

---

**FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS  
OFFICE OF THE GENERAL COUNSEL  
GENERAL GOVERNMENT SECTION  
2555 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-2100  
(850) 488-0410 SUNCOM 278-0410  
FAX (850) 922-2679**

---

**M E M O R A N D U M**

TO: Florida Building Commission Members,  
Members of the Special Occupancy TAC  
and Bruce Ketcham, Staff Support

FROM: Suzanne H. Schmith  
Commission Staff Attorney

SUBJECT: Enforcement and Maintenance of State Agency Regulations

DATE: Revised July 8, 1999

---

The purpose of the memorandum is to clarify the issues surrounding enforcement and maintenance of state agency construction regulations which are incorporated into the Florida Building Code.

As you are aware, chapter 98-287, Fla. Laws, directs that the provisions of the Florida Building Code be enforced by local jurisdictions through the permitting and inspection process. The law vests responsibility for enforcement, interpretation and regulation of the code with "a specified local board or agency, and the words 'local government' and 'local governing body' as used in this part shall be construed to refer exclusively to such local board or agency." Section 553.73(1)(e), Fla. Stat. (1998 Supp.). Section 553.80, Florida Statutes, assigns the responsibility for enforcement to each local government and locally constituted enforcement district. *See s. 553.80(1)*, Fla. Stat. (1998 Supp.). This section is amended by chapter 98-287, Fla. Laws, to delete the current reference to state agencies with statutory authority to enforce building codes. *Id.* Further, this section is amended to require that state and regional agencies with special expertise in building code standards provide support to local governments. *See s. 553.80(5)*, Fla. Stat. (1998 Supp.). Finally, the law clearly subjects state agencies with building construction responsibility to enforcement of the

Florida Building Code by local jurisdictions. *See* s. 553.79(17), Fla. Stat. (1998 Supp.).

The law contains the following specific exemptions from the requirement that state agencies are subject to local enforcement of the Florida Building Code:

(1) Local enforcement does not apply to the jurisdiction and authority of the Department of Agriculture and Consumer Services to inspect amusement rides or the Department of Insurance to inspect state owned buildings or boilers. *See* s. 553.79(17), Fla. Stat (1998 Supp.);

(2) State universities, community colleges and public school districts shall conduct plan review and construction inspections of their building projects and are not subject to local government permitting requirements, plans review and inspection fees. *See* s. 553.80(6), Fla. Stat. (1998 Supp.). However, those entities may choose to use the local jurisdiction's plans review and inspection process, and counties and municipalities must expedite permitting, plans review and inspections of those entities' projects;

(3) Hospitals and nursing homes shall have facility plans reviewed and construction surveyed by the Agency for Health Care Administration (AHCA). *See* s. 553.73(12), Fla. Stat. (The law provides that this authority is **in addition to** other sections of the law requiring that state agencies are subject to enforcement of building code requirements by local jurisdictions. Since this section will require duplicate plans review, the TAC should recommend to the commission how this should be handled, or whether legislative clarification is needed); and

(4) State-approved manufactured buildings are exempt from local codes enforcing agency plan reviews except for provisions of the code relating to erection, assembly, or construction at the site. *See* s. 553.79(2), Fla. Stat. Erection, assembly and construction at the site are subject to local permitting and inspections. *Id.* However, manufactured buildings are not exempt from approval under the statewide product evaluation and approval process to be established by the commission. *See* s. 553.842(7), Fla. Stat. (1998 Supp.).

Any other state agency construction regulations that are included in the Florida Building Code, and not specifically exempted in chapter 98-287, Fla. Laws, are subject to enforcement by local

jurisdictions. The TAC may recommend to the full commission that enforcement of those regulations be maintained at the state level, which will be implemented by seeking legislative exemptions in the 2000 session. The commission is currently hearing presentations from each of the affected agencies and voting on enforcement issues. At last month's meeting (June), following a presentation by the Bureau of Elevator Inspection, Department of Business and Professional Regulation (DBPR), the commission voted to retain enforcement of the elevator codes at the state level. As such, the department will pursue this in legislation for the 2000 session. At the June meeting, the commission also heard a presentation from the Division of Hotels and Restaurants. The commission did not vote on enforcement, but has requested a recommendation from the TAC on this issue. As the commission continues to hear presentations from the affected agencies, the TAC should be prepared to make recommendations on the enforcement issues.

On the issue of maintenance of state agency regulations, the law is silent. This issue was probably not contemplated by the drafters of House Bill 4181 (codified as chapter 98-287, Fla. Laws). However, these issues are squarely before the commission now and the commission is determining how those regulations will be maintained. At the June meeting, the commission voted to maintain the state elevator construction regulations, which will be included in the Florida Building Code, but will be enforced by the DBPR, Bureau of Elevator Inspections. Obviously this kind of rulemaking will require close coordination with the DBPR and its technical experts. As the commission continues to hear presentations from the affected agencies, the TAC should be prepared to make recommendations on these maintenance issues.