

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 697 Florida Building Code

SPONSOR(S): Aubuchon & others

TIED BILLS: IDEN./SIM. BILLS:

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------|--------------|----------------|
| 1) <u>Committee on Infrastructure</u> | <u>9 Y, 0 N</u> | <u>Rojas</u> | <u>Miller</u> |
| 2) <u>Economic Expansion & Infrastructure Council</u> | <u></u> | <u>Rojas</u> | <u>Tinker</u> |
| 3) <u></u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

The bill mandates several changes to the structure and process of the Florida Building Commission and Florida Building Code. The bill repeals s. 553.731, F.S., relating to a specified standard for wind resistant construction to be enforced by building officials. This bill will have a minimal fiscal impact as detailed in the fiscal analysis. A summarization of changes is listed below:

- (1) Adoption of the International Energy Conservation Code (IECC) as one of the foundations for the Florida Building Code.
- (2) Adds a 24th Commissioner to represent the swimming pool industry,
- (3) Limits the Governor's appointments to the Commission from panels of candidates selected by identified professional associations.
- (4) Restricts the power of the Commission to reject technical recommendations from its Technical Advisory Committees (TACs) concerning code amendments and limits the ability of the Commission to modify specified TAC proposals.
- (5) Repeals s. 553.731, F.S., relating to a specified standard for wind resistant construction to be enforced by building officials. The repeal would not affect ss. 553.73(6)-(8), F.S., which permanently prohibited the Commission from adopting amendments to the Code that diminish the standards pertaining to wind resistance and water intrusion.

Note: A strike-all amendment was adopted for HB 697. Please see Section IV for a summary of the strike-all.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government:

The bill requires that Commissioners be selected from a panel of candidates selected by identified associations, adds a 24th Commissioner to represent the swimming pool industry, restricts the power of the Commission to reject recommendations from its Technical Advisory Committees (TACs) concerning code amendments and limits the ability of the Commission to modify specified TAC proposals.

B. EFFECT OF PROPOSED CHANGES:

Composition and Appointment of the Florida Building Commission

Present Situation

The Florida Building Commission is a collegial body created by s. 553.74, F.S. The Commission is comprised of 23 members, 22 of whom are required to meet statutorily described professional qualifications, and a chairperson. The Governor appoints the Commissioners who are subject to Senate confirmation.

Effect of the Bill

The bill requires that the Governor now appoint Commissioners from a list of candidates put forth by identified professional associations, and adds a 24th Commissioner to represent the swimming pool industry. The intention is to give stakeholder groups a stronger voice in the selection process.

Below is a list of the professional associations specified in the bill to select panels of candidates, and the number of Commissioner positions to be filled:

- American Institute of Architects, Florida Section (1)
- Florida Engineering Society (2)
- Florida Air Conditioning Contractors Assoc. and the Florida Refrigeration and Air Conditioning Contractors Assoc. (1)
- Florida Electrical Contractors Assoc. (1)
- Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Assoc. (1)
- Associated Builders and Contractors of Florida and the Florida Associated General Contractors Council (1)
- Florida Assoc. of Plumbing, Heating and Cooling Contractors (1)
- Florida Roofing, Sheet Metal and Air Conditioning Contractors Assoc. (1)
- Florida Home Builders Assoc. (1)
- Building Officials Assoc. of Florida (3) – two Municipal and 1 county

- Florida Fire Marshals and Inspectors Assoc. (1)
- Florida Manufactured Housing Assoc. (1)
- Florida League of Cities and Florida Assoc. of Counties (1)
- Florida Building Material Assoc., Florida Concrete and Products Assoc., and Fenestration Manufacturers Assoc. (1)
- Building Owners and Managers Assoc. (1)
- Florida Insurance Council (1)
- Florida Swimming Pool Assoc. (1)

The Role of Technical Advisory Committees (TACs)

Present Situation

The Commission typically accomplishes its tasks relating to technical code issues using Technical Advisory Committees (TACs). TACs, developed by Commission rule, are comprised of no fewer than 11 members appointed by the Commission Chairperson. TACs are chaired by a Commissioner and are specific to different subject areas within the code. The role of TACs is recognized in s. 553.73(3), F.S., regarding review of proposed amendments to the Florida Building Code. Specifically a TAC is statutorily required to review a proposed code amendment after the proposal has been published on the Commission's website for a minimum of 45 days. Amendments to the code are required to address a Florida-specific need and additional criteria identified in the statute. The Commission has authority to accept or reject the TAC recommendation, reserves the right to make the final determination of all issues, and has original jurisdiction of matters relating to policy. However, there is growing concern by industry representatives that the Commission continues to circumvent statutory provisions by overriding the work of the TACs.

Effect of the Bill

The bill restricts the Commission's power of rejecting TAC recommendations. Under the bill, the Commission may not, without specificity, reject a recommendation from its TACs concerning code amendments, and modifications are limited to correcting scriveners' errors. The bill requires that proposals that the Commission might otherwise have rejected be re-referred to the TAC for further review and additional public testimony.

The Florida Energy Code

Present Situation

The elements of energy efficiency and accessibility differ from the rest of the Building Code in that each exists separately from the Building Code. With specific regard to energy efficiency, Part V of Chapter 553, F.S., provides for the adoption and maintenance of the Energy Efficiency Code for Building Constructions (Energy Code) and its integration into the Florida Building Code. The Commission can amend the Energy Code to require products and techniques that are demonstrated to be cost effective to the consumer provided that the proposed changes are made available to the public six months in advance of implementation.

