

FLORIDA BUILDING COMMISSION

SUMMARY OF ISSUES AND DRAFT RECOMMENDATIONS TO THE 2010 FLORIDA LEGISLATURE



DECEMBER 9, 2009



CONSENSUS CENTER

REPORT BY JEFF A. BLAIR
FCRC CONSENSUS CENTER
FLORIDA STATE UNIVERSITY



jblair@fsu.edu

<http://consensus.fsu.edu/FBC/index.html>

This document is available in alternate formats upon request to Dept. of Community Affairs,
Codes & Standards, 2555 Shumard Oak Blvd., Tallahassee, FL 32399, (850) 487-1824

FLORIDA BUILDING COMMISSION SUMMARY OF ISSUES AND DRAFT RECOMMENDATIONS TO THE 2010 FLORIDA LEGISLATURE

SUMMARY OF ISSUES

The primary focus of the Florida Building Commission during 2009 was the adoption of Glitch Amendments to the 2007 Edition of the Building Code, adoption of the 2007 Florida Energy Code implementing provisions necessary to comply with the Governor's 15% efficiency increase for thermal efficiency requirements, and adoption of 2008 Edition of the National Electric Code (NEC). In addition to efficiency increases to the Florida Energy Code, major components of the Code Update process include enhancements to the wind, water intrusion and hurricane protection provisions of the Florida Building Code. The effective date of the 2007 Florida Building Code, the 2008 Supplement to the 2007 Florida Building Code to implement glitch code amendments, and the 2009 Supplement to the Florida Energy Code was March 1, 2009.

In addition, the Commission convened numerous workgroups comprised of affected stakeholder interests to develop recommendations on septic system sizing, soffit system hurricane performance and labeling, the window wall interface, code assembly for the 2010 Code Update process, Accessibility Code updates, Energy Code amendments, flood resistant standards, pool energy efficiency standards, and hurricane and storm resistant construction research and code amendments.

During 2009 the Commission once again focused on consensus-building efforts regarding the implementation of Commission policy, with extensive input from stakeholders and interests affected by Commission policy. Chairman Raul L. Rodriguez, AIA, encouraged and led the Commission's consensus-building initiatives. Finally, the Commission continued with its focus of developing storm damage investigations and research and adopting code amendments related to making Florida's structures, and the products that comprise them, more storm resistant.

As a result of declining revenues from building permit surcharge fees, during the past year the Commission made changes to their processes to adapt to a reduced budget, and it is likely the Commission will have to continue in this mode for the coming year. To date, Commission meetings have moved from 3 day meetings every 6 weeks to 2 day meetings every 8 weeks with workgroup meetings held in conjunction with Commission meetings, and TAC and POC meetings conducted by teleconference when the complexity of issues being addressed lends itself to the format. In addition, the Commission voted in favor of a policy requiring all programs to be self-supporting, and is seeking legislative authorization to charge fees for petitions for declaratory statements, non-binding interpretations, and accessibility code waiver applications.

The Florida Building Code System was developed after Hurricane Andrew to streamline statewide adoption and enforcement of improved hurricane protection standards. Hurricanes Charley, Frances, Ivan and Jeanne in 2004 and Dennis, Katrina and Wilma in 2005 demonstrated the overall effectiveness of the Code, and identified areas that need additional refinements. Analyses of building

systems and component failures identified in these storms were conducted throughout 2005, 2006, 2007, 2008 and 2009, and will continue during the coming year (2010). Assessments indicate the design wind speeds required by the Code were adequate and buildings built to the new code did not experience nearly as severe damage as older buildings. While some new building technologies did have weaknesses, the major structural systems failures seen in older buildings were avoided in buildings complying with the Florida Building Code. The Commission addressed many of the weaknesses through implementation of the expedited code amendments authorized by the 2005 Legislature, the code enhancements adopted during the 2006 annual interim amendment process, and the adoption of the 2007 Edition of the Code, which became effective on March 1, 2009. With the continuing work of the Hurricane Research Advisory Committee and various building component specific workgroups (e.g., Window Wall, Soffit System), the Commission remains committed to addressing building and product weaknesses. Working with industry the Commission identified and funded research, and implemented additional code amendments designed to strengthen the Code's building envelope protection.

