

STORAGE NAME: h0953.lgva.doc

DATE: February 3, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 953

RELATING TO: Pinellas County/Code Adoptions

SPONSOR(S): Representative Carassas

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill amends the special act that provides for the adoption of building codes for Pinellas County to reflect the adoption of the Florida Building Code. In addition, the bill authorizes the Pinellas County Construction Licensing Board to act as the countywide compliance review board, notwithstanding general law requirements to establish such review board by interlocal agreement. As a result, the bill creates an exemption from general law.

The attached "Economic Impact Statement" indicates the bill has no fiscal impact.

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill. (See II.C. "EFFECT OF PROPOSED CHANGES:" section.)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Pinellas County Building Code Special Act

Part III of chapter 75-489, Laws of Florida, as amended, is intended to provide for uniform building codes and uniform life safety codes for Pinellas County. Currently, section 28 of ch. 75-489, L.O.F., as amended, adopts the Standard Building Code, the NFPA Natural Gas Code 54 and NFPA L.P. Gas Code 58, the National Electric Code, the Standard Mechanical Code, the Standard Plumbing Code, and the National Fire Protection Association Life Safety Code 101.

Section 29 of ch. 75-489, L.O.F., as amended, authorizes the Pinellas County Construction Licensing Board (Board) to adopt future editions of the codes referenced in section 28. The section also authorizes the Board to amend the codes referenced in section 28, and establishes a process for the adoption of such amendments.

Subsection (1) of section 32 of ch. 75-489, L.O.F., as amended, directs the Board to establish four Boards of Adjustment and Appeals as follows:

- A plumbing, mechanical and gas board;
- An electrical board;
- A board of adjustment for the Standard Building Code
- A life safety and fire code board of adjustment.

Subsection (2) of section 32 of ch. 75-489, L.O.F., as amended, provides a process for submission of appeals before the four Boards of Adjustment and Appeals.

Section 33 of ch. 75-489, L.O.F., as amended, authorizes the respective Boards of Adjustment and Appeals to interpret its respective code adopted for the county. The subsection provides that final decisions of the Board or any Board of Adjustment and Appeals shall be subject to review in the circuit court of the judicial circuit in and for Pinellas County.

The Florida Building Code

1998 Legislation

Chapter 98-287, L.O.F., provides for the creation of a unified Florida Building Code. Generally, chapter 98-287, L.O.F., provides that:

- The Board of Building Codes and Standards is reconstituted as the Florida Building Commission;
- The newly created Florida Building Commission is required to submit to the Legislature, before the 2000 regular session, for review and approval or rejection, the Florida Building Code as adopted by the Commission;
- The Commission is required to prepare a list of recommendations of revision to the Florida Statutes necessitated by the adoption of the Florida Building Code, if the code is approved by the Legislature;
- The Department of Insurance is required to adopt the Florida Fire Prevention Code and the Life Safety Code;
- Upon initial adoption, the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are deemed adopted by all local jurisdictions; with some restrictions, local governments may adopt more stringent requirements to the codes;
- Beginning January 1, 2001, local governments shall assume expanded responsibilities for permitting, plans review and inspection of facilities that are currently reviewed by state agencies;
- The Florida Building Commission may create and administer a statewide product evaluation system;
- There will be a building code training program developed which will become part of current continuing education requirements for occupations related to construction and construction regulation;
- There will be disciplinary consequences related to material code violations for state-certified and registered contractors;
- The Department of Business and Professional Regulation is required to implement an automated information system which tracks disciplinary actions taken against construction-related occupations on a statewide basis;
- There will be new continuing education requirements for registered engineers and registered landscape architects;
- The powers of the Department of Insurance and the Office of the State Fire Marshal are conformed with the reconstituted powers of the Florida Building Commission; and
- Similar processes for code adoption, update and promulgation of the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are provided.

The act also repeals some of the current statutes applicable to building codes effective January 1, 2001. The effective date of repeal of the relevant sections of chapter 553, F.S., is subject to Legislative approval of the statewide unified building code as developed by the Florida Building Commission.

2000 Legislation

The 2000 Legislature enacted chapter 2000-141, L.O.F. to, effective July 1, 2001, provide for the adoption of the Florida Building Code, a unified building code for the State of Florida. The act directs the Florida Building Commission (Commission) to continue the process to adopt the Florida Building Code (Code) as an administrative rule, subject to specific legislative direction. In addition, the act directs the Commission to recommend a statewide product approval system to the Legislature prior to the 2001 Legislative Session.

