

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: CS/CS/SB 560

INTRODUCER: Regulated Industries Committee, Community Affairs Committee, and Senator Constantine

SUBJECT: Energy Efficiency and Conservation

DATE: March 18, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/CS
2.	Oxamendi	Imhof	RI	Fav/CS
3.			EPCC	
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) implements certain recommendations of the Florida Energy Commission contained in the “2007 Report to the Legislature.” The CS revises requirements relating to the installation of energy devices based on renewable resources on buildings. Local governments are directed to amend the local comprehensive plan to include an energy element. The future land use plan element of a local plan must be based on energy efficient land use patterns and the traffic element of the local plan must incorporate transportation strategies to address reductions in greenhouse gas emissions. Each unit of local government in an urbanized area that is required to include a transportation element in the local plan must also include, as part of the element transportation, strategies to address reductions in greenhouse gas emissions.

The membership of the Florida Building Commission (commission) is revised and the commission is authorized to implement recommendations and standards contained in the “Report to the 2008 Legislature” to improve energy-efficiency in the construction of all new residential, commercial, and government buildings. The chair of the commission is designated by the governor from the 23 members and serves as the chair at the pleasure of the governor. The

commission is required to encourage public participation and to permit the public to comment at its meeting.

The Florida Building Code must facilitate and promote the use of cost-effective energy conservation, energy demand management, and renewable energy technologies. The CS establishes a schedule of required increases in the energy efficiency performance of buildings and identifies energy efficiency performance options and elements which must be identified within code support and compliance documentation.

The commission is directed to conduct a study to evaluate the energy efficiency rating of new buildings and appliances, and conduct a study to evaluate opportunities to restructure the Florida Energy Efficiency Code for Building Construction. Reports must be submitted to the Legislature by February 1, 2009. The Department of Community Affairs (department), in conjunction with the Florida Energy Affordability Coalition, must identify and review issues relating to the Low-Income Home Energy Assistance Program and the Weatherization Program, and make recommendations on necessary statutory changes to the Legislature by January 1, 2009.

The CS permits condominium boards of administration are authorized, without the approval of their members, to install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

The CS substantially amends the following sections of the Florida Statutes: 163.04, 163.3177, 553.36, 553.73, 553.74, 553.75, 553.77, and 718.113. The CS creates sections 553.886 and 553.9061, Florida Statutes. The CS repeals section 553.731, Florida Statutes. The CS creates three unnumbered sections of the Florida Statutes.

II. Present Situation:

Florida Energy Commission

The Florida Energy Commission (FEC) was created by the Legislature in 2006 and charged with developing recommendations for legislation to establish a state energy policy.¹ Over the past year, the FEC adopted 85 recommendations which were included in the “2007 Report to the Legislature”² issued in December 2007. Among the many recommendations addressed in the report, the FEC recommends that:

- The Florida Building Commission (commission) amend the 2007 Florida Energy Efficiency Code for Building Construction to significantly increase the energy performance of new buildings. (Recommendation #12)
- The commission increase the stringency of residential appliance efficiency and lighting standards. (Recommendation #13)

¹ Section 8, ch. 2006-230, L.O.F.

² A copy of the FEC full report can be viewed at www.floridaenergycommission.gov/UserContent/docs/File/FEC_Report_-_Volume_1.pdf (Last visited March 14, 2008).

- The commission evaluate how the Florida Energy Efficiency Code for Building Construction can be restructured to effect additional improvements to building efficiency. (Recommendation #14)
- The Legislature strengthen policies set forth in the Thermal Efficiency Code, the Energy Conservation Standards Act, and the Florida Building Energy Efficiency Ratings Act³ requiring labeling of new buildings and energy consuming products for energy efficiency. (Recommendation #15)
- The Legislature amend the Florida Building Code Act and the Thermal Efficiency Code statute to facilitate and promote the use of cost-effective energy conserving, energy demand management and renewable energy technologies in buildings. (Recommendation #16)
- The Legislature prohibit any state or local zoning or building authority, or homeowners', cooperative, or condominium association from preventing or restricting the use of energy-efficient roof designs except for public safety concerns. (Recommendation #17)
- The Legislature establish a sales tax rebate program for energy efficient products, either with a year-round program or a designated sales tax holiday. (Recommendation #29)
- The Legislature reauthorize the property tax exemption for renewable energy source devices and revise the calculation of the property tax assessment for applicable purposes. (Recommendation #30)
- The Legislature direct the department to develop recommendations to increase the availability of assistance through Florida's Low-Income Home Energy Assistance Program and Weatherization Assistance Program. (Recommendation #33)
- The Legislature should require local governments to recognize and provide for the inclusion of an energy element in their comprehensive plans. (Recommendation #61)

