

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 849 Building Construction and Inspection

SPONSOR(S): Economic Affairs Committee, Rulemaking & Regulation Subcommittee, Business & Consumer Affairs Subcommittee, Davis and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	12 Y, 0 N, As CS	Creamer	Creamer
2) Rulemaking & Regulation Subcommittee	14 Y, 0 N, As CS	Miller	Rubottom
3) Economic Affairs Committee	15 Y, 0 N, As CS	Livingston	Tinker

SUMMARY ANALYSIS

The bill amends numerous provisions relating to the Florida Building Code and provisions relating to fire safety, construction standards, and inspection guidelines. The bill:

- Exempts rules adopting federal standards, updates or modifications of the Florida Building Code, and updates or modifications of the Florida Fire Prevention Code from the requirement for legislative ratification.
- Prohibits the Commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements.
- Revises guidelines for the Department of Management Services to follow concerning standards for public buildings.
- Deletes references to the specified energy efficiency and sustainable materials rating standards, and redefines the terms “sustainable building rating” or “national model green building code” to include the International Green Construction Code (IGCC). These changes substitute references to the individual green code ratings with the term “sustainable building rating” or “national model green building code.”
- Requires hurricane mitigation training, approved by the Construction Industry Licensing Board, to be included as part of a home inspector’s continuing education; allows individuals to be licensed as a home inspector, if the individual submits an application postmarked on or before July 1, 2012; removes certain qualifications for licensure; and removes certain authority to conduct investigations.
- Requires compliance with minimum separation distances for liquefied petroleum gas tanks as provided in the 2011 National Fire Protection Association standard 58.
- Specifies that a person engaging in the practice of landscape design may submit plans to government agencies for approval.
- Clarifies that Habitat for Humanity International, Inc., or its local affiliates, are exempt from contracting licensing requirements for the rehabilitation of certain family residences.
- Revises provisions relating to the Florida Americans with Disabilities Accessibility Implementation Act to incorporate the 2010 ADA Standards for Accessible Design and to conform the Florida-specific provisions to those standards.
- Requires proposed amendments to base codes to provide a specific justification for why Florida is different from other areas that have adopted the base code; specifies that changes to the foundation code are only effective until the Commission adopts the new edition every three years.
- Efficiency standards for the Building Code are changed by replacing scheduled enhancements to the energy code provisions with language referring to the model code.
- Replaces the specified energy efficiency requirements for commercial and residential pool equipment with a reference to the Florida Energy Efficiency Code for Building Construction.

The bill is not anticipated to have a significant fiscal impact on state or local governments.

The bill has an effective date of July 1, 2011.

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

STORAGE NAME: h0849e.EAC

DATE: 4/26/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

The Florida Building Code (Building Code) is authorized by statute as the unified statewide building code pertaining to all construction.¹ The overall purpose for the Building Code is to create within a single set of documents uniform standards applicable to all aspects of construction in Florida to provide effective and reasonable protection for public health, safety, and welfare "...at the most reasonable cost to the consumer."² The Florida Building Commission (Commission)³ is responsible for adopting, updating, and general administration of the Building Code. With certain exceptions, enforcement of the Building Code is through duly-authorized state and local agencies.⁴

The law provides detailed sections on legislative intent⁵, Building Code adoption and contents,⁶ specific processes for different types of amendments,⁷ the triennial comprehensive update conducted by the Commission,⁸ and the Commission's powers.⁹ The express intent of the law is for the Commission to use the statutory rulemaking requirements and process¹⁰ for adopting, amending, or updating the Building Code:¹¹

s. 553.72, F.S., Intent.

(3) It is the intent of the Legislature that the Florida Building Code be adopted, modified, updated, interpreted, and maintained by the Florida Building Commission in accordance with ss. 120.536(1) and 120.54, F.S., and enforced by authorized state and local government enforcement agencies.

This intent is made a specific requirement in the substantive sections on adoption,¹² amendments,¹³ and updates.¹⁴ In addition, a large number of substantive bills and amendments are considered by the Legislature each year, keeping the Legislature actively engaged in the process of revision.

Florida Building Commission

The Commission consists of 25 members who are appointed by the Governor and confirmed by the Senate.¹⁵ The Commission is authorized to adopt general administrative rules¹⁶ and issue binding code interpretations.¹⁷ The Commission is required to update the Building Code every 3 years, following the

¹ Ch. 553, Part IV, Florida Building Code.

² s. 553.72(1), F.S.

³ s. 553.74, F.S.

⁴ s. 553.80, F.S.

⁵ s. 553.72, F.S.

⁶ s. 553.73(1)-(3), F.S.

⁷ s. 553.73(3) & (9)-technical amendments, (4) & (5)-amendments by local authorities, (8)-substantive amendments.

⁸ s. 553.73(7), F.S.

⁹ s. 553.74 - 553.7, F.S.

¹⁰ s. 120.536(1) and 120.54, F.S. Chapter 120 is Florida's Administrative Procedures Act or "APA".

