

MEMORANDUM**TO:** Administration/Code Enforcement TAC**FROM:** Suzanne H. Schmith
Staff Attorney**DATE:** February 7, 1999**RE:** Statutory Intent for Administrative Section of FBC

This memo is in response to a request by the TAC that legal clarify the statutory intent of the administrative section of the Florida Building Code.

Chapter 98-287, Fla. Laws, describes the need for uniform and consistent enforcement and administration of the Florida Building Code. Yet, it should be "exercised in a manner that meets minimum requirements, is affordable, does not inhibit competition, and promotes innovation and new technology." Section 553.72(1), F.S. There is no question that the code must contain administrative provisions. Section 553.73(1) and (2), F.S. direct that the code contain all provisions for enforcement of and compliance with the technical codes.

As directed by ch. 98-287, the commission has selected the "foundation" for the Florida Building Code – the 1997 Standard Building Code. Therefore, the Administrative section of that code serves as the foundation for Florida's code. In modifying that code, the commission and this TAC are to be guided primarily by the only statutory criteria for modifications – that they be made to accommodate the specific needs of the state (s. 553.73(3), F.S.) – and secondarily by the five modification criteria selected by the full commission. The task of this TAC is to develop the baseline administrative code provisions which will apply uniformly throughout the state, by considering and acting upon proposed modifications in accordance with the statutory and commission criteria.

Once the code is adopted, the question (as I understand it from TAC members) is how much flexibility do jurisdictions have to amend the administrative sections of the code? The law clearly treats amendments to the administrative sections of the code differently from amendments to the technical provisions. Section 553.73 (4)(b), F.S., authorizes local jurisdictions to amend technical provisions of the code only if they comply with a series of prerequisites, such as submitting a fiscal impact statement, holding a public hearing and determining the need for more stringent requirements, and post-adoption requirements, such as review by the commission during the three-year code update cycle and creation of a county-wide compliance review board to hear challenges to those amendments. By contrast, section 553.73(4)(a), F.S., directs that

amendments to standards "established by the Florida Building Commission pursuant to this paragraph" must only be more stringent than the baseline, transmitted to the commission within 30 days of adoption, and made available to the public. Therefore, these amendments are subject to far fewer limitations and may therefore be made more liberally.

Paragraph (a) of section 553.73(4), F.S., is anything but a model of clarity. It does not use the term "administrative amendments" or refer directly to administrative provisions of the code in describing the more liberal amendment provisions. However, the paragraph begins with direction to local jurisdictions to comply with the code's standards for issuance of mandatory co's, minimum types of inspections, and procedures for plans review, which is followed by the reference to amendments to standards adopted "pursuant to this paragraph." The logical conclusion is that the entire paragraph relates to administrative provisions. Further, this paragraph is not clear as to whether the intent is to limit local administrative amendments to just the three areas specifically listed, provide for unlimited amendments to all administrative provisions, or only allow amendment of the three specific areas listed.

Where chapter 98-287, Fla. Laws, is unclear, it directs us to consider the recommendations of the Final Report of the Governor's Building Codes Study Commission. *See* Intent Section. Recommendation III-1 provides that local government should establish the business practices of its building and fire departments, including the setting of fees, while the code should establish the baseline for plans review, permitting and inspection procedures. The recommendation contains a list of provisions to which local administrative provisions should be limited. The law as passed contains no such limits. The recommendation supports the conclusion that the intent was for local jurisdictions to retain much control over the administrative provisions of the code. The fact that a list of limits was considered, yet not adopted, further supports this conclusion. A local government may write its own "business practices" while uniformly complying with the minimum standards for plans review, permitting and inspection. If any administrative provision is adopted locally, it must only be more stringent, transmitted within 30 days and made available to the public in a usable format.