

**FLORIDA BUILDING COMMISSION
M E M O R A N D U M**

TO: Members of the Product Approval Task Group and Charlie Hickey

FROM: Suzanne H. Schmith Staff Attorney

SUBJECT: Section 103.7 of the SBC

DATE: April 1, 1999

CC: Administration / Code Enforcement TAC and Mo Madani

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This memorandum is in response to questions raised during the March meeting of the task group regarding section 103.7 of the Standard Building Code and its use in the Florida Building Code. The concern is whether this provision, which authorizes the building official to approve the use of methods and materials not specifically prescribed in the technical codes, conflicts with the product approval system required by section 553.842 of the Florida Statutes.

As currently written, the language of section 103.7 is inconsistent with the statute because it does not recognize the product evaluation and approval system which must be established in coordination with the Florida Building Code, and it does not account for products which will require approval thereunder. Therefore, if section 103.7 is to be incorporated into the Florida Building Code, it should be revised to be consistent with the statute. Any revision should address the following:

- (1) Recognize the product evaluation and approval system required by section 553.842, Florida Statutes – although by operation of law a provision of the code cannot preempt state law, the a direct recognition would assist regular code users who are not familiar with the law itself;
- (2) Clarify that alternate methods and materials may not be used if they have been disapproved by the Florida Building Commission. This alternate method should not be used to circumvent the required approval process for listed categories of products; and
- (3) Clarify that the alternate approval process does not apply to products which are required to undergo the statutory approval process. If "alternate" products, whether they are prototypes or otherwise, fall within a category of products which the commission has determined require statewide or local approval, they may not be approved for use under this process. If this was not the intent of chapter 98-287, Laws of Florida, then the Task Group should recommend that the commission pursue statutory revision during the 2000 legislative session.

The following revision to section 103.7 is suggested to the task group for discussion:

103.7 Alternate materials and methods. The provisions of the technical codes ~~are not intended to~~

prevent the use of must be implemented in coordination with a product evaluation and approval system established by the Florida Building Commission (cross-reference the administrative rule). The Florida Building Code does not preclude the use of any material or method of construction not specifically prescribed by them therein, provided any such alternate has not been disapproved by the Florida Building Commission for statewide use, or by the local building official for local use. Approval of any alternate material or method must be made only upon a case-by-case basis upon a review and a finding by the building official. The building official shall approve any such alternate, provided the building official finds that the alternate for the purpose intended is at least the equivalent of that prescribed in the technical codes, in quality, strength, effectiveness, fire resistance, durability and safety. The building official shall require that sufficient evidence or proof be submitted to substantiate any claim made regarding the alternate. This method of approval does not apply to products, materials or methods of construction for which the Florida Building Commission requires approval for local use, pursuant to section 553.77, Florida Statutes.