

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1080

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Evers

SUBJECT: Public Construction Projects

DATE: April 16, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------------|
| 1. | McKay | McVaney | GO | Fav/CS |
| 2. | Toman | Yeatman | CA | Fav/1 amendment |
| 3. | | | AGG | |
| 4. | | | AP | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1080 clarifies that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code, and the selection is made for each building or renovation.

The bill also 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 tiebreaker preference does not apply to transportation projects for which federal aid funds are available, in either local or state construction contracting.

This bill substantially amends sections 255.20, 255.257, and 255.2575 of the Florida Statutes.

II. 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,¹ 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.²

Section 255.252(3), F.S., provides legislative intent that “it 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.³

Section 255.257(4)(a), F.S., specifies that: “[a]ll 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 “[a]ll 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.”⁴

The Department of Management Services (DMS) states on its website the following:

¹ Chapter 2008-227, L.O.F.

² Section 255.252(2), F.S.

³ Section 255.253(7), F.S.

⁴ 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.

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.⁵

Administrative rules adopted by DMS pertaining to sustainable building ratings⁶ 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.⁷ 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.⁸
- **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*....”⁹
- **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

⁵http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/sustainablebuildings_and_energy_initiatives.

⁶ Chapter 60D, F.A.C.

⁷ Rule 60D-4.004(1)(c)1 and 2, F.A.C.

⁸ <http://new.usgbc.org/leed>.

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

offices, multi-family structures, hospitals, and institutional buildings such as courthouses, schools, and universities.”¹⁰

- 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.”¹¹

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.¹² The DMS has chosen the LEED rating system to meet its own needs.

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.^{13, 14} Although forests cover about 50 percent 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 percent forested. Liberty County in northwest Florida is the most forested with timber lands covering more than 90 percent of its area. The peninsula is forested at 40 percent or less and a number of counties in southeast Florida are less than 10 percent forested.¹⁵

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.¹⁶

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

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

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

¹² “‘Backlash’ bill against LEED green-building certification program moving in House,” available at: <http://www.thefloridacurrent.com/article.cfm?id=32144596>.

¹³ Florida Forestry Association website: <http://floridaforest.org/about-us/fl-forests-facts/>.

¹⁴ 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/>).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

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.”¹⁷

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.”¹⁸

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.”¹⁹

Florida Lumber Preference in Local Government Construction Contracting

Section 255.20, F.S., specifies requirements for local government construction contracting. Section 255.20(3), F.S., provides as follows:

All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of 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 this state if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.

III. Effect of Proposed Changes:

Section 1 amends s. 255.20, F.S., to exempt transportation projects for which federal aid funds are available from the operation of an existing tiebreaker preference for Florida lumber in local government construction contracting. The bill also reorganizes the provision.

¹⁷ Forest Stewardship Council website: <https://us.fsc.org/about-certification.198.htm>.

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

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

Section 2 amends s. 255.2575, F.S., to require 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 tiebreaker language does not apply to transportation projects for which federal aid funds are available, and mirrors the language in s. 255.20(3), F.S., in section 1 of the bill.

Section 3 clarifies that a state agency constructing new buildings or renovating existing buildings is required to select a sustainable building rating system or national model green building code in accordance with s. 255.257(4)(a), F.S. The selection is made for each building and renovation to a building.

Section 4 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

The tiebreaker preference for Florida-based lumber and timber only applies if the price is equal to that of such products not produced in Florida, so there should be no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The tiebreaker preference for Florida lumber created in s. 255.2575, F.S., mirrors the existing local government tiebreaker preference in s. 255.20(3), F.S., and adds state agencies to the list of entities which must use such a preference. The preference will therefore be specified for local government entities in two sections, which is duplicative.

According to the DMS, virtually all construction performed by the DMS is of the commercial, non-combustible type. The wood or timber found within this construction is the plywood specified for monolithic concrete forms, not applicable to the requirement under this bill, or for light framing or millwork. In this construction, the department 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.²⁰

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 9, 2013:

The CS exempts transportation projects for which federal aid funds are available from the operation of the tiebreaker preference for Florida lumber in local and state construction contracting.

B. Amendments:

Barcode 453686 by Community Affairs on April 16, 2013:

- Revises noticing requirements of alleged violators of local codes and ordinances;
- Exempts specified septic tank system inspections and evaluations when remodeling a home and establishes guidelines for construction proximity to a system;
- Revises the meaning of ‘demolish’ as it is used to define licensed contractors;
- Provides that amendments enacted in 2012 related to the licensing of contractors and subcontractors are remedial in nature, are intended to clarify existing law, and apply retroactively;
- Increases the maximum civil penalty a local governing body may levy against an unlicensed contractor;
- Revises local government and Department of Business and Professional Regulation (DBPR) collection retention percentages for unpaid fines and costs ordered by the Construction Industry Licensing Board;
- Removes a requirement that local governments send minor violation notices to contractors prior to seeking fines and other disciplinary penalties;
- Extends the grandfathering period for certain registered electrical and alarm system contractors to acquire statewide certified licenses;
- Clarifies a prohibition to adopt any mandatory sprinkler provisions of the International Residential Code within the Florida Building Code or any local amendments to the state code;

²⁰ Department of Management Services’ bill analysis of SB 1080, dated February 29, 2013.

- Adds a member to Florida Building Commission from the natural gas distribution industry;
- Authorizes that an electronic copy of a building site plan may be maintained for record retention and inspection purposes at a building site;
- Specifies DBPR procedures for Florida Building Code product approval compliance and authorizes the process for expedited 10-day approval reviews;
- Renames the statewide standard for energy efficiency;
- Specifies that residential heating and cooling systems need only meet the manufacturer's approval and listing of equipment;
- Eliminates the DBPR's responsibilities regarding a statewide uniform building energy-efficiency rating system;
- Provides building energy-efficiency system definitions; and
- Creates the Florida Concrete and Masonry Council, Inc., as a direct support organization of the Florida Building Commission and specifies its composition and duties.

(WITH TITLE AMENDMENT)