The act delegates to local governments the enforcement of state agency construction regulations, which are to be included in the Code (with limited exceptions). The act clarifies the Commission's authority to interpret the Code, hear appeals of local interpretations, and amend the code on a yearly basis.

Section 553.73(4)(b)7., F.S., provides, effective July 1, 2001, that:

"Each county and municipality desiring to make local technical amendments to the Florida Building Code shall by interlocal agreement establish a countywide compliance review board to review any amendment to the Florida Building Code, adopted by a local government within the county pursuant to this paragraph, that is challenged by any substantially affected party for purposes of determining the amendment's compliance with this paragraph. If the compliance review board determines such amendment is not in compliance with this paragraph, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines such amendment to be in compliance with this paragraph, any substantially affected party may appeal such determination to the commission. Actions of the commission are subject to judicial review pursuant to s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide."

Section 136 of chapter 2000-141, L.O.F., provides, in part, that the act is intended as a comprehensive revision of the regulation by counties and municipalities of the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings. Therefore, the section states, any sections or provisions of any special act governing those activities by any general purpose local government is hereby repealed.

2001 Special Session C Legislation

Chapter 2001-372, L.O.F., postpones the effective date of the Florida Building Code from January 1, 2002, until March 1, 2002.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the special act that provides for the adoption of building codes for Pinellas County. The bill updates the special act to reflect the adoption of the Florida Building Code. In addition, the bill authorizes the Pinellas County Construction Licensing Board to act as the countywide compliance review board, pursuant to section 553.73(4)(b)7., F.S., notwithstanding the requirements contained therein to establish such review board by interlocal agreement. As a result, the bill creates an exemption from general law.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Part III of ch. 75-489, L.O.F., as amended, is amended.

Subsection 27, which provides legislative intent, adds language providing that the act is intended to provide for continuing uniformity of building codes by placing sole authority for making amendments to the code, applicable within the boundaries of Pinellas County, with the Pinellas County Construction Licensing Board (Board).

Section 28, which provides for the adoption of codes, is amended to provide for the adoption of the Florida Building Code, the Florida Fire Prevention Code, and the National Electrical Code.

Section 29, which addresses amendments, to adopted building codes, is amended to delete language authorizing the Board to adopt editions of the codes referenced in section 28. The section is further amended to provide that for the purposes of section 553.73, F.S., and ch. 98-287, L.O.F., as amended by ch. 98-419, L.O.F., and ch. 2001-186, L.O.F., the Board shall be the sole local governing body authorized to make amendments to the Florida Building Code or the Florida Fire Prevention Code. The section also is amended to provide that the Board is exempt from the requirements of s. 553.73(4)(b)7., F.S., relating to a countywide compliance review board. Finally, the section is amended to specify that the Board is the local administrative board for the provision of interpretations upon request of local building officials and for the resolution of conflicts or interpretations between local building officials and local fire code enforcement officials.

Section 32 is amended to replace a reference to code with a reference to the Florida Building Code.

Section 33 is amended to delete language providing that final decisions of the Board or any Board of Adjustment and Appeals shall be subject to review in the circuit court of the judicial circuit in and for Pinellas County. New language is inserted to provide that such final decisions are subject to review by the Florida Building Commission or the Florida Fire Marshal.

Section 2. This section provides a severability clause.

Section 3. This section provides that the act shall take effect upon the effective date of the Florida Building Code.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN?

December 7, 2001

WHERE? Tampa Bay Review, Pinellas County

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Department of Community Affairs

Staff with the Department of Community Affairs reviewed HB 953 and discussed several concerns with the bill with local officials. To address these concerns, DCA staff recommends the following changes to the bill.

Page 1:

Line 10, following Section 1., insert the following language: Notwithstanding section 136 of chapter 2000-141, Laws of Florida

Line 11, following is, insert the following language: reenacted and

Rationale: Assures that Part III is a viable vehicle for conferring the authority sought in the bill. The referenced section of 2000-141, L sought to repeal acts pertaining to the authority conferred upon the Florida Building Commission in Chapter 553, F.S. There is uncertainty whether that language repealed the relevant special act, but for the sake of certainty, this language is recommended.

