

September 26, 2019

To: Florida Building Commission
C/O James Schock, P.E. Acting Chairman
Thomas Campbell, Executive Director

From: Douglas Buck and Joseph Belcher, Representing FHBA

Subject: Code Development Process – Rule 61G20-2.002

Thank you for the opportunity to provide comment on the Code Development Process and Rule 61G20-2.002. Before getting to the nuts and bolts of this letter, please allow us to congratulate the Commission, the acting chair and the staff for the exemplary job in getting the next edition of the code to the current point. It has been a challenging “first time” dealing with the legislative mandates affecting the process, and we believe the tremendous effort of the Commission and the staff are what allowed the process to run so smoothly. We recognize some groups do not share our support for the legislation passed in 2017 making the Florida Building Code the base code and requiring proponents to submit and justify changes approved in the International Codes and the National Electrical Codes.

The view that FHBA supported the bill because we did not want any changes to the Florida Building Code is far from the case. FHBA supported the bill because the leadership believes automatically adopting changes in a national model code is not in the best interests of the State of Florida. Florida’s climatic considerations are considerably different from most of the country and FHBA believes closer scrutiny in what goes in the Florida Building Code is merited. The FHBA position on the process is to **review** the changes to the International Codes and the National Electrical Code, identify the modifications necessary to comply with the law and adopt those modifications. During the development of the FBC 7th Edition (2020) this process became known as the Phase I Code Review Hearings. Upon completing the Phase I Code Review

Hearings, with the changes deemed necessary to comply with Florida Statute §553.73(7)(a) adopted, the process moves into the normal Triennial Code Update Phase. Proponents desiring any other changes submit such changes in the regular Triennial Code Update process which is known as the Phase II Triennial Update.

It has been stated that the TACs did not understand what they were supposed to do and that only two TACs understood and did the right thing and adopted all the updates in the latest edition of the national model codes. In truth, all the TACs except two TACs understood and followed the direction given by the Florida Legislature. **The legislative directed the review of the most current updates of the national model codes and the adoption any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.** The law also charged the Commission with reviewing and adopting updates based on the International Energy Conservation Code (IECC) while maintaining the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to Florida Statute §553.901. And finally, several previously existing sections of Florida Statute §553.73 prohibit any diminution of wind resistance provisions, including adopted reference standards, or water intrusion provisions of the code. [Florida Statute §553.73(7)(f)] In addition to the legislative format, affected sections of the rule are bolded the for ease of reference.

To deal with these issues, please accept the following amendments to Rule 61G20-2.002. FHBA is suggesting modifications we believe will bring the Rule Chapter in line with the law. [Florida Statute §553.73(7)(a), Florida Statute §553.73(7)(f), Florida Statute §553.73(8), and Florida Statute §553.73(9)(d)]

61G20-2.002 Statewide Amendments to the Florida Building Code.

(1) Definitions. As used in this rule, the following terms shall have the meaning indicated unless the context clearly requires a contrary definition:

(a) Amendment means an alteration to the adopted provisions of the Florida Building Code. Amendments shall include all alterations as referenced herein, whether adopted by the Commission for statewide or regional

application; or the local authority having jurisdiction, referred to as local amendments. More specifically,

1. Technical amendment means an alteration to the prescriptive requirements or reference standards for construction adopted by the code.

2. Technical amendments needed to ~~accommodate the specific needs of this state~~ **comply with the requirements of Florida Statute §553.73(7)(a) to adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, the United States Department of Housing and Urban Development, updates based on the International Energy Conservation Code (IECC), and to prevent diminishing of wind resistance and water intrusion provisions of the current code** including ~~e-~~ but are not limited to amendments to the Florida Building Code that provide for the following:

a. Establish minimum ~~life safety~~ construction requirements to protect buildings and their occupants ~~from fire,~~ **and maintain** wind **resistance and water intrusion provisions, and storm surge** using the latest technical research and **nationally recognized** engineering standards for buildings, ~~and~~ materials, ~~and~~ products.

b. Provide for flood protection provisions, **including storm surge** that are consistent with the latest flood protection requirements of the National Flood Insurance Program.

c. Maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.

d. Provide for energy efficiency standards for buildings that meet or exceed the national energy standards as mandated by Title III of the Energy Conservation and Protection Act.