¹¹ s. 553.72(3), F.S.

¹² s. 553.73(1)(a), F.S.

¹³ s. 553.73(3), (8), & (9), F.S.

¹⁴ s. 553.73(7)(a), F.S.

¹⁵ s. 553.74, F.S.

¹⁶ s. 553.76(1), F.S.

¹⁷ s. 553.775, F.S.

statutory rulemaking process in ch. 120, F.S., the Administrative Procedures Act (APA). The statute also provides a minimum time of 6 months between adoption of the updated Building Code and its effective date.¹⁸ The Commission is housed in the Department of Community Affairs (DCA) solely for administrative purposes. The DCA publishes the notices required for rulemaking¹⁹ as part of its duties to provide the Commission with administrative and staff support.²⁰

Update of the Florida Fire Prevention Code

One of the key components of the Building Code cross-references to the separately-adopted Florida Fire Prevention Code (Fire Code). The State Fire Marshall is required to adopt a new edition of the Fire Code every 3 years through the rulemaking provisions of the APA.²¹ The triennial update of the Fire Code is coordinated with that of the Building Code in order to prevent undue burdens on businesses and consumers.²² As part of the triennial update, the State Fire Marshall notifies each municipal, county, and special district fire department of the pending review and update. The local officials are required to provide copies of their local fire code amendments no later than 120 days before the date the State Fire Marshall is to adopt the triennial updates, in order for the Fire Marshall to determine whether the local provisions comply with the law.²³ Under present law, local fire code amendments are effective only until the adoption of the next triennial review.²⁴

The statute imposes detailed requirements the Commission must follow to adopt, amend, review, and update the Building Code in addition to following APA procedural requirements.²⁵ The resulting Building Code contains or incorporates the laws and rules pertaining to all major aspects of public and private building construction in Florida, from broad areas including design, physical construction, modification, repair, and demolition,²⁶ to specific matters from structural and mechanical systems to elevators and coastal construction standards.²⁷ The Building Code references the Florida Fire Prevention and Life Safety Codes adopted by Department of Financial Services rule.²⁸ When updating the Building Code the Commission is required to create the Building Code's foundation by incorporating the most current versions of a number of standard codes, such as the International Plumbing Code and the National Electrical Code.²⁹ The entire process of updating the Building Code is subject to extensive statutory direction,³⁰ continual legislative revision, and the procedural protections of the APA rulemaking process.³¹

Updates to the Building Code and the Fire Code are required to be adopted every 3 years³² and are developed with significant involvement of the Legislature and its substantive committees, business and industry representatives, local and state government, and the general public. Other rules involve state adoption of federal standards for operation of programs involving significant federal oversight due to funding sources or implementation of federal law and are adopted under a procedure separate from regular rulemaking, as stated in s. 120.54(6), F.S. All three categories of rules are subject to economic scrutiny in the rulemaking process but the concern for additional legislative scrutiny imposed by ratification appears to be met by the standards imposed under the substantive statutes being implemented by rule.

¹⁸ s. 553.73(7)(e), F.S.

¹⁹ Notice of proposed rule 9N-1.001, to adopt the 2010 updates to the Code, published by DCA on January 7, 2011, at <https://www.flrules.org/gateway/ruleNo.asp?id=9N-1.001>.

²⁰ s. 553.75(3), F.S.

²¹ s. 633.0215(1), F.S.

²² 3/16/2011 memorandum from the State Fire Marshall's office, on file with staff of the Rulemaking & Regulation Subcommittee.

²³ s. 633.0215(3)(a), F.S.

²⁴ s. 633.0215(3)(b), F.S.

²⁵ s. 553.73, F.S.

²⁶ s. 553.73(1)(a), F.S.

²⁷ s. 553.73(2), F.S.

²⁸ s. 553.73(1)(c), F.S.

²⁹ s. 553.73(7)(a), F.S.

³⁰ Ch. 553, Part IV, F.S.

³¹ s. 120.54, 120.56, F.S.

³² s. 553.73(7)(a), 633.0215(1), F.S.

Exemptions to Required Legislative Ratification

As part of statutory rulemaking, agencies are required to analyze the economic effect of a proposed rule and prepare a formal study if the proposal is likely to have an adverse impact on small businesses or directly or indirectly increase regulatory costs by over \$200,000 in the aggregate within a year of the rule going into effect.³³ The required elements of this economic study, or “statement of estimated regulatory costs” (SERC) include an economic analysis of the proposed rule’s impact on three specific economic factors as articulated in s. 120.541(2)(a), F.S.³⁴ If the proposed rule is likely to have an affect exceeding \$1 million in the aggregate within 5 years of being implemented, the rule must be submitted for legislative ratification under s. 120.541(3), F.S.

The reference in the statute to “paragraph (2)(a)” appears to be inadvertent, as it created an inconsistency with the SERC requirement in s. 120.54(3)(b), F.S. The apparent intent was to exempt both emergency rulemaking and the adoption of rules incorporating federal standards from the ratification requirement, not the mandatory economic analysis required as part of a SERC under s. 120.541(2)(a), F.S., The current language exempts both emergency rulemaking and adoption of rules incorporating federal standards only from the comprehensive economic analysis required for a SERC. Emergency rules, being excepted from general rulemaking requirements, are exempt from SERC requirements.