Florida Building Commission

The Florida Building Commission is established in ch. 553, F.S., and charged with adopting and maintaining the Florida Building Code as a single, unified state building code, and with enforcing requirements that provide effective and reasonable protection for the public safety, health and welfare. The commission consists of 22 members appointed by the governor to represent the various disciplines governed by the requirements of the building code, as well as local governments and code enforcement officials, the insurance industry, and the Department of Financial Services, and one member appointed by the governor to serve as chair of the commission.

The 2007 Legislature directed the commission, in consultation with the FEC and several other organizations, to review the Florida Energy Code for Building Construction. The commission was directed to revisit the analysis of cost-effectiveness that serves as the basis for energy efficiency levels for residential buildings and to identify cost-effective means of improving energy efficiency in commercial buildings. The commission was directed to provide a report to the Legislature by March 1, 2008, that contained an energy efficiency standard which could be adopted by the commission for the construction of all new residential, commercial, and

³ The Thermal Efficiency Code, the Energy Conservation Standards Act, and the Florida Building Energy Efficiency Ratings Act are located in parts V, VI, and VIII, respectively, of ch. 553, F.S.

government buildings.⁴ In July 2007, Governor Crist issued Executive Order 07-127 which directed the Secretary of Community Affairs to convene the commission to revise the Florida Energy Code to increase the energy performance of new construction by at least 15 percent over 2007 standards. The target date for implementation of revisions is January 1, 2009.

In February 2008, the commission released its “Report to the 2008 Legislature” which contained an evaluation of the Florida Energy Code for residential cost effective baseline, commercial conservation enhancements, and comparisons with the International Energy Code. The findings showed a significant number of conservation measures already in place that produce cost-effective energy savings with respect to the minimum building code requirements. To achieve the improvements directed by the Executive Order, the commission determined the best approach was to require a 10 to 15 percent increase in efficiency in residential buildings, and a 15 to 25 percent increase in efficiency for light commercial buildings. The commission initiated rulemaking to incorporate the efficiency increases into the 2007 Florida Building Code, effective October 1, 2008.

Local Government Comprehensive Plans

Section 163.3177, F.S., provides for the required and optional elements which must be contained within a local comprehensive plan. Coordination of the elements is a major objective of the comprehensive planning process. The elements must be consistent and the comprehensive plan must be financially feasible. Every comprehensive plan is required to contain a future land use plan element; a traffic circulation element; a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element; a conservation element; a recreation and open space element; a housing element; an intergovernmental coordination element; and an airport master plan. Some local governments are required to also have a coastal management element; a mass-transit element; a plan for port, aviation, and related facilities; or a plan element for the circulation of recreational traffic. In addition, plans may contain other optional elements as provided by law. All plan elements are reviewed by the department for consistency with the growth policies of the state and region, and with other elements of the local comprehensive plan.

The future land use plan element designates the proposed distribution, location, and extent of the uses of land for residential, commercial, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of public and private uses of lands. Within each future land use category, standards must be followed in the control and distribution of population densities, and building and structure intensities. The proposed distribution, location, and extent of the various land use categories is shown on a land use map or map series and is supplemented with goals, policies, and measurable objectives. The plan is based on surveys, studies, and data for the area including the amount of land necessary to accommodate anticipated growth; the projected population for the area; the character of undeveloped land; the availability of water supplies, public facilities, and services; the need for redevelopment including the renewal of blighted areas and the elimination of nonconforming uses; the compatibility of adjacent land uses; and economic development opportunities.

⁴ See s. 48 of ch. 2007-73, L.O.F., adopted during the 2007 Regular Session as SB 2802, an act implementing the 2007-2008 General Appropriations Act.

Condominiums

A condominium is a “form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”⁵ Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes (“division”) of the Department of Business and Professional Regulation (“DBPR”), in accordance with ch. 718, F.S.⁶

A condominium is created by recording a “declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed.” The declaration must include such matters as the name of the condominium, legal description, identification of the units, and a copy of the bylaws among other requirements.⁷ Section 718.112, F.S., provides that a condominium is governed by the article of incorporation of the condominium association and the bylaws of the association.

