

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 269 Public Construction Projects  
**SPONSOR(S):** Energy & Utilities Subcommittee; Beshears  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N, As CS	Whittier	Collins
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	White	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Section 255.252(3), F.S., provides that, “[i]t is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code” and “[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code.” “Sustainable building rating or national model green building code” means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- International Green Construction Code (IgCC),
- Green Building Initiative’s Green Globes rating system,
- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services (DMS).

The bill clarifies that when a state agency is constructing new buildings or renovating existing buildings and are required to select a sustainable building rating system or national model green building code in accordance with s. 255.257(4)(a), F.S., that this selection is made on a project-by-project basis and not a choice that encompasses all projects within that particular agency.

The bill requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This language is copied from s. 255.20(3), F.S., dealing with local bids and contracts for public construction works, with state agencies being added to the list of entities required to use Florida timber products for those projects.

The bill appears to have no fiscal impact on the state or local government.

### FULL ANALYSIS

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

STORAGE NAME: h0269c.GOAS

DATE: 3/12/2013

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### ***Florida Energy Conservation and Sustainable Buildings Act***

In recent years, the Florida Legislature has placed an increased emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency on a state and local level. In 2008, the Legislature passed a comprehensive energy package,<sup>1</sup> which contained the Florida Energy Conservation and Sustainable Buildings Act (Act). This Act (ss. 255.51-255.2575, F.S.) provides that, “Significant efforts are needed to build energy-efficient state-owned buildings that meet environmental standards and provide energy savings over the life of the building structure. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment and sustainable materials be included in all design proposals for state-owned buildings.”<sup>2</sup>

Section 255.252(3), F.S., provides legislative intent that, “[I]t is the policy of the state that buildings constructed and financed by the state be designed and constructed to comply with a sustainable building rating or a national model green building code” and “[i]t is further the policy of the state that the renovation of existing state facilities be in accordance with a sustainable building rating or a national model green building code.”

“Sustainable building rating or national model green building code” means a rating system established by one of the following:

- United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
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- Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.<sup>3</sup>

Direction is again provided in s. 255.257(4)(a), F.S.: “All state agencies shall adopt a sustainable building rating system or use a national model green building code for all new buildings and renovations to existing buildings.” Section 255.2575(2), F.S., provides that, “All county, municipal, school district, water management district, state university, community college, and state court buildings shall be constructed to comply with a sustainable building rating system or a national model green building code.”<sup>4</sup>

The DMS states on its website, the following:

State agencies are required by law to comply with the various green aspects of a sustainable rating system such as LEED or the others approved in statute. However, when it comes to energy consumption in particular, state agencies are now required by rule to consider at least one design option that far outperforms their preferred rating system. Nevertheless, an agency’s ultimate decision must be made on the basis of long-term cost-effectiveness.<sup>5</sup>

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<sup>1</sup> HB 7135 (Chapter 2008-227, L.O.F.)

<sup>2</sup> Section 255.252(2), F.S.

<sup>3</sup> Section 255.253(7), F.S.

<sup>4</sup> This section applies to all county, municipal, school district, water management district, state university, community college, and state court buildings the architectural plans of which are commenced after July 1, 2008.

<sup>5</sup> [http://www.dms.myflorida.com/business\\_operations/real\\_estate\\_development\\_management/facilities\\_management/sustainablebuildings\\_and\\_energy\\_initiatives](http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives).

The DMS Rules pertaining to sustainable building ratings<sup>6</sup> implement the statutes by requiring all agencies that are designing, constructing, or renovating a facility to perform a life-cycle cost analysis for at least three distinct energy-related designs that progressively meet and exceed the minimum energy performance requirements of the particular sustainable building rating or national model green building code adopted by the agency. The DMS then evaluates this life-cycle cost analysis for technical correctness and completeness.<sup>7</sup> According to the DMS, these Rules allow the agencies sole discretion as it pertains to the selection of a sustainable building rating or national model green building code.