Proposed Changes

The bill amends. 120.541(4), F.S., to exempt the adoption of federal standards, updates or modifications to the Building Code, and updates or modifications to the Fire Code from required legislative ratification. The adoption of these rules still would be subject to the preparation of a comprehensive SERC and economic analysis.

Current Situation

International Green Construction Code (IGCC)

Sections 255.251 – 255.2575, F.S., constitute the Florida Energy Conservation and Sustainable Buildings Act (Energy Conservation Act).³⁵ The Department of Management Services is required to provide an evaluation of “life-cycle costs based sustainable building ratings” before any state agency leases, builds, or has constructed a building or other structure.³⁶ Buildings constructed or financed by the state currently are to comply with one of several rating systems enumerated by s. 255.252, F.S. This list does not include the International Green Construction Code (IGCC).³⁷

The IGCC establishes baseline green and sustainability “regulations for new and existing traditional and high-performance buildings related to energy conservation, water efficiency, building owner responsibilities, site impacts, building waste, and materials and other considerations.” The IGCC is sponsored and endorsed by the International Code Council (ICC), the American Institute of Architects, ASTM International, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the U.S. Green Building Council (USGBC), and the Illuminating Engineering Society (IES).³⁸

³³ s. 120.541(1)(b), F.S.

³⁴ These factors are 1) whether the proposed rule is likely to adversely impact economic growth, private-sector job creation or employment, or private-sector investment; 2) whether there is a likely adverse impact on business competitiveness, including the ability of Florida businesses to compete in other states or domestic markets; and 3) whether there is a likely increase in regulatory costs, including transactional costs.

³⁵ s. 255.251, F.S.

³⁶ s. 255.254(1), F.S.

³⁷ s. 255.252, F.S.

³⁸ <http://www.iccsafe.org/cs/IGCC/Pages/PublicVersionDevelopment.aspx>. (Last visited on 3/31/2011).

The ICC recently revealed the latest version of the IGCC, Public Version 2.0, in December of 2010.³⁹ The ICC provides that the new code complements existing rating systems and guidelines by providing minimum baseline requirements along with a “jurisdictional electives” section of the code that allows jurisdictions to customize the codes beyond its baseline provisions. The IGCC acts as a model code that becomes law after it is adopted by the state or local government entity that governs construction standards.

Proposed Changes

The bill deletes references to the specified energy efficiency and sustainable materials rating standards, and redefines the terms “sustainable building rating” or “national model green building code” to include the International Green Construction Code (IGCC). These sections substitute references to the individual green code ratings with the term “sustainable building rating” or “national model green building code.”

The bill amends s. 553.74(1)(v), F.S., revising the membership of the Commission. The language expands the qualifications for the participating member who is a representative of the green building industry, to include “a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).”

Current Situation

Minimum Separation Distances for LP Tanks

The National Fire Protection Association (NFPA) is an international nonprofit organization established to reduce the risks and effects of fires by establishing consensus codes and standards, research, training, and education. NFPA 58, also known as the Liquefied Petroleum Gas Code, applies to “the storage, handling, transportation, and use of LP-Gas.” Liquefied petroleum gases are defined by the code as “gasses at normal room temperature and atmospheric pressure [that] liquefy under moderate pressure and readily vaporize upon release of the pressure.”

Section 527.06(3), F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to adopt rules that substantially conform to NFPA’s published safety standards. Subsection (3), specifically provides:

“Rules in substantial conformity with the published standards of the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.”

State agencies currently enforcing the LP gas container separation distances adopt changes in the NFPA safety codes as standards evolve and technology changes. DACS incorporates and makes NFPA 58 the applicable standard in Rule 5F-11.002. The rule was last updated on May 28, 2008, to adopt the 2008 version of NFPA 58. As NFPA recently published the 2011 edition of NFPA 58, DACS has initiated rulemaking to amend Rule 5F-11.002 and adopt the 2011 NFPA 58.⁴⁰

Proposed Changes

The bill amends s. 527.06(3), F.S., addressing minimum separation distances between an LP gas tank and a building, adjoining property line, other LP tanks, or any source of ignition. DACS and other state agencies are authorized to require compliance only with the standards for minimum LP gas tank

³⁹ <http://www.iccsafe.org/CS/IGCC/Pages/IGCCDownloadV2.aspx>. (Last visited on 3/31/2011).

⁴⁰ Administration of the LP Gas standards is through the Division of Standards in DACS. The Division filed a Notice of Proposed Rule with the Department of State which is due to be published in the April 8, 2011 edition of the Florida Administrative Weekly. (Conversation with Division Director Isadore F. Rommes on April 6, 2011).

separation distances included in the 2011 version of NFPA 58. The bill further provides subsection (3) would be deemed repealed on the last effective date of rules adopted by DACS, the Commission as part of the Building Code, and the Office of State Fire Marshal as part of the Fire Code, of the minimum LP gas tank separation distances contained in the 2011 edition of NFPA 58.

