

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 589 Florida Building Code  
**SPONSOR(S):** Economic Expansion & Infrastructure; Cretul  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2836

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>(W/D)</u>	<u></u>	<u></u>
2) <u>Economic Expansion &amp; Infrastructure Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Peterson</u>	<u>Tinker</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

---

### SUMMARY ANALYSIS

The Committee Substitute for House Bill 589 (CS) contains provisions related to the Florida Building Commission (Commission). In particular, the CS requires the Commission to:

- Review requirements in the National Electric Code relating to bonding and grounding systems for swimming pools, and to authorize the use of alternative method for bonding and grounding if appropriate.
- Develop and adopt mitigation techniques for the retrofitting of buildings constructed before the implementation of the Florida Building Code (Code).
- Conduct a Windstorm-loss Mitigation Study and report back to the Legislature as well as others by March 1, 2008. An appropriation of \$750,000 is provided.
- Review the Florida Energy Code for new building construction to evaluate the effectiveness of energy-efficient requirements, and report back to the Legislature by March 1, 2008.

The CS clarifies that the Commission issue formal interpretations of the Florida Building Code upon written application of any substantially affected person, a citizen, contractor, or designer, or a group representing a substantially affected person, citizen, contractor, or designer.

The CS amends the private provider statute to streamline the inspection process and address provisions pertaining to the use of private providers of building code inspection services. Also, the CS establishes a process whereby a "deficiency notice" is to be posted when a non-confirming item is found.

The CS implements recommendations of the workgroup reviewing the Product Approval validation process in response to the 2005 legislation. Specifically, it provides that the Commission may adopt by rule a schedule of penalties to be imposed against approved validation entities that validate product applications in violation of the product approval and evaluation statute or rule.

In addition, the CS creates the Florida Building Code Compliance and Mitigation Program within the Department of Community Affairs (DCA) to replace the Building Education and Outreach Program. Materials and services for the mitigation program will be provided by a private, nonprofit corporation under contract to DCA. An appropriation of \$1 million is provided to implement and administer this provision.

The bill takes effect upon becoming a law.

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

**STORAGE NAME:** h0589a.EEIC.doc  
**DATE:** 4/23/2007

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Provide limited government:**

The CS authorizes the Florida Building Commission to adopt rules related to:

- Bonding and grounding systems for swimming pools which is an alternative to that of the National Electrical Code;
- Accreditation of courses related to the Florida Building Code and establish qualifications of accreditors and criteria for the accreditation of courses;
- A schedule of penalties for violations of product applications;
- Identification of certain standards equal to or more stringent than those specifically adopted within the Code to allow the use of products that comply with equivalent standards within the state; and
- Adopting or modifying the modifications relating to existing warehouses in response to public comment received subject only to the rule adoption requirements of ch. 120, F.S.

The CS creates and requires the DCA to administer the Florida Building Code Compliance and Mitigation Program (program) to develop, coordinate, and maintain education and outreach to persons required to comply with the Code, and to ensure consistency in complying with the Code requirements, including methods for mitigating storm-related damage. The program replaces the Building Education and Outreach Program.

##### **Promote personal responsibility:**

The CS provides the Commission with the authority to adopt by rule a schedule of penalties to be imposed against approved validators who validate product applications in violation of state product approval and evaluation requirements.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Florida Building Commission**

The Florida Building Commission (Commission) is authorized to adopt and maintain the Florida Building Code (Code) as a single, unified state building code consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings or structures, and to enforce requirements providing for effective and reasonable protection for the public safety, health, and welfare of the citizens of Florida.

The Commission is administered and staffed by the Department of Community Affairs (DCA), and commission activities are funded through an "under roof floor space assessment" of one-half cent per square foot. The local government responsible for collecting a permit fee collects the surcharge and remits it to the DCA quarterly.

The Commission is charged with the responsibility of amending and updating the Code every three years to make recommendations on which laws should be revised or repealed to maintain consistency with the Code, and can approve technical amendments to the Code once each year.

The Commission may amend the code to incorporate interpretations and update standards upon a finding that delaying the application of the amendment would be contrary to the health, safety, and welfare of the public, or the amendment provides an economic advantage to the consumer.

The Commission is also authorized to hear appeals from decisions of local boards regarding the interpretation of the code; issue declaratory statements relating to the code; determine the types of products requiring approval for local or statewide use and provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use.