The Energy Code provides two methods of compliance; one method that prescribes specific efficiencies for elements that must be incorporated into a building; and one method that defines a performance

objective for the overall building and allows the designer to accomplish the objective selecting the building elements efficiency that best suit the circumstances. Reliance upon flexible performance based measures is one of two factors that currently differentiate the Energy Code from the national model code and the International Energy Efficiency Code (IEEC). The second is that the Energy Code provides for greater efficiency by limiting the amount of window area used to set the overall building performance objective.

Effect of the Bill

Under current law in Part IV, Chapter 553, F.S., the Florida Building Code incorporates the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the National Electrical Code. The bill amends this part to require the Commission to adopt the International Energy Efficiency Code as part of the Florida Building Code. Adoption of the IEEC could allow construction professions greater ease in meeting compliance standards.

Standard for Wind Resistant Construction

Present Situation

When the Building Code was first developed, the law directed the Commission to adopt an edition of wind design standard, American Society for Civil Engineers (ASCE) 7-98, and specifically preserved one permissive alternative for protection of a building from wind borne debris.

Following the 2004 and 2005 hurricane seasons, the Legislature, with input from the Commission repealed the designation of wind design standards and requirements for protection from windborne debris from the Statute. In the first special session of 2007 the Legislature directed building officials around the State to implement and enforce specified provisions from the model code upon which the Florida Building Code is based. The Commission was further directed to adopt those specified provisions of the model code within the Florida Building Code by July 1, 2007.

However, Chapter 2007-1, Laws of Florida, did not explicitly direct codification of these provisions within Florida Statutes. In addition, the Legislature in ss. 553.73(6)-(8), F.S., permanently prohibited the Commission from adopting amendments to the Code that diminish the standards pertaining to wind resistance and water intrusion. Florida law currently recognizes ASCE 7-02 as the minimum standard for wind resistant construction in Florida, notwithstanding the status of the Building Code and any developments to the standard subsequent to 2002.

Most recently, the Commission has adopted the 2007 Edition of the Florida Building Code, scheduled to take effect on October 1, 2008. That edition of the Code adopts the 2005 edition of the ASCE, Standard 7. There have been no challenges to any provisions of any edition of the Code as diminishing provisions relating to wind resistance or water intrusion. The Commission opposes identification of standards in statute, arguing that codification in statute can lead to obsolete language as newer standards are adopted into the Building Code.

Effect of the Bill

The bill repeals s. 553.731, F.S., relating to specified standards for wind resistant construction to be enforced by building officials. The Florida Building Code has since adopted subsequent provisions that have not been challenged as diminishing any standards relative to the windborne debris region. Furthermore, the repeal would not affect ss. 553.73(6)-(8), F.S., which permanently prohibited the Commission from adopting amendments to the Code that diminish the standards pertaining to wind resistance and water intrusion.

C. SECTION DIRECTORY:

- **Section 1** amends paragraph (d) of subsection (3) and paragraph (a) of subsection (6) of s. 553.73, F.S., to require adoption of the International Energy Conservation Code (IECC) as one of the foundations for the Florida Building Code, and restricts the Commission's authority to modify recommendations of its Technical Advisory Committees (TACs) regarding proposed code amendments to correction of scribes' errors.
- **Section 2** amends subsection (1) of s. 553.74, F.S., to add an additional Commissioner representing the swimming pool industry. Section 2 also restricts the Governor's selections of 20 of the 24 members of the Commission to panels of candidates submitted by identified professional associations.
- **Section 3** repeals s. 553.731, F.S., relating to a minimum standard for wind resistant design of buildings to be enforced by building officials.
- **Section 4** provides for an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Florida Building Commission will incur additional expenses as a result of the bill. Based upon average attendance and travel costs submitted by the Commission, the addition of a 24th Commissioner will cost approximately \$4,000.00 per year.

According to Florida Building Commission staff, the requirement that proposed recommendation amendments be resubmitted for additional review by Technical Advisory Committees (TACs) will cost a minimum of \$25,000.00 every third year when the Commission is required to update the Florida Building Code, and could exceed that amount depending on the result of that additional review and the Commission's action.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Arguably, adoption of the IEEC would allow construction professions greater ease in meeting compliance standards, use of free calculation software provided by the federal government, eliminating the need for Florida-specific calculations and for ease of builder processing of tax credit requirements that can be passed along to homeowners. Adoption of the IEEC could also allow for greater compatibility among product manufacturers, suppliers and builders who operate in various regional and national markets by requiring them to comply with only a single code.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill mandates adoption of the International Energy Conservation Code (IEEC) as one of the foundations of the Florida Building Code by amending Part IV, Chapter 553, F.S. However, no changes are made to Part V, Chapter 553, F.S., that requires adoption of the Florida Energy Efficiency Code for Building Construction.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 13, 2008, a strike-all amendment was adopted by the Infrastructure Committee, and the bill was reported favorably with one amendment.

The amendment changed the following:

- Replaces the specific appointed position of Chairman on the Florida Building Commission with a representative from the swimming pool industry and provides that one of the 23 members shall be designated Chairman.
- Encourages professional associations regulated by the Florida Building Commission to recommend to the Governor a list of candidates for consideration, and adds several groups to the list of associations that are encouraged to submit a list of candidates for consideration.
- In lieu of restricting the Commission's power of rejecting TAC recommendations, the amendment changes the meeting procedure of the Florida Building Commission to require that the Commission provide at least one opportunity for public comment on proposed action of the Commission before a final vote is taken.

By removing the requirement for additional TAC reviews and by keeping the number of commissioners at the current total number, the amendment eliminates the potential fiscal impacts to state government.