Current Situation

Home Inspectors

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity through the permitting process for the purpose of determining whether a structure complies with the appropriate building code standards. By contrast, a home inspection is a discretionary endeavor. A home inspection is typically conducted for a potential purchaser of a home, although home inspections are sometimes conducted for the current owner of a home to issue an opinion as to its condition. A home inspection is performed by private individuals rather than by local government inspectors.

“Home inspection” is defined to mean:

“a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing an opinion of the condition of the home.”

Proposed Changes

The bill requires at least 2 hours of hurricane mitigation training to be included as part of a home inspector’s required 14 hours of continuing education. The hurricane mitigation training must be approved by the Construction Industry Licensing Board.

The bill specifies that if a problem is observed but it is “not” self evident, the home inspector shall report a reason why the system or component is deficient or near the end of its’ service life.

The bill allows individuals with the following credentials to be licensed as a home inspector, if the individual submits an application to the Department of Business and Professional Regulation postmarked on or before July 1, 2012 and:

- Possesses a one and two family dwelling inspector certification issued by the International Code Council or the Southern Building Code Congress International,
- Has been certified as a one and two family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII, of ch. 468, F.S., or
- Possesses a Division I contractor license under part I, of ch. 489, F.S.

The bill deletes the current qualifications for licensure as a home inspector to be submitted before March 1, 2011. Requirements that are deleted include:

- A state or national certification with a proctored examination on home inspections, completion of at least 14 hours of verifiable education on home inspections, or
- At least three years of experience verified through home inspection reports submitted by the applicant and completion of at least 14 hours of verifiable education on home inspections.

Present Situation

Americans with Disabilities Act (ADA)

After the adoption of the federal Americans with Disabilities Act (ADA),⁴¹ Florida revised its accessibility code based on the U.S. Department of Justice's (DOJ) regulations, which established the ADA Accessibility Guidelines (ADAAG).⁴² The result was the Florida Americans with Disabilities Accessibility Implementation Act,⁴³ which included requirements specific to Florida and was adopted by the DOJ.

In 2008, the Commission convened a Florida Accessibility Code Workgroup to develop recommendations for amending the Florida accessibility code for building construction by integrating the relevant standards in the DOJ's most recent accessibility guidelines. The workgroup was directed to evaluate and develop recommendations for the integration of the Florida Americans with Disabilities Accessibility Implementation Act into the 2004 ADAAG⁴⁴ and later regulations proposed and adopted by the DOJ. The workgroup also made recommendations to conform Florida's accessibility code to DOJ's 2010 ADA Standards for Accessible Design,⁴⁵ including updating references and revising terminology.⁴⁶

Proposed Changes

The bill revises the provisions relating to the Florida Americans With Disabilities Accessibility Implementation Act (Act) to incorporate the 2010 ADA Standards for Accessible Design (ADA Standards) as revised by the DOJ in September, 2010, and to conform the Florida-specific provisions to those standards. Several sections within the Act are amended to update the references to the 2010 ADA Standards for Accessible Design and the relative Code of Federal Regulation citations and are deleted to provide consistency with the ADA Standards.

The Legislative intent statement is modified to reference the 2010 ADA Standards for Accessible Design and removes the term "guidelines." Commercial facilities are included in the statement that the Act is not intended to diminish the defenses available under the ADA and the standards.

The bill amends the provision relating to exterior hinged doors to update the reference to s. 404.2.9 of the ADA Standards; updates the requirements for special accessibility features for motels and hotels to reflect the ADA Standards and the specific references to the standards; and updates the reference to the ADA standard for bathing rooms, water closets, and toilet rooms.

According to the Commission, the following Florida-specific standards are either unnecessary, are inconsistent with the federal regulations, or are addressed through the ADA standards and are, therefore, deleted.

- All required doors and walk-through openings in buildings, excluding single-family homes, duplexes, and triplexes not covered by the ADA of 1990 or the Fair Housing Act must have at least 29 inches of clear width.⁴⁷

According to the Commission, this provision has no effect because the requirement would only apply to federal buildings, which the state is preempted from regulating under its accessibility standards.

⁴¹ 42 U.S.C. 12181. Title III of the Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards.

⁴² Section 2, ch. 93-183, L.O.F.

⁴³ Section 1, ch. 93-183, L.O.F.

⁴⁴ The U.S. Department of Justice (DOJ) has replaced the term "Americans with Disabilities Act Accessibility Guidelines" with the term "Americans with Disabilities Act Standards for Accessible Design."

<http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf>.

⁴⁵ Compliance with the 2010 Standards for Accessible Design is permitted as of September 15, 2010, but not required until March 15, 2012. DOJ, Revised ADA Regulations Implementing Title II and Title III of the federal ADA.

<http://www.ada.gov/regs2010/ADAREgs2010.htm>.

