
**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: Special Occupancy/Specialty Codes TAC and Bruce Ketcham

FROM: Suzanne H. Schmith
Staff Attorney

SUBJECT: Summary of Statutory Requirements

DATE: November 19, 1998

CC: Mechanical/Elevator TAC

This memo is in response to a request from TAC members, during the November meeting, for an overview of the statutory requirements relating to the TAC's responsibilities. Members specifically requested clarification of the TAC's responsibility for incorporating state agency regulations, as opposed to state agency inspection and enforcement authority, into the Florida Building Code (the code). Because of overlapping responsibility with regard to elevators, this memo is also being provided to the Mechanical/Elevator TAC.

The revised statutory provisions which are most relevant to these questions are sections 553.73, 553.79 and 553.80, Florida Statutes (F.S.). Section 553.73(1)(a), F.S., provides, in part, that the Florida Building Code "**shall contain** or incorporate by reference **all laws and rules which** pertain to and **govern the design, construction, erection, alteration, modification, repair, and demolition of** public and private buildings, **structures, and facilities** and enforcement of such laws and rules" (emphasis added). Subsection (2) of 553.73, F.S., requires that the code contain provisions and requirements for the following structures or facilities which are directly related to the subject area of this TAC: historical buildings, **elevators**, lodging

facilities, food sales and food service facilities, public or private educational facilities, swimming pools and correctional facilities. Together, these sections provide the authority for, and legislative direction to, the commission to incorporate state agency regulations governing the construction of specified types of facilities into the code.

The statute additionally provides limitations on the scope of the commission's authority to incorporate such regulations. Section 553.73(2), F.S., restricts the provisions incorporated to those requirements related to types of materials used and construction methods and standards used to meet the criteria specified in the code. This section specifically excludes the incorporation of provisions related to personnel, their supervision or training, or any other professional qualification requirements for contractors or their workforce. Therefore, it is the TAC's responsibility to determine which existing agency regulations fall within these boundaries and recommend those for inclusion in the code.

The statute is clear that enforcement of the code lies with the local governmental jurisdictions, with limited exceptions. The legislative intent section provides that local governments "shall have the power to inspect all buildings, structures and facilities within their jurisdictions" (s. 553.72(2), F.S.), and that the code be enforced by authorized state and local government enforcement agencies (s. 553.72(3), F.S.). The enforcement section (s. 553.80(1), F.S.) is amended to delete state agencies as entities with building code enforcement authority, upon adoption of the code, and specifically reserves enforcement authority to local governments and legally constituted enforcement districts. Further, section 553.79(17), F.S., specifies that state agencies with construction responsibility are subject to local enforcement, except for the Department of Agriculture and Consumer Services with regard to inspection of amusement rides, and the Department of Insurance with regard to inspection of state-owned buildings and boilers. However, the Agency for Health Care Administration may still provide plans review and conduct construction surveys for facilities under its jurisdiction, such as nursing homes and hospitals (*see* s. 553.73(12), F.S.).

Finally, section 553.80(5), F.S., directs state and regional agencies with special expertise in building code standards to provide support to local governments upon request. This provision covers the scenario in which so few of a particular type of facility are located within a jurisdiction that hiring a specialty inspector is not justified.