Line 17, prior to the word amendments, insert technical

Line 24, strike the word ~~adopts~~ and insert recognizes as applicable to the county

Rationale: Pursuant to Chapter 553, F.S., the Florida Building Code is applicable to local jurisdictions without further action by the applicable jurisdiction. Adoption by reference creates the possibility that future versions, amendments and modifications would not be applicable to the County absent further action of the legislature or adoption by the Board. As identified to me, that was not the intent of the PCCLB who desire to apply the Code as developed by the Commission subject to local amendments.

Lines 26 and 28, strike ~~replaced~~ and insert updated

Rationale: "Updated" is the terminology used in Chapter 553, F.S., for those occasions when the base model codes are adopted by the Commission as substitutes for those existing at the time, currently the 1997 Standard and International codes. This change merely makes the language of the special act consistent with statute.

Line 30, strike (3) ~~The National Electrical Code~~

Rationale: Chapter 27 of the Florida Building Code adopts the National Electrical Code, 1999 edition, under its alternative label, NFPA 70. That has been confirmed with Commission and Board staff.

Page 2

Lines 4 and 5, strike ~~The codes are incorporated in this law as fully as if set out at length.~~

Rationale: Based upon Chapter 553, F.S., such incorporation is unnecessary and creates an avenue to challenge the applicability of subsequent amendments or updates to the codes by the Commission in Pinellas County.

Lines 5 and 6, strike ~~applicable codes, appendices and~~

Rationale: Because the Code is adopted by the Commission for utilization throughout the State, and this provision refers to adoption of codes or amendments by the board, only amendments and variations should be included in this provision.

Line 13, following the word time; insert the following language subject to the requirements of section 553.73(4), Florida Statutes,

Rationale: Clarifies that amendment authority is as provided by general law concerning local amendments of the Florida Building Code.

Line 29, strike ~~all standard codes~~ and insert the Florida Building Code

Rationale: Change is consistent with all other changes within the bill which adopt the Florida Building Code rather than the standard family of model codes.

Page 3

Line 3, following the word make, insert technical

Rationale: The Board will be the only entity to amend the technical provisions of the Code, i.e. standards for construction. The Bill recognizes and expressly grants to the municipalities the authority to amend the administrative provisions of Chapter 1 of the code, as those provisions relate more to the business of running a building department. This dichotomy is likewise recognized in Chapter 553, F.S., which provides preferential treatment for administrative amendments.

Line 5, following is, strike ~~exempt from the requirements of~~ and insert the following language deemed to be the countywide compliance review board for Pinellas County as required by;

Line 6 and 7, following Statutes, strike ~~relating to a countywide compliance review board~~

Line 13, following law, insert the following language The decision of the board interpreting a code, resolving a conflict of interpretation or to adopt an amendment following a recommendation by the applicable Board of Adjustment and Appeals, shall be the final local determination of the matter which is subject to appeal to the Florida Building Commission pursuant to section 553.73.

Rationale: By legislative declaration, the Board will avoid the necessity of obtaining an interlocal agreement to serve in the capacity of countywide compliance review board, an entity created by chapter 553, F.S., to review amendments for compliance with the requirements for local amendments. An exemption from that section may negate the entire process of appeal to the Commission, leaving the only alternative as costly litigation. As represented by the County, the

latter was not their intent. However, because the board amends the code as well as acts as the countywide compliance review board, there is no need for them to make their determination in two different capacities, rather their first decision is that which is appealable.

Line 18, following any, insert technical

See Page 3, Line 3 comment

Page 4

Line 11, following Code, insert the following language provisions not falling within the jurisdiction of the boards created by subsection (a) or (b).

Rationale: This clarifies the jurisdictions of the various Boards of Adjustment and Appeal. In the past, the Standard Building Code was an identifiable book as were the other volumes. Under the Florida Building Code is the entire series of books. The building volume contains a variety of issues that cross jurisdictional lines through incorporation of state agency rules and integration of the electrical code as referenced above. The language inserted identifies this board as the catch-all whose primary responsibility will be regarding structural issues.

Page 5

Line 11, following considered., insert the following sentence The decisions of the boards are subject to appeal to the Florida Building Commission pursuant to 553.73, Florida Statutes.

Rationale: The intent of Pinellas County was not to avoid the appellate jurisdiction of the Commission as identified, therefore, the language clarifies that issue.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor has requested an amendment to implement DCA's recommendations.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith