provides for the Florida Building Commission to expedite the adoption and implementation of the State Existing Building Code as part of the Florida Building Code pursuant only to the provisions of chapter 120, Florida Statutes. The special update and amendment requirements of section 553.73, Florida Statutes, and the administrative rule requiring additional delay time between adoption and implementation of such code are waived.
- Section 10: Adds paragraph (c) to subsection (17) of section 120.80, Florida Statutes.
- Section 11: Amends section 553.841, Florida Statutes.
- Section 12: Corrects a cross-reference in subsection (3) of section 553.8412, Florida Statutes.
- Section 13: Amends subsection (3), subsection (4), subsection (5), subsection (6), subsection (7), subsection (8), paragraph (a) of subsection (9), and subsection (16) of section 553.842, Florida Statutes.
- Section 14: Provides that the bill will take effect upon becoming law.

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

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

#### **1. Revenues:**

This bill does not appear to have a fiscal impact on state government revenues.

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

The bill provides for review panels to resolve disputes regarding differing interpretations of the Building Code by local building officials. This would provide a means for a statewide binding interpretation of the Code. According to the Department of Community Affairs establishing such a system would result in a cost to the department. The department cannot absorb these costs without an additional appropriation.

The department provided estimated costs of the new system based on the cost of the nonbonding opinions currently provided by Building Officials Association of Florida (BOAF). BOAF currently provides nonbonding opinions on the Florida Building Code at \$107 per nonbonding opinion. The

projected number of opinions requested each year may be conservative according to the department.

340 jurisdictions x 12 reviews per jurisdiction each year x \$107 per opinion = \$436,560.

Type of cost	Amount Year 1	Amount Year 2	Amount Year 3
Non-Recurring	0	0	0
Recurring	\$ 436,560	\$ 436,560	\$ 436,560
Total Revenues and Expenditures	0	0	0

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill may have a positive fiscal impact on local government revenues because it permits the governing bodies of local government to provide a schedule of reasonable fees for enforcing the Florida Building Code.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

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

Changes to the statutory provisions related to the Florida Building Code are likely to have a direct economic impact on the private sector, but the nature and degree of that impact is not known.

**D. FISCAL COMMENTS:**

There are no additional fiscal comments.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The municipality/county mandates provision does not appear to apply to this bill as it does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. Thus, the bill appears exempt the bill from the provisions of section 18, article VII of the Florida Constitution.

2. Other:

There do not appear to be other constitutional issues with the bill.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to provide any new rule-making authority except where it directs the Commission to adopt provisions related to existing buildings, or a rehabilitation code, as they may be amended through the workshop and hearing process, as part of the Florida Building Code pursuant to chapter 120, Florida Statutes.

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

Drafting Issue - Appointments to the Florida Building Commission

There is a conflict between the mandatory and permissive language in the bill as it relates to appointments to the Florida Building Commission. To begin, “members *shall* be appointed by the Governor subject to confirmation by the Senate,” with no other qualifying language except new language that provides that the Governor *may* appoint Commission members from lists of candidates submitted by the respective professional organizations.” Then there is language which requires that “the Commission shall be composed of 23 members” and provides for most of the members to be “from a list of three candidates.”

#### Drafting Issue – Unvented Attic Assemblies

The provision of the bill which requires the Commission to initiate rulemaking to incorporate permitted standards and conditions in the Florida Building Code within 60 days of the adoption by the International Code Council of permitted standards and conditions for unvented attic assemblies in the International Residential Code should be moved to a more appropriate subsection in section 553.73, Florida Statutes, or be included in the bill in the same manner as the expedited adoption and implementation of the State Existing Building Code.

#### Other Comments – Implementation Issues with Section 553.842, Florida Statutes

The Building Officials Association of Florida, Inc. has described the difficulties in implementing the product approval requirements in section 553.842, Florida Statutes, and rule 9B-72 of the Florida Administrative Code: “created more issues than it resolved...onerous...local government and industry were in no way prepared for such a complicated and time-consuming process.”<sup>34</sup> The Board of Directors for the Building Officials Association of Florida, Inc. voted unanimously to request that the requirement for local governments to implement section 553.842, relating to product evaluation and approval, be suspended until the process for local and statewide product approval can be reviewed and modified in a manner that would accomplish the goals of the statute while not placing an undue burden on local government.<sup>35</sup>

#### Other Comments – Support for the Bill

Supporters of the bill with the recommended strike-everything amendment include: American Specialty Contractors of Florida; Associated Builders and Contractors; Florida Air Conditioning Contractors Association; Florida Association of Electrical Contractors; Florida Association of Plumbing, Heating, Cooling Contractors; Florida Refrigeration and Air Conditioning Contractors Association, Florida Roofing, Sheet Metal & Air Conditioning Contractors Association; and Florida Wall & Ceiling Contractors Association.<sup>36</sup>