The Code establishes minimum requirements to protect buildings and their occupants from wind, rain, flood and storm surge based on well-researched and continually-evolving engineering standards for buildings and the products that go into their construction. It is important that the Commission be able to quickly integrate these standards into the Code to keep pace with changes in building technology and advances in the sciences of storm dynamics and building performance. The Commission is continually evaluating the code adoption process for increases in efficiency, and as a result the Commission is recommending eliminating the statutory requirement for the Commission to wait six months after publication of the latest I-Code Edition before selecting same as the foundation code for the Florida Building Code for future Code Editions.

The Commission is required by Florida law to update the Florida Building Code every three years, and the 2007 Edition represented the second update and third edition of the Code. The update process is based on the code development cycle of the national model building codes, which serve as the "foundation" codes for the Florida Building Code. The effective date of 2007 Florida Building Code, the 2008 Supplement to the 2007 Florida Building Code to implement glitch code amendments, and the 2007 Florida Energy Code became effective on March 1, 2009. During 2009 the Commission initiated the 2010 Code Update process by selecting the 2009 I-Codes as the foundation codes for the 2010 Edition of the Florida Building Code. In addition, the Commission selected the target effective date for 2010 Edition of the Florida Building Code as December 31, 2011, to publish a fully integrated Code, and to implement a mandated process to remove (unnecessary) and maintain (needed) Florida Specific amendments for the 2013 Code Update Process.

The Code is a complex interrelated document consisting of thousands of pages and containing myriad related standards and references that must be evaluated and updated on an ongoing basis. In the case of editorial and unintended glitches, it is important for the Commission to correct these non-controversial glitch and correlation issues as quickly as possible in order to prevent unintended consequences and unnecessary delays and complications for all of the building code system participants. With the addition of the expedited code amendment authority in 2007, the Commission is now capable of correcting code glitches as needed. To further this goal, the Commission is recommending that the Legislature expand the Glitch Code criteria in Chapter 553.73(7) F.S to include recognizing equivalency of standards in the Florida Building Code (i.e., design standards).

Energy efficiency issues were a primary focus of the Commission during 2009, and the Commission's Energy Code Workgroup met throughout the year and will continue to develop Energy Code recommendations for the 2010 Code Update cycle. The Chair appointed a Pool Efficiency Subcommittee to the Florida Energy Code Workgroup to provide recommendations to the Workgroup regarding the pool equipment efficiencies subtask for pool pumps and heaters efficiencies and hydronic systems standards. During 2009, as directed by the Legislature, the Commission adopted a rule for determining cost effectiveness of energy conservation measures to be considered for inclusion in the Florida Energy Code by adopting Rule 9B-13.0071, Cost Effectiveness of Amendments to Florida Energy Code, adopted the 2009 International Energy Conservation Code (IECC) as the foundation for the 2010 FBC, Energy Volume, is evaluating energy conservation measures to ensure the 2010 Energy Code increases efficiency requirements by 20%, developed a strategic plan for achieving scheduled increases in energy efficiencies with subsequent editions of the code, and is evaluating specific building options for promoting the use of renewable energy technologies as required by law.

The Commission sent the US Department of Energy certification certifying that the Florida Energy Code is equivalent to ASHRAE 90.1-2004, issued a letter verifying Florida complies with the qualifying conditions for energy funds from the federal Stimulus Bill, by reporting that Florida's Energy Code, updated to implement Governor Crist's Executive Order 2007-197 and implemented in the 2007 Florida Building Code that went into effect March 1, 2009, is more stringent than ASHRAE 90.1-2007 for commercial buildings and is as stringent as the 2009 IECC for residential buildings. The report further stated Florida's energy code is a state-wide uniform and mandatory code and the schedule for increasing energy efficiency requirements required by Florida law, 20% by 2010, 30% by 2013 and 40% by 2016, will far exceed the standards established by the Stimulus Bill within the eight year time horizon the Bill establishes. In addition, at the request of the Florida Energy and Climate Commission (FECC) the Commission transmitted a Report titled, "Florida Energy Code, The Baseline Efficiency for Florida Buildings", regarding assessment of building codes and appliance efficiency standards on the need for utility sponsored programs, and relevant supporting documents to the Florida Energy and Climate Commission (FECC).

