

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Florida Building Code Enforcement
SPONSOR(S): Business & Professions Subcommittee, Robinson
TIED BILLS: IDEN./SIM. **BILLS:** SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 1 N	Darden	Miller
2) Business & Professions Subcommittee	14 Y, 0 N, As CS	Thompson	Anstead
3) State Affairs Committee		Darden	Williamson

SUMMARY ANALYSIS

The Florida Building Code (Code) is a single, uniform system for adopting, updating, interpreting, and enforcing building requirements across the state. Counties and municipalities are tasked with the primary responsibility for Code enforcement. Local governments may levy fees to cover the cost of enforcing the provisions of the Code, but those fees, as well as fines and investment earnings related to such fees, may only be used by a local government to cover the cost of carrying out Code enforcement.

The bill prohibits a local government from carrying forward a budget balance greater than its average cost for enforcing the Code for the preceding four fiscal years. The bill requires each local government to use any excess funds to rebate and reduce fees, and provide funding to non-profit organizations that expand training opportunities for the construction industry.

The bill creates an exception for local governments that have established a Building Inspections Fund Advisory Board prior to 2019. Such boards consisting of five members from the construction stakeholder community and carrying an operating balance in excess of the average of its operating budget for the preceding four years are allowed to continue to carry such excess funds upon recommendation by the advisory board.

The bill may have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Building Code

The Florida Building Code (Code) provides for the “adoption, updating, amendment, interpretation, and enforcement” of a single uniform state building code.¹ The Code is intended to provide effective and reasonable protection for the public health, safety, and general welfare of the state’s residents while providing sufficient flexibility to allow for construction that is affordable and promotes competition, innovation, and the deployment of new technology. The standards established by the Code focus on providing for public health and life safety, while providing for the protection of property as appropriate. The Florida Building Commission is primarily responsible for ensuring the Code is aligned with the most up-to-date construction industry standards.²

Local governments play a significant role in enforcing the Code.³ Local governments are authorized to regulate building construction in most cases.⁴ Counties and municipalities may, subject to an interlocal agreement between them, create an enforcement district for the purpose of enforcing the Code.⁵ Local governments may request the support of state and regional agencies with special expertise in building code standards and the licensing of contractors and design professionals to aid in the process of Code enforcement.⁶

Florida Building Code Fees

Local governments are authorized to levy fees to cover the cost of enforcing the provisions of the Code.⁷ The fees, including any fines or investment earnings related to the fees, may only be used to carry out the local government’s Code enforcement responsibilities. Meeting these responsibilities imposes direct and reasonable indirect costs related to:⁸

- The review of building plans, building inspections, re-inspections, and building permit processing;
- Building code enforcement;
- Fire inspections associated with new construction;
- Training costs associated with enforcement of the Code; and
- Enforcement action pertaining to unlicensed contractor activity, to the extent not funded by other user fees.

Local governments are prohibited, however, from requiring additional fees for:⁹

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued; and
- Providing, recording, or filing evidence of workers’ compensation insurance coverage required by ch. 440, F.S.

¹ S. 553.72(1), F.S.

² S. 553.72(3), F.S.

³ See s. 553.72(2), F.S. (legislative intent for local governments to have the power to inspect all buildings, structures and facilities in their jurisdiction).

⁴ S. 553.80(1), F.S.

⁵ S. 553.80(2)(a), F.S.

⁶ S. 553.80(5), F.S.

⁷ Ss. 553.80(7), 125.56(2), and 166.222, F.S.

⁸ S. 553.80(7)(a), F.S.

⁹ S. 553.80(7)(d), F.S.

When creating its fee schedule, a local government may not levy fees (including fines and investment earnings related to fees) that generate total estimated annual revenue that would exceed the total estimated annual cost of its enforcement activities.¹⁰ If any excess funds are accumulated, the local government has discretion to issue refunds or carry forward those funds into future years. Local governments are required to use “recognized management, accounting, and oversight practices” to ensure fees, fines, and investment earnings are maintained and used only for authorized purposes.¹¹

Local governments may not use code enforcement fees to cover:¹²

- Planning and zoning, or other general government activities;
- Provide reduced cost or free inspections of public buildings;
- Public information requests, community functions, boards, and any program not directly related to enforcement of the Code;
- Enforcement and implementation of any other local ordinance, except for valid local amendments to the Code or ordinances directly related to enforcing the Code.

If a property owner chooses to utilize a private code inspection service operating under the provisions of s. 533.791, F.S., the local government must refund fees to the extent its expenditures were reduced by not incurring costs for inspecting the property.¹³

Effect of Proposed Changes

The bill prohibits a local government from carrying forward an amount of funds generated by Code enforcement activities that exceeds the four-year rolling average of its operating budget for Code enforcement. The bill defines the term “operating budget” as excluding any amount held in reserves. If a local government would otherwise have an amount of carry forward funds that would exceed the allowed limit, the bill requires the local government to use those funds to rebate and reduce fees, and provide funding to non-profit organizations to expand training opportunities in the construction industry.

The bill creates an exception to the prohibition on local governments from carrying forward excess funds for those local governments that have established a Building Inspections Fund Advisory Board prior to 2019. Specifically, such boards consisting of five members from the construction stakeholder community and carrying an operating balance in excess of the average of its operating budget for the preceding four years may continue to carry such excess funds upon recommendation by the advisory board.

B. SECTION DIRECTORY:

Section 1: Amends s. 553.80, F.S., relating to enforcement of the Florida Building Code.

Section 2: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁰ S. 553.80(7), F.S.

¹¹ S. 553.80(7)(c), F.S.

¹² S. 553.80(7)(b), F.S.

¹³ S. 553.80(7), F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may require local governments to provide rebates to fee-payers, and funding for non-profits engaged in construction industry training programs, to the extent the local government has maintained reserves in excess of its average operating budget for enforcing the Code in the previous four fiscal years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a reduction in permitting fees to the extent local governments are levying fees in excess of the amount necessary to cover authorized expenses.

D. FISCAL COMMENTS:

None.

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 action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Creates an exception to the prohibition on carrying forward excess funds for local governments that have established a Building Inspections Fund Advisory Board prior to 2019.
- Extends the timeframe used to carryover funds, from two years to four years.
- Removes the requirement that the excess funds be used to “enhance service efficiencies.”

This analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.