#### Other Comments – Opponent of the Bill

Ralph Hughes, Chairman, FECF Corporation, has expressed his opposition to the following changes in this bill:<sup>37</sup>

- to section 553.73(6)(a) and (b), Florida Statutes, which requires the Commission to select the most current version of the International Building Code;

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<sup>34</sup> See Letter from Ronnie L. Spooner, President, Building Officials of Florida, Inc., to the Honorable Jeb Bush, Governor of the State of Florida (Mar. 8, 2004) (on file with the Comm. on Local Gov't & Veterans' Affairs).

<sup>35</sup> *Id.*

<sup>36</sup> See Talk Sheet, Please Support HB 911 by Larry Cretul – House Local Affairs Subcommittee (contains date of Mar. 25, 2004) (provided by Richard Watson, Government Consultant) (on file with the Comm. on Local Gov't & Veterans' Affairs).

<sup>37</sup> See Telephone Conversation between Ralph Hughes and Staff of the Comm. on Local Gov't & Veterans' Affairs (Mar. 23, 2004).

- to section 553.73(7)(c), Florida Statutes, related to staff rejecting any proposed amendment that fails to include a fiscal impact and the change prohibiting;
- to section 553.74, Florida Statutes, as unnecessarily limiting the pool of applicants and exert control on the Commission;
- to former paragraph (i), now paragraph (f) of subsection (1) of section 553.77, Florida Statutes, because these revisions would effectively “gut” product approval
- to section 553.842, Florida Statutes, except the removal of the date reference of October 1, 2003, the International Code Council Evaluation Services addition, and the removal of subsection (16);
- to section 553.775(3)(c)1., Florida Statutes, which designates the Building Officials Association of Florida, Inc., since this improperly elevates this body in the process;
- to subsection (14) of section 553.79, Florida Statutes, related to truss-placement plans not having to be signed and sealed; and
- to section 553.80, Florida Statutes, related to fees charged by local governments for enforcing the Florida Building Code.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

##### Subcommittee on Local Affairs

On March 25, 2004, the Subcommittee on Local Affairs recommended the bill favorably with one “strike-everything amendment” by Representative Cretul which:

- removes provisions related to hospice facilities;
- amends s. 553.37, F.S.; providing for the approval, delivery, and installation of lawn storage buildings and storage sheds;
- amends section 553.73, Florida Statutes, to conform a cross reference; specify codes from the International Code Congress when updating the Florida Building Code; authorize amendments to the foundation code only as provided; provide for the incorporation of certain statements, decisions, and amendments into the Florida Building Code; provide a timeframe for rule updates to the Florida Building Code to become effective; add a requirement for technical amendments to the Florida Building Code;
- amends section 553.74, Florida Statutes, to make additional revisions regarding the appointment of members to the Florida Building Commission;
- amends section 553.77, Florida Statutes, to revise the specific powers of the Florida Building Commission related to product approval;
- amends section 553.775, Florida Statutes, as created by the bill to revise provisions related to the review of decisions of local building officials and local enforcement agencies;
- amends section 553.80, Florida Statutes, to modify the provisions of fee use from code enforcement;
- amends section 553.841, Florida Statutes, to revise the Building Code Training Program provisions related to approval by the Department of Business and Professional Regulation; and

- amends section 553.842, Florida Statutes, to provide for products to be approved for statewide use; removes an expired date; provides for validation by inspection of certification mark or listing; and removes an expired requirement for an adoption schedule for product approval.

#### Committee on Local Government & Veterans' Affairs

On March 31, 2004, the Committee on Local Government & Veterans' Affairs adopted the "strike-everything" amendment recommended by the Subcommittee on Local Affairs with four amendments:

- provides that within 60 days of the adoption by the International Code Council of permitted standards and conditions for unvented attic assemblies in the International Residential Code, the Commission shall initiate rulemaking to incorporate such permitted standards and conditions in the Florida Building Code;
- returns to "30 business days" as the timeframe, after receipt of the permit application and the affidavit by the private provider performing plans review, for the local building official to issue the requested permit or provide written notice about the specific plan features that do not comply with the applicable codes;
- expands the meaning of the phrase "enforcing the Florida Building Code" to include associated training costs; and
- changes the provision related to the core curriculum as a prerequisite to licensure for those licensees not subject to testing on the Florida Building Code as a condition of licensure to allow the professional licensing boards to determine if this should be a prerequisite to licensure

The bill, as amended, was reported favorably with committee substitute.