In response to the US Department of Justice's publication of "*Proposed ADA Standards for Accessible Design, June 2008*", the Commission convened an Accessibility Code/ADAAG 2.0 Workgroup to develop recommendations for amending the Florida Accessibility Code for Building Construction by integrating the relevant Florida standards in ss. 553.501-553.513, F.S., into the 2004 ADAAG as adopted by 28 CFR 36 (prospective). Although DOJ's process is not complete, the Workgroup began working with the 2004 ADAAG to modify the new draft FACBC to reflect DOJ's amendments consistent with the US Department of Justice's adoption of the next generation of the ADA Accessibility Standards. Once the integration of Florida specific requirements is complete, the Workgroup will evaluate Florida specific requirements for possible recommendations to the 2011 Legislature.

At the request of the Florida Division of Emergency Management (DEM), during 2009 the Florida Building Commission convened a Flood Resistant Standards Workgroup charged with developing recommendations for integrating the International Code Series (I-Codes: IBC, IRC, etc.) flood damage-resistant provisions (for buildings and structures) in the Florida Building Code. The Commission conducted a facilitated stakeholder process culminating in a consensus package of recommendations regarding integrating flood resistant standards into the 2010 FBC. The

Commission voted unanimously to adopt the package of recommendations for integrating flood resistant standards into the 2010 Edition of the Florida Building Code.

The product approval system is an internet based system administered by a contracted Product Approval Administrator. With major consensus-based revisions to the system implemented through rule development in 2007, the system is processing hundreds of applications monthly with efficiency and satisfaction by the product manufacturers who use the system. The Commission's Product Approval Program Oversight Committee (POC) convenes at every Commission meeting to review product and entity applications, address petitions for declaratory statements, and consider enhancements to the product approval system. Since the system went into effect in October 2003, the Commission has approved 9,243 product applications and 40,376 products for statewide use within limitations established by the approvals, as well as approved 144 product approval entities. During 2009 the Commission amended Rule 9B-72.090 adjusting product approval fees for manufacturers and the administrators contract to ensure the program is self-supporting, amended Rule 9B-72.100 by adopting criteria (meeting requirements of ISO/IEC Guide 65, and substantiating accreditation and independence) for approval of evaluation entities and including the International Association of Plumbing and Mechanical Officials Evaluation Service (IAPMO ES) to the list of approved evaluation entities, amended Rule 9B-72.130 Product Approval, for the purpose of limiting the number of lines in an application to 150 and revising the BCIS Screens to conform to the rule amendments,, amended Rule 9B-72.090 (self-affirmation) allowing self-affirmation for products that comply with the subsequent code version, and amended Rule 9B-72.180 (equivalency of standards).

With the hiring of an Education System Administrator in 2006, the Commission's Education Product Oversight Committee now receives technical assistance in establishing course development guidelines and conducting the oversight function of the Building Code Education Accreditation System. With the repeal of the Building Codes Education and Outreach Council in 2007, a workgroup was formed composed of representatives of the Florida Building Commission, related licensing boards, industry licensee organizations, education providers, and accreditors. The workgroup meets quarterly, and provides the Commission's Education POC with recommendations on procedural issues as well as on subjects for education and training on the Florida Building Code. Education is one of the cornerstones of the Building Code System, and the effectiveness of the Building Code depends on the knowledge of professionals who design and construct buildings. The Commission continues to work with the Department of Business and Professional Regulation and representatives of the licensing boards to establish a cooperative system for approving building code courses and integrating building code continuing education into licensing requirements. In collaboration with the Education Workgroup and the System Administrator, the Commission is working to ensure the accountability and efficacy of the Education System. The Commission is recommending the repeal of the Building Code Administrative Core Curriculum. During 2009 the Commission amended Rule 9B-70.002, Education, to revise the rules of operation regarding review and approval of accreditors and courses seeking accreditation, and to correct some outdated internet references including expiration dates of registered training providers and accreditors.