The following are basic, brief descriptions of the four statutorily-authorized sustainable building rating systems:

- **Leadership in Energy and Environmental Design (LEED)** is a “voluntary, consensus-based, market-driven” program that provides third-party verification of green buildings [and] addresses the entire lifecycle of a building. LEED projects have been established in 135 countries.... For commercial buildings and neighborhoods, to earn LEED certification, a project must satisfy all LEED prerequisites and earn a minimum 40 points on a 110-point LEED rating system scale.<sup>8</sup>
- **International Green Construction Code (IgCC)** is the “first model code to include sustainability measures for the entire construction project and its site - from design through construction, certificate of occupancy and beyond. The new code is expected to make buildings more efficient, reduce waste, and have a positive impact on health, safety and community welfare....” The IgCC “creates a regulatory framework for new and existing buildings, establishing minimum green requirements for buildings and complementing voluntary rating systems, which may extend beyond baseline of the IgCC. The code acts as an overlay to the existing set of *International Codes*....”<sup>9</sup>
- **Green Globes** is a web-based program for green building guidance and certification that includes an onsite assessment by a third party. “Green Globes offers a streamlined and affordable...way to advance the overall environmental performance and sustainability of commercial buildings. The program has modules supporting new construction...[and]...existing buildings.... It is suitable for a wide range of buildings from large and small offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities.”<sup>10</sup>
- The **Florida Green Building Coalition (FGBC)** is a nonprofit corporation “dedicated to improving the built environment, [whose] mission is to lead and promote sustainability with environmental, economic, and social benefits through regional education and certification programs. FGBC was conceived and founded in the belief that green building programs will be most successful if there are clear and meaningful principles on which ‘green’ qualification and marketing are based.”<sup>11</sup>

According to proponents of the bill, LEED is the only sustainable building rating system that does not award points for timber that is grown on a majority of Florida’s 16 million acres of forest, leaving only approximately 200 acres of Florida-grown wood being certified under this rating system, because LEED only awards points for timber that is grown under the Forest Stewardship Council requirements.<sup>12</sup> The DMS is the lead agency for implementing the Florida Energy Conservation and Sustainable Buildings Act and has chosen the LEED rating system to meet its own needs. Proponents of the bill have stated that there may be widespread perception that since DMS has selected LEED as its rating system, other state and local agencies will view this as a recommendation or endorsement of LEED by

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<sup>6</sup> Chapter 60D, F.A.C.

<sup>7</sup> Rule 60D-4.004(1)(c)1 and 2, F.A.C.

<sup>8</sup> <http://new.usgbc.org/leed>.

<sup>9</sup> <http://www.iccsafe.org/cs/igcc/pages/default.aspx>.

<sup>10</sup> <http://www.thegbi.org/green-globes/>.

<sup>11</sup> <http://www.floridagreenbuilding.org/home>.

<sup>12</sup> February 13, 2013, correspondence with staff from the Florida Forestry Association and a representative from Plum Creek Timber Company.

DMS<sup>13</sup> and that personnel within those entities will assume that once a rating system has been adopted, the agency must use that system for all projects within that particular agency in perpetuity.

### ***Florida Timber Industry***

According to the Florida Forestry Association, there are almost 16 million acres of forests in Florida. Seventy percent (11.2 million acres) is privately owned, 16 percent (2.6 million acres) is owned by the state, 11 percent (1.7 million acres) is owned by the federal government, and three percent (0.5 million acres) is owned by local governments.<sup>14, 15</sup> Although forests cover about 50% of the state's land area, Florida's timberlands are located mostly north of Orlando. In the northern half of the state most counties are at least 50% forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90% of its area. The peninsula is forested at 40% or less and a number of counties in southeast Florida are less than 10% forested.<sup>16</sup>

In 2010, there were 59 primary wood-using mills in Florida. Almost half of those are sawmills (27). Other types of mills include mulch (7), pulp/paper (6), chip-and-saw (5), chip mill (3), post (3), plywood (2), pole (2), pellet, strand board, veneer and firewood (1 each). The primary wood-using mills in Florida are located mostly in the northern part of the state.<sup>17</sup>

There are several forest certification standard programs that provide guidance and certification that timber land is being used in a sustainable manner. The Sustainable Forestry Initiative, the American Tree Farm System, and the Forest Stewardship Council are some commonly-used programs.