~~e. Maintain coordination with the Florida Fire Prevention Code.~~

~~e. -f.~~ Provide for the **update to** the latest ~~industry~~ **nationally recognized standards adopted by reference within the Florida Building Code and adopt new nationally recognized standards as deemed necessary.** ~~standards and design.~~

3. Administrative amendment means an addition to or amendment of the requirements adopted by the code for enforcement of the prescriptive requirements or reference standards for construction adopted by the code.

(b) Strengthens means to make more stringent and provide for greater life safety, **resiliency, or durability.**

(c) Improves means to make more responsive to the context of application; statewide, regional, or local; on the basis of experience or newly presented information without compromising or decreasing life safety requirements.

(2) The Florida Building Commission may amend the Florida Building Code for the following purposes:

(a) To update the Florida Building Code every three years pursuant to subsection 553.73(7), F.S. When updating the code, the Commission shall review the most current updates to the model codes including but not limited to the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, the International Energy Conservation Code, and the National Electrical Code (NEC) for the purpose of determining whether the latest changes to the model codes are needed to accommodate the ~~specific~~ needs of this state. The Commission shall also consider its own interpretations, declaratory statements, appellate decisions, and local technical amendments. For the purpose of conducting this review, the following steps will be undertaken:

1. The Commission shall select the model codes that will be used to conduct its review.

2. No sooner than ninety days after the latest updates of the **national** model codes are published, **the Commission staff will identify the changes deemed to qualify as technical amendments under Item (1)(a)2 a through e above and** a complete listing of the changes to the model codes **including those identified by the Commission staff** will be posted and made available for public review on the Commission's website. **Interested parties may submit additional changes not identified by Commission staff purported to meet the criteria of Item (1)(a)2 a through e above.**

3. No sooner than one hundred fifty days after the listing of the changes to the model codes is posted, the Commission's Technical Advisory Committees (TACs) will meet to review the changes to the **national** model codes **identified by staff as qualifying as technical amendments under Item (1)(a)2 a through e above or submitted by interested parties as qualifying as technical amendments needed to comply with Florida Statute §553.73(7)(a)**

and make recommendations to the Commission regarding those changes meeting the requirements of Item (1)(a)2 a through e above. ~~that are needed to accommodate the specific needs of this state.~~ The TACs' recommendations will be posted on the Commission's website for further public review.

4. No sooner than ninety days after posting the TACs' recommendations, the Commission will meet to vote whether to approve the TACs' recommendations regarding the latest changes to the national model codes that are needed to comply with Florida Statute §553.73(7)(a). ~~to accommodate the specific needs of this state.~~ After Commission approval, the approved changes to the Florida Building Code needed to ~~accommodate the specific needs of this state~~ comply with the requirements of Florida Statute §553.73(7)(a) will be made available on the Commission's website. The public will then have the opportunity to submit amendments to the Florida Building Code and the approved changes to the Florida Building Code pursuant to subsection (3), of this rule.

(b) To amend the Florida Building Code pursuant to subsection 553.73(8), F.S.

(c) To amend the Florida Building Code, once each year, pursuant to subsection 553.73(9), F.S.

(3) Amendments to the Florida Building Code submitted pursuant to subsections 553.73(7), 553.73(8), and 553.73(9), F.S., shall be submitted on the Code Amendment Proposal Form, No. 61G20-1.001, effective January 2018, adopted and incorporated herein, which may be found on the Building Code Information System at http://www.floridabuilding.org/cm/cm_code_srch.aspx, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08931> or by contacting the Department of Business and Professional Regulation, Office of Codes & Standards, 2601 Blair Stone Road, Tallahassee, Florida 32399-0772. The Code Amendment Proposal Form shall be submitted online at www.floridabuilding.org/cm/cm_code_srch.aspx and shall be reviewed by Commission staff for sufficiency. Commission staff shall ascertain 1) whether the amendment to the code has been submitted in legislative format, 2) if the rationale for amending the code has been provided, and 3) if all required questions regarding fiscal and other impacts have been answered by the proponent. The term "NA" or "Not applicable" shall be considered an insufficient answer to statutorily required questions. If a proposed code amendment is submitted more than two weeks prior to the deadline established and staff finds the proposal to be insufficient, staff shall notify the proponent via email of the nature of its insufficiency and that if the proponent of the amendment elects to resubmit the proposal curing the insufficiency, it must be resubmitted prior to the deadline. Once a Code Amendment Proposal has been found sufficient, Commission staff shall verify such status online, enabling the Building Code Information System to show the proposal to the general public for comment. Code Amendment Proposals found insufficient shall not be verified or considered as building code amendments in the code amendment process.

