

A WHITE PAPER ON THE RELOCATION OF THE FLORIDA BUILDING COMMISSION WITHIN STATE GOVERNMENT

The Florida Building Commission is a 25 member collegial body with diverse representation from the construction industry, building owners and state and local governments. Its role is to oversee the updating and maintenance of the Florida Building Code, the primary state regulation governing the safety of the built environment. The building code establishes standards for the broad array of building systems, so to manage its task the Commission relies on a small core staff that coordinate and manage processes which access the specialized expertise of over a hundred volunteer committee members and countless additional industry and government participants.

The Florida Building Code is one of two major building construction codes dictated by state law. The second code is the Florida Fire Prevention Code administered by the State Fire Marshal's Office which is a part of the Building Code by reference. Coordination of the two codes at the state and local levels is critical to efficiency in the building design and construction process. The Commission and the State Fire Marshal have established coordinating committees and processes that address overlaps in the codes during revisions and updates and for interpretation of the codes.

In addition to the Code the Commission is responsible for programs that support the Code including the state product approval system, which provides quality assurance for hurricane protection building products and systems, and building code training and education. The Commission is also a resource for building construction technical expertise to state agencies and has applied its network of technical experts to insurance issues, onsite sewage system, termite control, swimming pool safety and other issues under the authority of other agencies.

The unique characteristic of the Florida Building Commission's business processes relative to other state regulatory agencies is its approach to establishing regulations. Government agencies receive input from regulated parties and some agencies have advisory panels that provide input but ultimately it is government employees that propose and adopt the regulations. The Commission's approach involves a broad spectrum of effected industry stakeholders who actually participate in decision making. The Commission generally does not propose building code amendments. Exceptions are special issues such as hurricane related building failures and legislative assignments where the Commission uses a structured consensus development process with committees comprised of industry and government specialists to develop solutions to be included in the Code. In developing the Code all amendments are first reviewed and approved by specialty technical advisory committees before the Commission considers them. This approach brings the expertise of hundreds of private and public sector volunteers who invest tens of thousands of hours in the Commission's work on the Building Code. The high standard for consensus, seventy five percent for approval, ensures balanced decisions and fair treatment to all industry participants.

Also of special note are the efficiencies the Commission and its support group the Building Codes and Standards Office have implemented to increase the productivity of this large scale use of the private sector expertise to develop government regulations. These efficiency gains have resulted in fifteen staff persons supporting a level of effort that originally required twenty one. The core of the business system that allows these efficiency gains is information technology, the Building Code Information System (BCIS) through which all functions other than direct calls for building code technical assistance are managed. This award winning system is a key element of the Commission and Building Codes and Standards Office business system that must be maintained to ensure continued performance and success.

This paper addresses the Florida Building Commission's perspective of where in state government it believes it would best fit and thrive. The primary goal is to seek placement in an organization where its approach to governance can survive and thrive rather than be molded into the culture or format of existing bureaucracies. The challenge is there are no other areas of government currently identified where the Building Commission's approach to governance and its business processes exist. The Commission is unique in the extent of its reliance on outside parties to work on its regulations and it is unique in that its Chairman is appointed by the Governor and confirmed by the Florida Senate. These characteristics have been crucial to its ability to apply science and practical private sector expertise to building construction problems with minimal disproportionate influence of special interest groups. They must be preserved in any relocation for the Commission's continued responsiveness to industry and public needs.

An overview of the business processes of the Commission and the Building Codes and Standards Office that supports it are provided in the attachment to this paper. As indicated the core mission of the Office is support of the Commission but it also manages related programs such as the building department for factory built buildings and the energy efficiency ratings system for buildings. To ensure the continued success of the Commission these business processes must be a "good fit" with the business processes of whatever organization it is incorporated into or the host organization must be flexible enough to allow continued operation of these processes.

The Commission requests that reviewers compare its role in building construction regulation, its private sector driven building code regulations development approach to governance and its business practices and technology system to those of the organizations being considered for it to merge with. There are similarities with units within several existing agencies and perhaps future agencies that should be evaluated in determining the best fit. We trust that evaluation will be deeper than consideration that the Commission and another organization both deal with some aspect of the construction industry.

POTENTIAL AGENCIES FOR RELOCATION:

Building codes and standards functions are located in several different agencies in other states and the US Government including departments of community affairs, insurance, state, housing and commerce. Codes are related to the mission of those agencies in differing ways. Below is a discussion of those

agencies that exist or may be revived in Florida and how the Florida Building Commission would be similar or may fit within each.

Department of Community Affairs

These state agencies characteristically provide support to local governments and provide an interface between local governments and federal agencies that promote community development. Building codes are a key program for promoting health, safety and welfare of the public in the domain of the built environment as a component of community development.

The Commission is currently attached to the Florida DCA for administrative support but is delegated independent authorities and more autonomy from DCA than most statutory boards.

Department of State

The Florida Department of State has programs that support the preservation of historic buildings and have a unique role in Florida and federal law in determining how certain aspects of the building and fire codes are applied to historic structures.

Little is known about the business processes and organization of the DOS but its presumed strength of choice is the Commission could be organized into the agency in a manner that maintains its autonomy and preserves its business processes with less restructuring.

