

M E M O R A N D U M

TO: Product Approval Task Group
and Charlie Hickey

FROM: Suzanne H. Schmith

SUBJECT: Product Evaluation and Approval System

DATE: February 2, 1999

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This memo is in response to issues raised at the January meeting of the Product Approval Task Group concerning whether the law requires separate product evaluation and product approval systems. At that meeting I advised that chapter 98-287, Laws of Florida, contemplates the development of one unified product evaluation and approval system. Chapter 98-287, Laws of Florida, creates section 553.842 of the Florida Statutes, to provide for a product evaluation and approval system to operate in coordination with the Florida Building Code. Several provisions of that section, as well as the report of the Governor's Building Codes Study Commission (December, 1997) support the conclusion that only one system needs to be established.

First, the legislation consistently refers to a single evaluation and approval process. *See* § 553.842, Fla. Stat. (1998 Supp.). The statute authorizes the commission to adopt rules to implement "a product evaluation and approval system." § 553.842(1), Fla. Stat. (1998 Supp.) It further directs that "the product evaluation and approval system" must rely upon regional, national and international consensus standards. § 553.842(2), Fla. Stat. (1998 Supp.) The statute does not refer to both a product evaluation system and a product approval system.

Second, in listing the essential provisions of "the product evaluation and approval system" the legislation mandates that it include "independent, third-party qualified and accredited testing and laboratory facilities" and the "development of stringent but reasonable testing criteria," but does not include a requirement for product approval entities or criteria for product approval as opposed to criteria for product evaluation or testing. § 553.842(1)(c)&(e), Fla. Stat. (1998 Supp.)

Third, the statute creates a process by which products are evaluated for compliance with standards in the Florida Building Code and for which approval is the end product. The statute provides two methods by which approval can be achieved, one for submittal of product evaluation reports by approved product evaluation entities and one for submittals of product evaluation reports or rational analysis by professional engineers or architects. For products tested by an approved evaluation entity, the report must show that the product or method or system of construction was tested to be in compliance with the Florida Building Code

or with the intent of the code, and that the product or method or system of construction is, for the purpose intended, at least equivalent of that required by the code. *See* §553.842(5), Fla. Stat. (1998 Supp.). For products certified by a listed professional, the report or rational analysis (signed and sealed by the professional) must certify that the product or method or system of construction is at least equivalent of that required by the code. This section describes a system in which approval is granted based upon testing or certification which demonstrates compliance with the code. *See Id.* The statutory scheme does not contemplate a separate approval process or the involvement of separate product approval entities.

The report of the Governor's Building Codes Study Commission provides further support for this concept. The intent language of chapter 98-287, Laws of Florida, directs the commission to consider the recommendations of the study commission when implementing the provisions of the act. Recommendation V-1 of the report defines product approval as "an authorization of use of a product, material or system of construction *as a result of product evaluation.*" Five Foundations for a Better Built Environment (the report of the Governor's Building Codes Study Commission, December 1997), p. 36. This definition is consistent with a unified product evaluation and approval process, the end product of which is approval.

The task group subcommittee headed by Mr. Everly has submitted draft criteria for the product evaluation and approval system, and for product evaluation entities. The draft states, "Approval shall be given when the product, construction method, or building system meets an appropriate set of specific provisions set forth in the FBC." This description is consistent with the statutory scheme which directs the commission to (1) determine the types of products which require approval; (2) adopt into the code the standards against which products will be measured; and (3) define the criteria for approving product evaluation entities. Once a product or method or system of construction has been shown, by submittal and validation of a product evaluation report by an **approved** product evaluation entity, to meet the standards established in the code, that product is approved. The commission plays an active role in this process, rather than that of a rubber stamp, by determining the standards which must be met and the criteria for selecting evaluation entities.

Finally, the task group has identified technical deficiencies with the language of section 553.842, Florida Statutes, which may be contributing to confusion over this issue. The glitch bill is the appropriate vehicle for clarifying that language. If "validation" of the product evaluation report is at issue, then the term should be defined. (See my attached comments to the definitions the task group developed at the December meeting.) If oversight of evaluation entities is the issue, then address that at this time. However, the task group should avoid proceeding in a direction which is inconsistent with the statute.