The Commission's commitment to consensus-building on substantive issues was spotlighted during 2009, with Chairman Rodriguez appointing facilitated workgroups of Commission members and representative stakeholders to reach agreement on packages of recommendations in their respective subject areas. The workgroups convened during 2009 include: the Hurricane Research Advisory Committee, Soffit Systems Workgroup, Window Wall Workgroup, and the Flood Resistant

Standards Workgroup. Each of these groups worked with stakeholders to identify issues, evaluate a full range of options, and submit consensus recommendations to the Florida Building Commission on their respective topics. In addition, the Chair convened an ad hoc committee of Commissioners to evaluate the efficacy of Commission processes, and a subcommittee to develop recommendations for pool equipment efficiency standards.

Monitoring the building code system and determining refinements that will make it function better is a primary responsibility of the Commission, and consequently the Commission is continually effecting refinements to the building code system by administrative rule amendment(s) where the statutes provide authority. However, the building code system is established in law, requiring that some refinements must be implemented through changes to law. The Commission's recommendations for 2010 legislative actions designed to improve the system's effectiveness are summarized below.

DRAFT RECOMMENDATIONS FOR COMMISSION CONSIDERATION DECEMBER 9, 2009

The Commission's 2008 Recommendations to Consider for Submittal to the 2010 Florida Legislature:

1.) *The Commission seeks clarification and has recommendations regarding the Legislature's intent (section 509.211 and section 553.885 F.S.) for Carbon Monoxide (CO) Detector requirements in the Florida Building Code. They are as follows:*

1. *Clarify the responsibilities of the Division of State Fire Marshal (DSFM) and the Department of Business and Professional Regulation (DBPR) under Chapter 509.211 F.S. regarding CO detectors in hotels and motels.*
2. *Clarify the scope of what was intended by the term: "new construction" in section 553.885 F.S.*
3. *Provide legislative authority for the Commission to review and determine the appropriate location(s) for CO detectors.*
4. *Clarify that the requirement applies to all fuel sources that emit carbon monoxide and not only fossil fuels.*

2.) *The Commission recommends and seeks statutory clarification that TAC members may serve on TAC's despite their personal or associates' appearance before the Commission or appendages on matters unrelated to TAC service.*

3.) *The Commission recommends the Legislature expand Glitch Code criteria in Chapter 553.73(7) F.S to include recognizing equivalency of standards in the Florida Building Code (i.e., design standards).*

4.) *The Commission requests Legislative authority for the Commission to charge a fee for issuing non-binding interpretations and for parties requesting interpretations to pay the interpretations contractor directly for the service.*

5.) *The Commission recommends incorporating its 75% voting threshold requirement for all substantive Commission decisions in statute.*

6.) *The Commission supports DCA's initiative seeking legislative authority for the Department to administer the manufactured building program as follows:*

1. *Contract for the Manufactured Building administrative responsibilities;*
2. *Manufacturers to pay the administrator directly for plans review and inspections services via the Building Code Information System (BCIS);*
3. *Department to establish plans review and inspection fees.*

7.) *The Commission recommends and requests specific statutory authority for manufactures/entities to pay the administrator of the Product Approval Program (vendor) directly via the BCIS.*

Commission's Proposed Recommendations from 2009 Committee Projects to Consider for Submittal to the 2010 Florida Legislature:

The following recommendations have already been adopted by the Commission:

8.) *Seek a legislative exception so that local CRS (higher flood resistant standards) would not be subject to the local technical amendment requirements of the Code, subject to a consistency review with updated editions of the code.*

9.) *Seek statutory change to section 553.80 F.S. to clarify that this provision shall not be used to deviate from flood resistant requirements.*

10.) *Recommend to the 2010 Florida Legislature eliminating the statutory requirement for the Commission to wait six months after publication of the latest I-Code Edition before selecting same as the foundation code for the Florida Building Code for future Code Editions (starting with 2013 Code Update process).*