⁴⁶ Florida Building Commission, *Report to the 2011 Legislature*, Jan. 2011, at 5, 16 and 58, available at

http://www.dca.state.fl.us/fbc/commission/FBC_0111/Commission/FBC_Report_and_Recommendations_2011_Legislature_1-24-11.pdf.

⁴⁷ Section 553.504(3), F.S.

- The Florida-specific requirement that the bottom landing on ramps must provide 72 inches of straight and level clearance, rather than the ADA standards 60 inches of clearance.⁴⁸

According to the Commission, a landing size larger than that required by the ADA Standards is not justified. The ADA standards should apply.

The following are Florida-specific requirements:⁴⁹

- Handrail extensions at top and bottom of ramps shall be 18 inches.
- Curb ramps that are part of a means of egress must be 44 inches wide.
- Curb ramps not protected by handrails must have the sides be flared with a slope no greater than a ratio of 1 to 12.

According to the Commission, these standards exceed the ADA Standards.

- The requirement for additional accessible seating spaces in assembly areas, public food service, and licensed beverage service establishments.⁵⁰

According to the Commission, studies indicate the number of wheelchair accessible areas provided under the ADA Standards sufficiently address the demand for accessible seating.

- The standards for designated aisle width between tables with end seating positions in restaurants.⁵¹

According to the Commission, it cannot justify Florida-specific standards for aisle widths.

- The requirement that all standard water closets must be at a height of 15 inches, measured vertically from the finished floor to the top of the seat, with a variation of plus or minus a half inch.⁵²

According to the Commission, the ADA Standards should be applied to all rooms incorporating accessibility features.

- The Florida-specific standards for detectable warning surfaces.⁵³

According to the Commission, the ADA Standards should be applied.

- The requirement that the installation and placement of public telephones must be governed by the ruled of the Public Service Commission.⁵⁴

According to the Commission, the ADA Standard requirements for public telephones will be included in the building code.

- The requirement that the accessible stall door must be self-closing.⁵⁵

According to the Commission, this requirement is established in the ADA Standards.

- The requirement that all checkout aisles that are not required to be accessible must have at least 32 inches of clear passage.⁵⁶

According to the Commission, there is no justification for Florida-specific standards for non-accessible checkout aisle widths.

⁴⁸ Section 553.504(4), F.S.

⁴⁹ Section 553.504(5), F.S.

⁵⁰ Section 553.504(7), F.S.

⁵¹ Section 553.504(8), F.S.

⁵² Section 553.504(9), F.S.

⁵³ Section 553.504(10), F.S.

⁵⁴ Section 553.504(11), F.S.

⁵⁵ Section 553.504(12), F.S.

⁵⁶ Section 553.504(13), F.S.

- The prohibition of turnstiles in locations that serve fewer than 100 persons and permitting turnstiles in occupancies which serve at least 100 persons under certain conditions.⁵⁷

According to the Commission, the ADA Standards do not permit turnstiles in required accessible routes.

The bill amends several provisions relating to the accessibility standards for parking spaces for persons with disabilities. The bill:

- Amends s. 553.5041(1), F.S., to update the references to the ADA Standards for parking spaces for persons with disabilities. The bill also revises this section to use the terminology of the ADA standards.
- Amends s. 553.5041(3), F.S., to reference “designated accessible spaces,” rather than parking spaces for self-parking by employee and visitor parking areas.

According to the Commission, the number and placement of accessible parking spaces provided in s. 553.5041(4), and in the ADA Standards referenced in this section should apply.

- Amends s. 553.5041(5)(a), F.S., to clarify that all spaces must be located on accessible routes that are at least 44 inches wide and laid out so that users are not compelled to walk or wheel behind parked vehicles except behind his or her own parked vehicle.

According to the Commission, the general prohibition of requiring travel behind parked vehicles is to prevent injury to wheel chair bound persons who may not be seen by the drivers of parked vehicles. The Commission believes that this concern is not applicable when the driver of a vehicle is wheeling behind the vehicle that he or she just parked.

- Amends s. 553.5041(5)(b), F.S., to delete the requirement that accessible spaces must be located on the shortest safely accessible route to an accessible building entrance.

According to the Commission, the ADA Standards require placement on the shortest accessible route and the application of the additional term “safely” may conflict with the ADA standards.

- Amends s. 553.5041(5)(c)1., F.S., to delete the requirement for the placement of accessible aisles adjacent to accessible parking spaces.

According to the Commission, this provision is duplicative of the ADA Standards.

- Amends s. 553.5041(5)(d), F.S., to delete the requirement relating to proximity of parallel on-street parking to the beginning or end of a block or adjacent to alley entrances.

According to the Commission, this provision may unnecessarily limit the placement of parallel parking spaces and may violate the ADA requirement for accessible parking on the shortest accessible route to a building’s accessible entrances.

- Deletes the s. 553.5041(5)(e), F.S., which relates the slope and grade of the pavement where parallel parking is located.

According to the Commission, the slope and grade characteristics of parallel parking spaces on streets are dictated by the characteristics of the streets.