### **Building Education and Outreach Council**

In the 2005 Regular Session, the Legislature enacted chapter 2005-147, Laws of Florida, to address issues relating to the development and administration of the Code and relating building safety requirements. The Florida Building Code Training Program (program) in s. 553.841, F.S., was redesignated as the "Building Code Education and Outreach Program" and the Building Code Education and Outreach Council (council) was created to coordinate, develop, and maintain education and outreach efforts associated with the Code.

The council, which consists of twelve members each serving a 2-year term, is responsible for the development, maintenance and updating of a core curriculum that is the prerequisite to advanced module coursework, as well as a set of advanced modules specifically designed for use by building code administrators, plan reviewers, and inspectors; and engineers, architects and contractors, except for continuing education program requirements. Every two years upon receipt of funding from the DCA, the council determines how much funding is available for education and outreach programs.

### **Building Code Administrators, Plans Examiners and Inspectors**

Local building officials and building administrators are responsible for administering, supervising, directing, enforcing and performing the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures under the provisions of part XII of ch. 468, F.S., which provides that when permitting is required, the building official or administrator must ensure compliance with the Code and any applicable local technical amendments. Responsibilities include the review of construction plans to ensure compliance with all appropriate sections of the code and the inspection of each phase of construction. The plans examiner is responsible for reviewing construction plans, and the building inspector is responsible for conducting on-site inspections.

Administrators, examiners and inspectors are regulated by the Florida Building Code Administrators and Inspectors Board (Board) created within the Department of Business and Professional Regulation. The Board has the authority to qualify and certify building code administrators, plans examiners, and building inspectors. Standards for certification are established in s. 468.609, F.S., and procedures for disciplinary actions for failure to properly enforce applicable building codes are established in s. 468.621, F.S.

### **Alternative Plans Review and Inspection**

Section 553.791, F.S., establishes that notwithstanding other provisions of law, local ordinance, or local policy, the fee owner of a building or structure, or the fee owner's contractor (with written permission from the fee owner), may choose to use a private provider for building code inspection services, and may pay the private provider directly, so long as a contract for services is executed. Private providers are defined as licensed engineers or licensed architects, and for residential additions or alterations of 1,000 square feet or less, a private provider can be a building code administrator, inspector or plans examiner holding a standard certificate issued under part XII of ch. 468, F.S.

### Effect of the Bill

#### **National Electric Code – bonding and grounding systems for swimming pools**

The CS creates an unnumbered section of statute to require the Commission to review the requirements in the National Electric Code which relate to bonding and grounding systems for swimming pools. The Commission can adopt a rule authorizing the use of an alternative bonding and grounding system, and the alternative method can be integrated into the 2007 edition of the Code, notwithstanding the requirements of s. 553.73. Until a rule is adopted, the use of a single #8 AWG bare solid copper wire buried to a minimum depth of 4 inches to 6 inches below subgrade, and 18 to 24 inches from inside the wall of a swimming pool

or spa, is a permissible alternative or is equal to compliance with the National Electric Code (2005), NFPA No. 70, adopted by reference into the Code.

### **Mitigation Techniques**

The CS creates an unnumbered section of statute to establish the following legislative findings:

- The results of recent hurricane strikes have demonstrated the effectiveness of the Code in reducing property damage for buildings constructed in accordance with the Code,
- Buildings constructed before the Code are vulnerable,
- The destructive effect of hurricanes represent a continuing threat to the health, safety, and welfare of the residents of the states, and affect insurance rates in the state,
- Mitigating property damage is a valid and recognized objective of the Code, and
- Retrofitting buildings built before the Code was implemented is cost-effective and a benefit to the state.

Also, the Commission is required to:

- Consider the extent to which a propose code provision will mitigate property damage to buildings and contents when evaluating if the provision should be adopted,
- If the provision applied does not demonstrate that it significantly affects life-safety issues, it must be evaluated by its measurable benefits when compared to the costs of implementing the provision as a rule,
- Develop and adopt within the Code the appropriate mitigation techniques to retrofit buildings constructed before implementation of the Code.
- Consider, but not be limited to, prescriptive techniques for installing gable-ended bracing; secondary water barriers for roofs and standards relating to secondary water barriers, cost-effectiveness of the secondary water barrier; prescriptive means and criteria to improve roof-to-wall connections; and clarifying that roof-fastener deficiencies must be corrected when exposed during reproofing.