11.) *The Commission requests Legislative authority for the Commission to charge a fee for issuing petitions for declaratory statements and for parties requesting declaratory statements to pay DCA for the service.*

The Following recommendations have not yet been considered by the Commission for adoption:

12.) *The Commission requests Legislative authority for the Commission to charge a fee for issuing accessibility code waivers and for parties requesting waivers to pay DCA for the service.*

13.) *The Commission supports stakeholder initiatives to repeal the Building Code Administrative Core Curriculum.*

14.) *The Commission supports the consensus recommendations for sizing residential septic system developed by the interagency Septic System Sizing Workgroup (FBC and DOH).*

Commission Recommendation in Response to 2008 Legislative Assignment to Reconsider for Submittal to the 2010 Legislature:

15.) *The Commission recommends amending the list of evaluation entities in law to include adding LAPMO Evaluation Service (ES) in the law as an approved evaluation entity, to update the current list to eliminate entities no longer in existence, and to alphabetize the list of approved evaluation entities. The Commission recommends that the law be revised to eliminate the Commission's adoption of rule criteria.*

COMMISSION REPRESENTATION AND PROCESS

Commission Representation. The Florida Building Commission is a 25 member Governor appointed stakeholder group who successfully created, implemented, and maintains the statewide Florida Building Code, which became effective in 2002. The Commission is comprised of the Governor's Chair, and 24 members appointed according to criteria established by the American National Standards Institute (ANSI) for representation. They are as follows: in the *general interest category*: four code officials, two state government representatives, a local government representative, a representative of persons with disability, and a representative of the green building industry; in the *consumer category*: an architect, a structural engineer, a mechanical or electrical engineer, representatives of fire protection technology, the building management industry, and the insurance industry; and in the *producer category*: a general contractor, residential contractor, mechanical contractor, plumbing contractor, electrical contractor, roofing/sheet metal/air conditioning contractor, a manufactured building representative, a building product manufacturer, and a swimming pool contractor.

Consensus Process. The Florida Building Commission (FBC) seeks to develop consensus decisions on its recommendations and policy decisions. General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100% acceptance or support is not achievable, final decisions require at least 75% favorable vote of all members present and voting. This super majority decision rule underscores the importance of actively developing consensus throughout the process on substantive issues with the participation of all members and which all can live with and support.

The Commission's consensus process is conducted as an open public process with multiple opportunities for the public to provide input to the Commission on substantive issues.

At each Commission meeting, the public is welcome to speak during the public comment period provided for each substantive issue under consideration, as well as general public comment periods provided at the end of each day's meeting. In addition, most substantive issues before the Commission go through a workgroup process where consensus recommendations are developed by appointed representative stakeholder groups, providing additional opportunities for public input. Workgroup recommendations approved by the Commission usually require rule development to implement, affording at least two additional entry points for public comment.

Since its formation in July of 1998, The Commission has demonstrated a commitment to working with affected interests to build consensus on complex issues. The adoption of the first edition of the Florida Building Code (2001 Edition), developed from September 1998 through January of 2001, involved 27 Commission meetings, dozens of facilitated public workshops, and hundreds of TAC meetings. The Commission has consistently worked with all affected interests to build the best possible consensus-based decisions for the citizens of Florida. Through its committees and workgroups comprised of experts, the Commission has always developed its decisions based on the results of the best engineering and science available. Although the Code is by law a minimum building code, the Florida Building Code is the strongest consensus and science based building code in the country. In summary, the Florida Building Commission provides a forum for stakeholders representing different interests to participate in a consensus-building process where issues affecting the construction industry are discussed and evaluated on their technical merits and cost-benefits to the citizens of the State of Florida.