Section 718.103(8), F.S., defines a condominium “common element” to mean the “portions of the condominium property not included in the units.”

A homeowners’ association is a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”⁸ Homeowners’ associations are regulated under ch. 720, Florida Statutes.

A declaration of covenant is “a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.”⁹

III. Effect of Proposed Changes:

Section 1. The bill amends s. 163.04, F.S., to add declarations to the list of deed restrictions, covenants, or other binding agreements which may not prohibit the installation of energy devices based on renewable resources. The bill specifies that condominiums are residential dwellings for purposes of installation of solar collectors or other energy devices, and removes the three-story height restriction for installation of solar collectors or other energy devices on such residential dwellings.

⁵ Section 718.103(11), F.S.

⁶ Peter M. Dunbar, *The Condominium Concept, A Practical Guide for Officers, Owners and Directors of Florida Condominiums*, 8th ed., s. 2.6, 32 (Aras Publishing 2003).

⁷ Section 718.104(4), F.S.

⁸ Section 720.301(9), F.S.

⁹ Section 720.301(4), F.S.

Section 2. The bill amends s. 163.3177, F.S., to require that:

- The future land use element in a local comprehensive plan must include energy efficient land use patterns and energy needs and delivery infrastructure, including renewable energy sources.
- The traffic element must incorporate transportation strategies to address greenhouse gas emission reductions in the transportation sector.
- Each unit of government in an urbanized area must include in the transportation element of the local comprehensive plan transportation strategies to address greenhouse gas emission reductions from the transportation sector.
- By January 1, 2011, each local government must amend the local comprehensive plan to include an energy element consisting of existing and future electric power generation and transmission systems. The energy element must contain provisions that encourage energy conservation, energy efficiency, use of renewable energy resources, and greenhouse gas reduction strategies.

Section 3. The bill amends s. 553.36(13), F.S., to include modular and factory-built building within the definition of the term “manufactured building.”

Section 4. The bill amends s. 553.73, F.S., to require that the commission include the most current version of the International Energy Conservation Code in the triennial update of the Florida Building Code.

Section 5. The bill amends s. 553.74, F.S., to revise the membership of the Florida Building Commission by adding a member who is a swimming pool contractor licensed to do business in the state. Organizations representing the various disciplines represented on the commission are encouraged to recommend a list of candidates to be considered by the governor for appointment to the commission.

The bill deletes the governor’s authority to appoint the chair of the commission who shall serve as the chair and on the commission at the pleasure of the governor. The bill provides for the governor’s designation of the chair from among one of the 23 appointed members. The person designated by the governor as the chair shall serve as the chair at the pleasure of the governor.

Section 6. The bill amends s. 553.75, F.S., to authorize the department to use communications media technology in conducting meetings of the commission or any meetings held in conjunction with meetings of the commission. It also requires the commission to encourage participation by interested public, and to permit the public an opportunity to comment on each proposed action of the commission before a final vote is taken on any motion.

Section 7. The bill amends s. 553.77, F.S., to provide the commission with the authority to amend the Florida Energy Efficiency Code for Building Construction to implement recommendations and standards to improve energy-efficiency in the construction of all new residential, commercial, and government buildings.

Section 8. The bill creates s. 553.886, F.S., to require that the Florida Building Code must facilitate and promote the use of cost-effective energy conserving, energy demand-management, and renewable energy technologies in buildings.

Section 9. The bill creates s. 553.9061, F.S., to establish the following schedule of required increases in the energy efficiency performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. These increases are relative to the 2004 Florida Building Code, as amended on May 22, 2007:

- By 2010, efficiency increases of at least 20 percent.
- By 2013, efficiency increases of at least 30 percent.
- By 2016, efficiency increases of at least 40 percent.
- By 2019, efficiency increases of at least 50 percent.

The commission is further required to identify within code support and compliance documentation the specific building options and elements available to meet the energy efficiency goals. Options and elements include solar water heating; energy efficient appliances; energy efficient windows, doors, and skylights; low solar absorption roofs; enhanced ceiling and wall insulation; reduce leak duct systems; programmable thermostats, and energy efficient lighting systems. The Florida Energy Commission must review the energy efficiency goals at least once every three years and the review must be completed prior to the adoption of the triennial updates to the Florida Building Code.

Section 10. The bill directs the commission to conduct a study to evaluate energy efficiency ratings for new buildings and appliances, and include a review of the current energy efficiency ratings and consumer labeling requirements contained in ch. 553, F.S. The study must contain recommendations on strengthening and integrating the energy efficiency rating and labeling requirements. The commission must submit a report on the recommendations to the President of the Senate and the Speaker of the House of Representatives by February 1, 2009.

Section 11. The bill directs the commission to conduct a study to evaluate opportunities to restructure the Florida Energy Efficiency Code for Building Construction to achieve long-range improvements to building energy performance. The commission is directed to address the integration of the Thermal Efficiency Code, the Energy Conservation Standards Act, and the Florida Building Energy-Efficiency Rating Act, which are all contained in ch. 553, F.S. The commission must submit a report containing recommendations on the integration to the President of the Senate and the Speaker of the House of Representatives by February 1, 2009.

Section 12. The bill directs the department, in consultation with the Florida Energy Affordability Coalition, to identify and review issues relating to the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program. Recommendations made by the department and the coalition should:

- Support customer health, safety, and well-being;
- Maximize available financial and energy conservation assistance;
- Improve the quality of service to customers seeking assistance; and

- Educate customers to make informed decisions regarding energy use and conservation.

The department must report findings and recommended statutory changes to the President of the Senate and the Speaker of the House of Representatives by January 1, 2009.

Section 13. The bill repeals s. 553.731, F.S., relating to wind-borne debris protection requirements.¹⁰

Section 14. The bill amends s. 718.133, F.S., to authorize the board of administration of a condominiums or multicondominiums to, without the approval of the members, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

Section 15. The bill provides that the act shall take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because the bill requires cities and counties to expend funds to develop a new comprehensive plan element, it may fall under the purview of s. 18, Art. VII, of the State Constitution. If it is determined that the total costs to prepare the new energy elements exceed \$1.8 million, the bill needs to have a finding of important state interest and a 2/3 vote of the membership of each house of the Legislature to effectively bind cities and counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate at this time.

¹⁰ The requirements of s. 9, ch. 2007-01, L.O.F., and s. 26, ch. 2007-90, L.O.F., relating to wind-borne debris protection requirements, are unaffected by the repeal of s. 553.731, F.S.

C. **Government Sector Impact:**

State Government: Indeterminate at this time. However, the Florida Building Commission and the Department of Community Affairs have both reported that the study provisions of the CS can be implemented within current budget authority.

The department, as the state land planning agency, will incur additional expenses in the review of the plan amendments submitted by local governments.

Local Government: Indeterminate at this time. However, all 67 counties and more than 400 municipalities will incur expenses due to the local comprehensive plan amendments required to address the energy element, and required revisions to the future land use and traffic circulation elements.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 18, 2008:

The committee substitute (CS) amends s. 553.36(13), F.S., to include modular and factory-built building within the definition of the term “manufactured building.”

The CS amends s. 553.74(1), F.S., to expand the list of organizations that are encouraged to recommend a list of candidates to be considered by the governor for appointment to the commission. The additional organizations are the Mechanical Contractors Association of Florida, the National Electrical Contractors Association, Florida Chapter, the Union Contractors Association, the Sheet Metal and Air Conditioning Contractors National Association, and the United Pool and Spa Association.

The CS also amends ss. 553.74(1) and (2), F.S., to provide for the governor’s designation of the chair of the Building Commission from among one of the 23 appointed members, and provides that the person designated as the chair shall serve as the chair at the pleasure of the governor.

The CS amends s. 553.75, F.S., to authorize the department to use communications media technology in conducting meetings of the commission and to require the commission to encourage participation and to permit interested members of the public to comment on each proposed action of the commission before a final vote is taken on any motion.

The CS amends s. 553.9061, F.S., to clarify that the current edition of the Florida Building Code is the 2004 Florida Building Code, as amended on May 22, 2007.

The CS amends s. 163.04(2), F.S., to clarify that condominium unit are residential dwellings for purposes of installation of solar collectors or other energy devices The CS deletes the provision that solar collectors may be installed on a condominium roof that is considered a common element of the condominium association.

The CS amends s. 718.133, F.S., to authorize the board of administration of a condominiums or multicondominiums to, without the approval of the members, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

B. Amendments:

None.