- Deletes the s. 553.5041(5)(f), F.S., which requires that curb ramps be placed outside parking spaces.

According to the Commission, this provision is addressed in the ADA Standards.

- Amends s. 553.5041(6), F.S., to provide that the parking space must be striped in a manner consistent with the standards of the controlling jurisdiction for other spaces.

⁵⁷ Section 553.504(14), F.S.

According to the Commission, this provision would provide for the consistent application of the layout of parking spaces.

- Decreases the height of parking signs for the disabled from a height of at least 84 inches to a height of at least 60 inches.

According to the Commission, this provision is consistent with the ADA Standards.

The bill amends the provision related to the exceptions to the applicability of the ADA, to delete the reference to parking spaces, parking lots, and other parking facilities being governed by s. 553.5041, F.S., when that section provides increased accessibility. According to the Commission, the parking requirements are addressed in s. 553.5041, F.S., as amended by this bill. The powers of the Commission are amended to update the reference to the ADA Standards.

The bill revises the provisions that establish the applicability⁵⁸ of the accessibility requirements in part II of ch. 553, F.S. The bill deletes the provision that limits the application of the accessibility standards in part II, ch. 553, F.S., to buildings, structures, and facilities that were either under construction or under contract for construction on October 1, 1997. The bill also deletes the exception to such application for buildings, structures, or facilities that were in existence on October 1, 1997, unless they are one of the listed types of buildings, structures, or facilities.

The bill amends the provisions related to vertical accessibility⁵⁹ to update references to the ADA Standards and to expand the exception for locations that functionally cannot comply with the Florida specific requirements for vertical accessibility to all levels above and below the occupiable grade level to include:

- Theaters, concert halls, and stadiums or large assembly areas that have stadium-style seating or tiered seating, if specific ADA Standards are met.
- All play and recreation areas if the requirements of the ADA Standards are met.
- All employee areas exempted according to the ADA Standards.
- Facilities, sites, and spaces exempted according to the ADA Standards.

According to the Commission, vertical accessibility to all levels is not feasible as applied to these buildings and structures. The new ADA Standards include for the first time access to a percent of elevated play areas to ensure equal play and recreation experiences for persons with disabilities. The ADA Standards exempts employee work areas from full accessibility and maintains the policy of requiring approach, enter, and exit capability criteria. With respect to large assembly areas, vertical accessibility to all levels is unattainable and subject to a waiver. The ADA Standards specify the requirements, including sight-lines, companion seating, and dispersed accessible seating. The new standards require conditions that are typically imposed by waiver but exemption would eliminate the 2 to 6 month delay to resolve the matter.

The bill also repeals the requirement for alternate power generators for emergency purposes and its related provisions. According to the Commission, this provision exceeds the scope of the need for the disabled persons to have access to ground levels and upper story living areas following a disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The Commission believes the requirement a practical means of enforcement within the Building Code system as it relates to existing high rise buildings.

The bill provides that buildings and facilities may be designed to conform to the 2010 ADA Standards if the design also complies with the Florida-specific requirements in part II, ch. 553, F.S., until the Florida Accessibility Code for Building Construction is updated to implement the changes to part II of ch. 553, F.S., as amended by this bill.

Miscellaneous Provisions

Proposed Changes

⁵⁸ Section 553.507, F.S.

⁵⁹ Section 553.509, F.S.

The bill amends s. 481.329, F.S., to provide that nothing in part II, of ch. 481, F.S., which provides for the regulation of the practice of landscape architecture, shall prohibit a person engaging in the practice of landscape design from submitting plans to government agencies for approval.

Proposed Changes

The bill amends s. 489.103, F.S., to clarify that Habitat for Humanity International, Inc., or its local affiliates are exempt from contracting licensing requirements for the rehabilitation of certain family residences.

Proposed Changes

The bill creates s. 489.105(3)(q), F.S., to define the term "glass and glazing contractor." Specifically, this section codifies the Construction Industry Licensing Board rule for glass and glazing specialty contractors and allows licensed glass and glazing contractors to install hurricane shutters.

Proposed Changes

The bill amends s. 553.73, F.S., to specify the codes to be used to develop the base code in Florida to form the foundation for the Florida Building Code. It requires proposed amendments to demonstrate that the state's geographical jurisdiction exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code and why the proposed amendment applies to this state.

The bill specifies that amendments or modifications to the foundation code are only effective until the Commission adopts the new edition of the Building Code every three years.

Proposed Changes

The bill amends s. 553.74(1)(v), F.S., revising the membership of the Commission. The language expands the qualifications for the participating member who is a representative of the green building industry, to include "a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED)".

Proposed Changes

The bill amends s. 553.842, F.S., to require products advertised as hurricane, windstorm or impact protection from wind-borne debris during a hurricane or windstorm, actually be approved as such under Florida's product approval program in s. 553.842, F.S., or s. 553.8425, F.S. It also provides that any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without required approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of ch. 501, F.S.