The Sustainable Forestry Initiative (SFI) program is a widely-used standard. The organization asserts that their "forest certification standard is based on principles that promote sustainable forest management, including measures to protect water quality, biodiversity, wildlife habitat, species at risk, and Forests with Exceptional Conservation Value." Further, that the standard "has strong acceptance in the global marketplace so we can deliver a steady supply of wood and paper products from legal and responsible sources. This is especially important at a time when there is growing demand for green building and responsible paper purchasing, and less than 10 percent of the world's forests are certified."<sup>18</sup>

The American Tree Farm System (ATFS), another commonly-used program, "offers certification to landowners who are committed to good forest management....Forest certification is the certification of land management practices to a standard of sustainability. A written certification is issued by an independent third-party that attests to the sustainable management of a working forest...protect[ing] economic, social and environmental benefits."<sup>19</sup>

The Forest Stewardship Council (FSC) is an independent, non-profit organization. "[M]embership consists of three equally weighted chambers -- environmental, economic, and social -- to ensure the balance and the highest level of integrity. Independent FSC-accredited certification bodies verify that all FSC-certified forests conform to the requirements contained within an FSC forest management standard....Certifiers are independent of FSC and the companies they are auditing."<sup>20</sup>

### **Effects of Proposed Changes**

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<sup>13</sup> February 13, 2013, correspondence with staff from the Florida Forestry Association and a representative from Plum Creek Timber Company.

<sup>14</sup> Florida Forestry Association website: <http://floridaforest.org/about-us/fl-forests-facts/>.

<sup>15</sup> 2010 Florida's Forestry and Forest Product Industry Economic Impacts, by the Florida Forest Service (PDF file accessed at <http://floridaforest.org/about-us/fl-forests-facts/>).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Sustainable Forestry Initiative website: <http://www.sfiprogram.org/sustainable-forestry-initiative/>.

<sup>19</sup> American Tree Farm System website: <https://us.fsc.org/about-certification.198.htm>.

<sup>20</sup> Forest Stewardship Council website: <https://us.fsc.org/about-certification.198.htm>.

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The bill requires all state agencies, when constructing public bridges, buildings and other structures, to use lumber, timber, and other forest products produced and manufactured in Florida if such products are available and their price, fitness, and quality are equal. This language is copied from s. 255.20(3), F.S., dealing with local bids and contracts for public construction works, with state agencies being added to the list of entities required to use Florida timber products for those projects. In addition, the requirements are for energy efficiency and sustainable building purposes.

According to DMS,

The Florida wood, timber, and lumber included in this requirement is primarily used for residential construction, such as housing and apartments. In the last 20 years, DMS has only constructed 2 or 3 projects with wood framing. Nearly all construction performed by DMS is commercial, non-combustible construction. That is, the only wood or timber found within our construction would be plywood specified for monolithic concrete forms, not applicable to the requirement under this statute, or for light framing or millwork. In this construction, DMS does not procure "wood or timber" directly, but rather competitively procures a general contractor or construction manager for a low bid, lump sum of materials and labor.<sup>21</sup>

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 255.257, F.S., to require state agencies to use certain building rating systems and building codes for new construction and renovation projects.

**Section 2.** Amends s. 255.2575, F.S., to require governmental entities to specify certain products associated with public works projects.

**Section 3.** Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

This bill appears to have no fiscal impact on state expenditures by stating that contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest products produced and manufactured in Florida **if such products are available and their price, fitness, and quality are equal**. DMS and the Department of Corrections have indicated the bill has no fiscal impact on those agencies.<sup>22, 23</sup>

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

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<sup>21</sup> February 22, 2013, correspondence with staff from the Department of Management Services.

<sup>22</sup> March 6, 2013 Department of Management Services Bill Analysis on file with the House Government Operations Appropriations Subcommittee.

<sup>23</sup> February 4, 2013 Department of Corrections Bill Analysis on file with the House Government Operations Appropriations Subcommittee.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida-based lumber and timber companies could see an increase in sales.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The language (in Section 2.) dealing with entities that are charged with the letting of contracts for public work, the construction of public bridges, buildings, and other structures, was copied, and subsequently amended, from a section of law that is being reported by the construction industry as outdated and is widely discounted by the industry.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2013, the Energy & Utilities Subcommittee passed the bill with the following changes and reported the bill out as a committee substitute:

- Clarified that each state agency shall use a sustainable building rating system or national model green building code for **each** new building and renovation to an existing building.
- Rather than amending “state agencies” into a section of law dealing with local contracting, the amended language was copied and added to a more encompassing section of statute.