Department of Financial Services (Insurance)

The Florida agency that regulates insurance is incorporated into the Department of Financial Services. The program within the DFS that is most similar to the Commission's areas of responsibility is the State Fire Marshal's Office which includes a bureau responsible for the Florida Fire Prevention Code. The Florida Building Code and the Florida Fire Prevention Code are the two major building codes that govern the safety of the built environment and Florida law requires their close coordination.

The business processes of the Fire Code bureau and the Commission are similar and there could be significant enhancements for the Fire Code by integrating the bureau's business processes into the Commission's BCIS. Conversely, the Fire Code administration system in Florida has a more advanced Fire Code education and training that could be extended to improve Building Code effectiveness. The key unknown and underlying suspicion of industry is how independence of the Commission could be maintained within a fire services centric organization and a department that regulates insurance.

Department of Business and Professional Regulation

This agency is well known to most stakeholders in the building construction industry via its professions licensing functions. There are similarities and significant differences in the business processes of the Commission and the licensing boards that are organized within or supported by DBPR's Division of Professions. The greatest similarity is both regulate the actions of contractors, architects, engineers (some types), building code enforcement personnel and private inspectors of different types. However, what and how the building code and the licensing boards' regulations affect those parties differ significantly.

The DBPR also has a business regulation function that may be more similar in its business processes to those of the Commission. As example, the Bureau of Elevators in the business regulation side of DBPR establishes and maintains the construction standards for elevators in buildings that are subsequently integrated into the Florida Building Code. The Bureau operates with an advisory committee similar to the Commission's Technical Advisory Committees. The Bureau also administers state requirements for the inspection of elevator installations via a private third party inspection system which is similar to the Building Codes and Standards Office administration of the factory built buildings design and construction inspection program.

A specific concern with relocation of the Commission and Codes and Standards Office into this agency is the potential impact on the Commission's streamlined business practices. On the Professions side of the agency the approach to improving efficiency and productivity has been to group similar business functions for a large number of licensing boards into separate units which then improve efficiency by eliminating replication of the same function in each board. While this organizational approach is valid where the different boards' business functions, e.g. application intake, testing, continuing education, etc. are sufficiently similar the Commission's business functions do not fit. Also, for this approach to maintain its efficiency gains it tends to be inherently more rigid and adaptable to business functions like those of the Commission. This type organization may not be the best fit for the Commission's approach to governance and the efficiency gains it has achieved through its own information technology.

A possible better fit for the Commission within the DBPR initially may be direct attachment to the DBPR Secretary's Office. This organizational approach was once considered for the Commission in its early days with DCA and would allow more flexibility. Another consideration is both the Secretary of the agency and the Chairman of the Commission are appointed by and serve at the pleasure of the Governor (unlike all other boards). With this organizational structure the lines of communication and responsibility are more direct and appropriately do not go through a subordinate of the Department Secretary, a division director. Also, this organizational approach would provide advantages to the Commission in the bureaucratic in-fighting over budgets and policy priorities and potential interference of other boards or entities.

Best Fit Option for Government Reinvention

The best option for relocation of the Commission and the Building Codes and Standards Office would be the establishment of an Agency, or a major unit within a new Agency, that combines building construction support and regulation programs within one organization that could provide effective coordination of state policies. Building construction like agriculture and tourism is a major industry and source of jobs in Florida and it warrants a government organization that can promote it and provide efficient and balanced regulation. While such an agency does not currently exist there are potential options for pursuing this approach to governance.

An option is for the Commission to travel with the Division of Housing and Community Development (HCD), within which it is currently organized, to whichever agency the Division will be relocated to. The Building Codes and Standards Office was created within the Department of Veterans and Community Affairs in 1974 and subsequently organized within the Division of Housing and Community Development in the current Department of Community Affairs in a limited version of the combined support and regulation approach to governance. In addition to the Building Codes and Standards Office the Division includes programs that support housing and the development of infrastructure essential to construction in Florida communities. Also, until it was spun off as an independent agency the Florida Housing Finance Agency, which provides major funding support to affordable housing construction, was located within the Department of Community Affairs and aligned with the Division's programs. The Commission has been allowed to innovate and thrive within the Division during its developmental years. Continued association with the Division or other similar organization would ensure it continues to innovate and adapt to changes in the industry.

An organization which maintains the current Division of Housing and Community Development (HCD) support and public safety programs as its core offers additional possibilities in the current climate of government reinvention. Programs directly related to building construction could be relocated from other agencies into a construction-centric agency or agency sub-division. Maintaining the HCD group as a core of building construction support and regulation programs makes evolution into a larger agency combining multiple state agency construction programs a more real possibility than separating construction industry regulation and support into different agencies. Silo-ing has been the standard approach employed for the past 30 years and has resulted in a system lacking coordination and balance between the dual goals of both facilitating and regulating the construction industry. On the regulation side building codes, fire codes, health codes, elevator codes and numerous facility licensing programs all of which dictate construction standards are spread throughout different agencies with their own narrow focus. The specific mission and focus of the different agencies inherently create impediments to coordination and promotion of a comprehensive regulatory construct that would improve government effectiveness and construction industry efficiency. The Florida Building Code and the system created to support it was the first major effort to confront and improve the coordination of the multiple state agencies' construction regulations. The next step could be the initiation of an agency or entity that could evolve to bring all the construction industry regulatory and government support pieces into one organization.