Proposed Changes

The bill substantially rewords s. 553.9061, F.S., relating to increases in the thermal efficiency standards, to state:

The energy efficiency standards for the Florida Building Code as created in this chapter shall be based on the national consensus standards of the International Energy Conservation Code as referenced by the United States Department of Energy.

The change in reference replaces scheduled enhancements to the energy code provisions with language referring to the model code.

Proposed Changes

The bill amends ss. 553.909(3), (4), and (5), F.S., to replace the specified energy efficiency requirements for commercial and residential pool pumps, motors, heaters and spas, with a reference to the Florida Energy Efficiency Code for Building Construction. The changes are effective on or after December 31, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.541(4), F.S., to exempt rules adopting federal standards, updates or modifications to the Florida Building Code, and updates or modifications to the Florida Fire Prevention Code from the requirement of legislative ratification.

Section 2. Amends s. 161.053, F.S., to prohibit the Commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements.

Section 3. Amends s. 162.12(1), F.S., to allow notices of code violations to be sent to corporations through their registered agent.

Sections 4-7: Amends s. 255.252, .253, .257, .2575, F.S., to remove separate references to four different rating systems and substitute the defined phrase "sustainable building rating" or "national model green building code."

Section 8. Amend s. 468.8316 to require at least 2 hours of hurricane mitigation training to be included as part of a home inspector's required 14 hours of continuing education.

Section 9. Amends s. 468.8319, F.S., to remove the delay in the effective date for enforcement of unlicensed activity against home inspectors until July 1, 2011.

Section 10. Amends s. 468.8323, F.S., to require that if a defect is "not" self evident, the home inspector shall report a reason why the system or component is deficient or near end of its service life.

Section 11. creates s. 468.8324, F.S., to allow individuals with specified credentials to be licensed as a home inspector, if the individual submits an application to the Department of Business and Professional Regulation postmarked on or before July 1, 2012; removes certain qualifications for licensure; and removes certain authority to conduct investigations by the Department of Business and Professional Regulation.

Section 12. Amends s. 468.841, F.S., to provide that home inspectors licensed under part XV of ch. 468, F.S., are not required to comply with the license requirements for mold assessment.

Section 13. Amends s. 481.329, F.S., to specify that a person engaging in the practice of landscape design may submit plans to government agencies for approval.

Section 14. Amends s. 489.103, F.S., to clarify that Habitat for Humanity International, Inc., or its local affiliates are exempt from contracting licensing requirements for the rehabilitation of certain family residences.

Section 15. Amends s. 489.105, F.S., to define the term "glass and glazing contractor."

Sections 16 and 17. Amend ss. 489.107 and 489.141, F.S., to make technical conforming changes to cross-references resulting from the addition of the definition of "glass and glazing contractor."

Section 18. Amends s. 514.028, F.S., to replace one of the two public lodging industry seats on the seven-member Department of Health advisory review board with a representative from a local building department.

Section 19. Amends s. 527.06, F.S., to require compliance with the minimum LP gas container separation distances included in the 2011 version of NFPA 58.

Section 20. Amends s. 527.21, F.S., to specify that the definition for propane is as defined by the NFPA 58, Liquefied Petroleum Gas Code.

Sections 21 – 29. Amend the provisions related to accessibility for handicapped persons in part II of ch. 533, F.S., which consists of ss. 553.501-553.513, F.S., to revise references to the current 2010 ADA Standards for Accessible Design (ADA standards) and to conform the Florida specific provisions to those standards.

Section 21 Amends s. 553.502, F.S., to revise the statement of Legislative intent.

Section 22. Amends s. 553.503, F.S., which relates to the adoption of the federal standards to update the reference to the ADA Standards for Accessible Design.

Section 23. Amends s. 553.504, F.S., which provides exceptions to the applicability of federal ADA standards, to update the reference to the ADA Standards for Accessible Design.

Section 24. Amends s. 553.5041, F.S., to update the reference to the ADA standards for parking spaces for persons with disabilities.

Section 25. Amends s. 553.505, F.S., which identifies the locations that are subject to the accessibility standards and are not subject to the ADA standards.

Section 26. Amends s. 553.506, F.S., to update the reference to the ADA standards in regards to the powers of the commission.

Section 27. Amends s. 553.507, F.S, to revise the language that establishes the applicability of the accessibility requirements in part II of ch. 553, F.S.; removes provisions for construction on October 1, 1997 and facilities that were in existence on October 1, 1997.

Section 28. Amends s. 553.509, F.S., to update the reference to the ADA standards concerning the powers of the commission and standards for vertical accessibility; repeals the alternate power generators for elevators provisions.

Section 29. Provides that buildings and facilities in this state do not have to comply with the changes provided by this act until the Florida Accessibility Code for Building Construction is updated.

Section 30. Amends s. 553.73, F.S., to specify the national codes to be used to develop the base code in Florida to form the foundation for the Building Code; requires proposed amendments to base codes to provide a specific justification for why Florida is different from other areas that have adopted the base code.