If the cost to retrofit an existing building exceeds the cost of applying the code to new construction, the Commission must authorize the use of alternate, less expensive means to retrofit.

### **Code Amendments**

The CS amends subsection (7) of s. 553.73, F.S., to authorize the Commission to approve amendments to the Code to address changes to federal or state laws. It deletes a provision which authorizes the approval of certain amendments only upon the conclusion of a triennial update to the Code.

### **Interpretations**

The CS amends s. 553.775, F.S., to clarify the requirement that the Commission render a formal interpretation of the Florida Building Code upon written application of a substantially affected party.

Specifically, the CS provides that upon written application by any substantially affected person, a citizen, contractor, or designer, or a group representing a substantially affected person, citizen, contractor, or designer, the Commission shall issue or cause to be issued a formal interpretation of the Florida Building Code as prescribed by subparagraph (c)1.

### **Alternate Plans Review and Inspection**

The CS amends section 553.791, F.S., to:

- Define “audit” as the process of confirming that building code inspection services have been performed by a private provider, including ensuring that the required affidavit for plan review has been properly completed and affixed to permit documents and that minimum mandatory inspections required under the building code have been performed and properly recorded. The term does not mean that a local building official is required to replicate the plan review or inspection being performed by the private provider.

- Define “Immediate threat to public safety and welfare” as a building code violation that, if allowed to continue, constitutes a hazard that could result in death, serious bodily injury, or significant property damage.
- Define “Stop work order” as the issuance of any written statement, director, or order to stop work on a project.
- Provide that the written contract for a private provider to conduct building code inspection services may be executed by the fee owner’s contractor upon written authorization of the fee owner.
- Provide that changing the private provider’s authorized representative as named in a permit application does not require a permit revision, and prohibits the imposition of a fee for making the change.
- Require a deficiency notice to be posted at a job site by a private provider of inspection services, or an authorized representative, or a building department official when a item that doesn’t conform to the Code to found. Corrections must be made and a re-inspection must be performed. Re-inspection or re-audit fees may not be charged if a local building official audits the site prior to the private provider’s inspection, or for administrative matters unrelated to a violation of the Code.

### **Florida Building Code Compliance and Mitigation Program**

The CS amends s. 553.841, F.S., to:

- Require the DCA to administer the Florida Building Code Compliance and Mitigation Program (program) to develop, coordinate, and maintain education and outreach to persons required to comply with the Code, and to ensure consistency in complying with the Code requirements, including methods for mitigating storm-related damage. The program replaces the Building Education and Outreach Program.
- Abolish the Building Education and Outreach Council.
- Provide that services and materials under the program be provided by a private, nonprofit provider under contract with the DCA.
- Provide contract terms (four year contract, with an option of a single four year renewal at the end of the contract term) and experience requirements for the private, nonprofit provider, including experience in and the ability to promote design and construction techniques and materials for mitigating hurricane damage at a Florida-based trade conference. The conference must include a broad range of participants in the design and construction trades and profession, including public and private entities with jurisdiction over building codes, and design and construction licenses.
- Require the Commission to provide by rule for accredited courses relating to the Code.
- Require the Commission to establish qualifications of accreditors and criteria for accreditation of courses.
- Authorize the DCA to use funds from the contractor licensing application fees for the program.

\$1 million is appropriated from the Department of Community Affairs’ Operating Trust Fund in order to implement and administer this section.

### **Product Approval**

The CS amends s. 553.842, F.S., to require that the certification method for compliance for state product approval can only be used for products for which the Code designates standardized testing. The CS provides the Commission with the authority to adopt by rule a schedule of penalties to be imposed against approved validators who validate product applications in violation of state product approval and evaluation requirements. The CS provides that the imposition of penalties is governed by s. 120.60, F.S., and the uniform rules of procedure. The Commission is authorized to adopt a rule identifying standards equal to or more stringent than those specifically adopted within the Code to allow the use of products that comply with equivalent standards within the state.

### **Warehouses**

The CS creates an unnumbered section to statute to require the Commission to review modification relating to existing warehouses which have been reviewed by the Commission’s technical advisory committee. The Commission will take public comment on the modifications, including the necessity of the

modification, how the modifications affect the health, safety, and welfare of Florida residents, and the continuing need for any Florida-specific requirement of the code which the modifications seek to repeal. Notwithstanding the Code, the Commission can adopt or modify the modifications in response to public comment received subject only to the rule adoption requirements of ch. 120, F.S.