COMMISSION MILESTONES FOR 2009

http://consensus.fsu.edu/FBC/fbc_documents.html

- February 2009** Commission votes to proceed with rule development to adopt the 2008 NEC, the interior decorators settlement agreement, and correction of roofing nail size error in the FBC, by conducting a rule development workshop at the April 2009 Commission meeting. Commission votes to initiate rule making to develop a rule for determining cost effectiveness of energy conservation measures to be considered for inclusion in the Florida Energy Code. Commission conducts hearings to repeal Rule 9B-3.0477, Electrical Bonding of Pool Decks, Rule 9B-3.0475, Wind Mitigation Retrofits, and Rule 9B-3.0472, Carbon Monoxide Detectors.
- March 2009** Commission conducts Teleconference Meeting (March 16, 2009) and decides on Rule 9B-72.090, Product Approval Self Affirmation, and Rule 9B-72.180, Product Approval Equivalency of Standards, and votes to file the rules. Commission conducts Teleconference meeting on March 30, 2009 to receive update on relevant issues regarding the 2009 Legislative Session.
- April 2009** Commission conducts rule development workshops on Rule 9B-70.002, Education, Rule 9B-3.047, Florida Building Code/2008 NEC, Interior Designers, and Conflicts with Law, and Rule 9B-13.0071, Cost Effectiveness of Amendments to Florida Energy Code. Commission reviews annual Effectiveness Assessment Survey Results. Commission convenes Commission Process Review Ad Hoc, Green and Energy Efficiency Roofs Subcommittee to Florida Energy Code Workgroup, Pool Efficiency Subcommittee to Florida Energy Code Workgroup, and Swimming Pool Subcommittee to the Plumbing TAC. Commission renames Window Workgroup to the Window/Wall Workgroup and Universal Bedroom Definition Workgroup to the Septic System Sizing Workgroup to better reflect their respective project scopes. Commission conducts Teleconference meetings on April 20, 2009 and April 27, 2009 to receive updates on relevant issues regarding the 2009 Legislative Session.
- May 2009** Commission conducts Teleconference meeting on May 18, 2009 to receive update on the results of relevant issues regarding the 2009 Legislative Session.

- June 2009** Commission conducts organizational meetings for Commission Process Review Ad Hoc, Pool Efficiency Subcommittee to Florida Energy Code Workgroup, and Swimming Pool Subcommittee to the Plumbing TAC. Commission conducts rule adoption hearings and concludes rulemaking for Rule 9B-70.002, Education, Rule 9B-3.047, Florida Building Code/2008 NEC, Interior Designers, and Conflicts with Law, and Rule 9B-13.0071, Cost Effectiveness of Amendments to Florida Energy Code. Commission conducts rule development workshops on Product Approval Fees. Commission considers Broward BORA Memo Regarding AC Equipment Wind Resistance, and decides to work with local boards of appeals to consider options. Commission decides that the effective date for 2010 Code will be December 31, 2011, to publish a fully integrated Code, and to implement a mandated process to remove (unnecessary)/maintain (needed) Florida Specific amendments for the 2013 Code Update Process.
- August 2009** Commission conducts rule adoption hearing on Rule 9B-72.090, Product Approval Fees. Commission adopts criteria for approving evaluation entities and adds IAPMO as an approved entity, and votes to proceed with rule adoption for Rule 9B-72.100 and 9B-72.130, Product Approval. Commission adopts Flood Plain Management Standards for integration into the 2010 Code.
- September 2009** Commission conducts teleconference rule adoption hearing on Rule 9B-72.100, Product Approval, adopting criteria for the approval of product approval evaluation entities, and including IAPMO to the list of approved evaluation entities.
- October 2009** Commission conducts rule development workshop on Rule 9B-72.130, Product Approval, application limitations and amending BCIS screens to 150 sequence numbers. Commission adopts schedule for development of and adoption of 2010 Florida Building Code, with an effective date of December 31, 2011 for the 2010 Florida Building Code. Commission selects 2009 I-Codes for the foundation of the 2010 Florida Building Code. Commission certifies to the United States Department of Energy the equivalence of the Florida Energy Code to ASHRAE 90.1-2004. Commission conveys report on Florida Energy Code impact on utility conservation programs to the Florida Energy and Climate Commission (FECC).
- December 2009** Pending Commission action at the December 2009 meeting.