Section 31. Amends s. 553.74, F.S., to revise the membership of the 25-member Commission to expand the qualifications for the representative of the green building industry.

Section 32. Amends s. 553.842, F.S., to require products advertised as hurricane, windstorm or impact protection from wind-borne debris during a hurricane or windstorm be approved as such.

Section 33. Amends s. 553.9061, F.S.; to revise requirements for increases in the energy efficiency standards of the Florida Building Code.

Section 34 Amends ss. 553.909, F.S., to replace the specified energy efficiency requirements for commercial and residential pool equipment with a reference to the Florida Energy Efficiency Code for Building Construction.

Section 35. Amends s. 627.711, F.S., to require the hurricane mitigation training for home inspectors to be approved by the Construction Industry Licensing Board.

Section 36. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments in D., below.

2. Expenditures:

See fiscal comments in D., below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments in D., below.

2. Expenditures:

See fiscal comments in D., below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments in D., below.

D. FISCAL COMMENTS:

The overall purpose for the Building Code is to create within a single set of documents uniform standards applicable to all aspects of construction in Florida to provide effective and reasonable protection for public health, safety, and welfare "...at the most reasonable cost to the consumer."

One of the key components of the Building Code cross-references to the separately-adopted Fire Code. The triennial update of the Fire Code is coordinated with that of the Building Code in order to prevent undue burdens on businesses and consumers.

The DCA estimates compliance by businesses and consumers simply with the local construction permitting requirements resulting from the existence and enforcement of the Building Code readily exceed an aggregate of \$1 million over 5 years.⁶⁰ Where the Building Code is adopted in compliance with the Legislature's primary intent, following extensive legislative engagement during the three-year cycle, and protects "public health, safety, and general welfare ... at the most reasonable cost to the consumer",⁶¹ the resulting direct or indirect regulatory costs will normally exceed the statutory threshold requiring ratification for rules.

⁶⁰ 3/11/2011 conversation with Jim Richmond, Asst. Gen. Counsel, DCA, general counsel for Florida Building Commission.

⁶¹ s. 553.72(1), F.S.

The Commission currently is completing the third triennial update to the Code and has begun the rulemaking process.⁶² DCA anticipates the rule incorporating the final version of the updated Code will be ready to file for adoption after May 6 but before June 30, 2011.⁶³ Absent the requirement of legislative ratification the Code thus would become effective no later than December 31, 2011.⁶⁴ However, since the regulatory costs resulting from the operation of the Code will exceed the level of economic impact requiring legislative ratification, and the Code will not be adopted through rulemaking prior to the end of the regular session of the Legislature, under present law the earliest the Code would be considered for ratification would be during the 2012 regular session.

The State Fire Marshall concurrently is preparing the triennial update of the Fire Code for adoption at the same time as the Building Code update which also incorporates the Fire Code.⁶⁵

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 5, 2011, the Rulemaking & Regulation Subcommittee adopted CS/CS/HB 849 which added an exemption from the requirement of legislative ratification in s. 120.541(3), F.S., for rules adopting federal standards, the triennial update of the Florida Building Code, and the triennial update of the Florida Fire Prevention Code. CS/CS/HB 849 also added a revision of s. 527.06(3), F.S., to require affected state agencies to compel compliance only with the minimum LP gas tank separation distances contained in the 2011 edition of NFPA 58. This analysis reflects the changes in CS/CS/HB 849.

On April 21, 2011, the Economic Affairs Committee took up the bill, adopted a strike-all amendment and passed the bill as a CS/CS/CS/HB 849 by a vote of 15-0.

The CS/CS/CS differs from the CS/CS in the following major areas:

- Allows notices of code violations to be sent to corporations through their registered agent.
- Adds reference to a national model green building code to the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a referenced code.

⁶² Notice of Proposed Rule 9N-1.001; see note 26, above.

⁶³ See note 47, above.

⁶⁴ S. 553.73(7)(a), F.S.

⁶⁵ See note 41, above.

- Requires at least 2 hours of hurricane mitigation training to be included as part of a home inspector's required 14 hours of continuing education and requires hurricane mitigation training to be approved by the Construction Industry Licensing Board.
- Removes certain qualifications for licensure; and removes certain authority to conduct investigations by the Department of Business and Professional Regulation.
- Specifies that a person engaging in the practice of landscape design may submit plans to government agencies for approval.
- Defines the term "glass and glazing contractor."
- Includes a representative from a local building department as a member Department of Health advisory review board.
- Revises references to the current 2010 ADA Standards for Accessible Design and to conform the Florida specific provisions to those standards.
- Requires products advertised as hurricane, windstorm or impact protection from wind-borne debris during a hurricane or windstorm, be approved.
- Revises requirements for increases in the energy efficiency standards of the Florida Building Code.
- References the Florida Energy Efficiency Code for Building Construction for commercial and residential pool equipment.
- Requires hurricane mitigation training for home inspectors to be approved by the Construction Industry Licensing Board.

This analysis reflects the changes in CS/CS/CS/HB 849.