### **Windstorm-loss Relativities**

The CS creates an unnumbered section of statute to require the Commission to conduct a study updating the evaluation of loss relativities and resulting reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for properties on which fixtures which have been installed or construction techniques which have been implemented demonstrate a loss reduction in damage caused by windstorms. Fixtures and techniques include, but are not limited to, the enhancement of roof strength, roof-covering performance, wall-to-floor-to-foundation strength, opening protection, and window, door, or skylight strength. The study is contingent upon appropriations from the Legislature, and the Commission must submit a report to the Legislature, the Governor, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than March 1, 2008.

At the request of the Commission, the Office of Insurance Regulation must assist the Commission in developing the scope and methodology used to perform the study.

\$750,000 is appropriated from the Department of Community Affairs' Operating Trust Fund for the purposes of conducting the required study.

### **Florida Energy Code**

The CS creates an unnumbered section of statute to require the Commission, in consultation with the Florida Energy Commission, the Building Officials Association of Florida, the Florida Energy Office, the Florida Home Builders Association, the Florida Association of Counties, the Florida League of Cities, and other stakeholders, to review the Florida Energy Code to valuation the cost-effectiveness analysis that serves as the basis for energy-efficiency levels for residential buildings. The Commission must identify cost-effective means to improve energy efficiency in commercial buildings and compare the finding to the International Energy Conservation Code and the American Society of Heating, Air Conditioning, and Refrigeration Engineers Standards 90.1 and 90.2.

The Commission must present a report to the Legislature no later than March 1, 2008, and the report must include a new energy-efficiency standard that may be adopted for the construction of all new residential, commercial, and government buildings.

The act shall take effect upon becoming a law.

### **C. SECTION DIRECTORY:**

**Section 1** requires the Florida Building Commission to review the requirements in the National Electrical Code which relate to bonding and grounding systems for swimming pools; provides for adoption of a rule.

**Section 2** provides legislative findings related to retrofitting buildings to prevent hurricane and storm damage; authorizes the Commission to consider the costs and benefits of mitigation techniques before adopting a rule; requires the Commission to develop and adopt within the Florida Building Code appropriate mitigation techniques to use in retrofitting buildings constructed before code implementation.

**Section 3** amends s. 553.73, F.S., to revise authority of the Commission to approve certain code amendments

**Section 4** amends s. 553.775, F.S., to require the Commission to issue formal interpretations of the code under certain circumstances.

**Section 5** amends s. 553.791, F.S., to provide definitions; provide that the written contact for a private provider to conduct building code inspection services may be executed by the fee owner's contractor upon written authorization of the fee owner; provide that changing the private provider's authorized representative as named in a permit application does not require a permit revision; prohibit the imposition of a fee for making the change; require the posting of a deficiency notice at a job site under certain circumstances and corrective actions; prohibit the charging of certain fees; require the signing of certain forms upon inspection completions; require the signing and sealing of a certificate of compliance; limit authority of local building officials to take certain actions for certain noncompliance; and revise provisions relating to prohibiting local adoption or enforcement of more stringent laws, rules, procedures, policies, qualifications, or standards.

**Section 6** amends s. 553.841, F.S., to provide legislative findings; require the DCA to administer the Florida Building Code Compliance and Mitigation Program; require that the program be provided by a private, nonprofit corporation under contract with the department and specifies certain criteria to be used in selecting the corporation; deletes provisions pertaining to the Building Education and Outreach Council; require the Commission to provide by rule for accredited courses relating to the Code; require the Commission to establish qualifications of accreditors and criteria for accreditation of courses; and authorize the DCA to use funds from the contractor licensing application fees for the program.

**Section 7** amends s. 553.842, F.S., to revise provisions relating to product evaluation and approval; authorize the Commission to adopt by rule a schedule of penalties for violations of product applications; authorizes the Commission to identify certain standards by rule.

**Section 8** requires the Commission to review certain modifications recommended by the Commission's technical advisory committee and authorizes the Commission to adopt or modify the modifications in response to public comments.

**Section 9** requires the Commission to update an evaluation of certain hurricane loss relativities and resulting insurance premium discounts relating to mitigation of property loss and requires the Commission to prepare and submit a report with specified requirements.

**Section 10** requires the Commission to review the Florida Energy Code and to compare that code to other energy efficiency codes and requires the preparation and submittal of a report to the Legislature by a specified date.

**Section 11** provides an appropriation from the Operating Trust fund within the Department of Community Affairs for the purpose of implementing and administering s. 553.841, Florida Statutes, relating to building code education, mitigation, and outreach programs.

**Section 12** provides an appropriation from the Operating Trust fund within the Department of Community Affairs for the purpose of implementing the required study updating the evaluation of loss relativities and resulting reasonable discounts, credits, and other rate differentials or appropriate reductions in deductibles for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been install or implemented.

**Section 13** provides the act will take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DCA is directed to administer Florida Building Code Compliance and Mitigation Program, an Education and Outreach program designed to take the place of the current Building Code Education and Outreach Program, as well as provide education and training relating to mitigation in the aftermath of a natural disaster. The CS provides an appropriation of \$1 million from the Operating Trust Fund within the Department of Community Affairs for the purpose of implementing and administering s. 553.841, Florida Statutes, relating to building code education, mitigation, and outreach programs.

License fees which previously funded the Education and Outreach Program will now fund the Florida Building Code Compliance and Mitigation Program.

The CS also provides an appropriation of \$750,000 from the Operating Trust Fund within the Department of Community Affairs for the purpose of implementing the required study updating the evaluation of loss relativities and resulting reasonable discounts, credits, and other rate differentials or appropriate reductions in deductibles for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been install or implemented.

The Florida Building Commission reported no fiscal impact from the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

B. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

C. RULE-MAKING AUTHORITY:

The Florida Building Commission is authorized to adopt rules related to:

- Bonding and grounding systems for swimming pools which is an alternative to that of the National Electrical Code;
- Accreditation of courses related to the Florida Building Code and establish qualifications of accreditors and criteria for the accreditation of courses;
- A schedule of penalties for violations of product applications;
- Identification of certain standards equal to or more stringent than those specifically adopted within the Code to allow the use of products that comply with equivalent standards within the state; and
- Adopting or modifying the modifications relating to existing warehouses in response to public comment received subject only to the rule adoption requirements of ch. 120, F.S.

**D. DRAFTING ISSUES OR OTHER COMMENTS:**

CS/SB 2864 (Posey) contains a provision substantially similar to this bill which requires the Office of Insurance Regulation to conduct a wind-loss mitigation study.

**E. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

The Economic Expansion and Infrastructure Council considered HB 589 on April 20, 2007, and adopted a strike all amendment to the bill. Specifically, the amendment:

- Requires the Florida Building Commission (Commission) to review requirements in the National Electric Code relating to bonding and grounding systems for swimming pools, and to authorize the use of alternative method for bonding and grounding if appropriate.
- Requires the Commission to develop and adopt mitigation techniques for the retrofitting of buildings constructed before the implementation of the Florida Building Code.
- Amends the private provider statute to streamline the inspection process by allowing a designated representative of the private provider to sign the necessary inspection reports as long as the Certificate of Compliance is signed and bears the seal of the private provider. The bill stipulates certain minor changes in the permit shall not require a permit revision. Establishes a process whereby a deficiency notice shall be posted when a non-conforming item is found and establishes statutory definitions for critical terms of accountability measures for private provider's inspections.
- Creates the Florida Building Code Compliance and Mitigation Program within the Department of Community Affairs (DCA) to replace the Building Education and Outreach Program. Materials and services for the mitigation program will be provided by a private, nonprofit corporation under contract to DCA. An appropriation of \$1 million from DCA's Operating Trust Fund is provided for the Florida Building Code Compliance and Mitigation Program.
- Provides that the commission may adopt by rule a schedule of penalties to be imposed against approved validation entities that validate product applications in violation of the product approval and evaluation statute or rule.
- Directs the Commission to conduct a Windstorm-loss Mitigation Study and report back to the Legislature as well as others by March 1, 2008. In addition, the Commission must review the Florida Energy Code for new building construction to evaluate the effectiveness of energy-efficient requirements, and report back to the Legislature by March 1, 2008. An appropriation of \$750,000 is provided from DCA's Operating Trust Fund.

- Requires the Commission to review the Florida Energy Code and to compare that code to other energy efficiency codes and prepare and submit a report to the Legislature.

The bill was reported favorably as a council substitute.