(a) Each proposed amendment will be heard first by the appropriate Technical Advisory Committee, which will consider the proposal and all documentation submitted therewith, and consider whether to recommend approval by a two-thirds vote. If the proposal fails to achieve a two-thirds favorable vote, it is forwarded to the Commission for action based upon the applicable criteria. The Committee may modify the proposed amendment if it provides the documentation required by subsection 61G20-1.001(3), F.A.C. After modification, the Committee must then vote whether to recommend adoption as amended. If the proposed amendment as modified fails to achieve a two-thirds favorable vote, the proposal is forwarded to the Commission for action.

(b) The Commission shall publish each proposed amendment on its website at www.floridabuilding.org at least 45 days prior to its consideration by the appropriate Technical Advisory Committee. This notice may run concurrently with the notice required by subsection 120.54(2), F.S., and is not intended to extend the required rulemaking timeframes therein.

(c) The full Commission shall consider and vote upon each proposed amendment after consideration by at least one Technical Advisory Committee. The Commission may act on a consent agenda of those proposals which receive the required two-thirds vote at the Committee level to deny the amendment. The Commission must take action on all proposed amendments regardless of the Committee's recommendation. The decision of the Commission to approve a proposed amendment shall be by at least the required three-fourths vote. Those proposals failing to meet the vote requirement shall not be adopted. The Commission may modify a proposed amendment, provided that the form required by subsection 61G20-1.001(3), F.A.C., is amended to reflect the modification and supporting documentation is submitted.

(d) The Commission shall publish each proposed amendment on its website at www.floridabuilding.org at least 45 days prior to its consideration by the full Commission. This notice may run concurrently with the notice required by subsection 120.54(3), F.S., and is not intended to extend the required rulemaking timeframes therein.

(4) Each amendment approved for adoption by the Florida Building Commission pursuant to subsection 553.73(9), F.S., shall take effect no earlier than three months after the rule amendment is filed for adoption with the Department of State.

Rulemaking Authority 553.73(3), (7)-(9), 553.76(1), (2), (4), 553.77 FS. Law Implemented 553.73(3), (6)-(8), 553.76(2), 553.77 FS. History—New 11-20-01, Amended 6-8-05, 2-28-06, 9-13-07, 7-30-08, Formerly 9B-3.050, 9N-2.002, Amended 7-1-13, 3-27-18.

Concerns were expressed regarding the system for uploading code changes (BCIS). The FHBA code consultant submitted more than fifty code modifications for FHBA and other clients and did not have any difficulty with the system. The editing functions of the BCIS could use some minor tweaks. In all the changes submitted, the FHBA code consultant reports three or four changes had the formatting changed when clicking on submit. For some reason, the system deleted all the spaces between words. We believe the complaints heard on the floor at a Commission Plenary Session and from others were due to unfamiliarity with the system. I suggest they try to submit a change on the ICC cdpACCESS system, especially any attempts to change a table if they want to experience a real challenge.

Regarding TAC actions on Public Comments, the Commission should develop a less confusing system of voting. The TACs should be able to change their recommendation after hearing testimony from the proponent of public comment while not engaging in an exercise of wordsmithing. The current voting is confusing to all (except maybe the facilitator). We have seen a long time Commissioner argue persuasively against a proposal and turn around and unintentionally make a motion resulting in the approval of the proposal he passionately opposed. Persons from the audience pointed this out, and the Commissioner requested reconsideration and led the charge to defeat his original motion. Votes should be able to be yes or no with the proper majority dictating the outcome; not voting yes when meaning to say no.

It appears that the organizations intent on seeing all the changes in the national model codes adopted in Florida are not concerned with the effect of the changes. It was apparent at the TAC meetings that most of the “proponents” did not even know what the code change said, let alone understand the change. Over ninety-percent of the changes to the national model codes

were “clarifications” or “reorganizations” or “relocations.” A seemingly slight change dubbed a clarification can have dramatic impacts on the code user. One example is a “clarification” that would have eliminated the use of air-impermeable insulation at the roof deck to create a sealed attic. It was a simple misunderstanding by the proponent between the words air-permeable and air-impermeable that would have prohibited using only air-impermeable insulation in direct contact with the roof sheathing. The change to clarify is frequently much more than a clarification.

Last but not least, it is our firm belief this disagreement between interest groups on the code modification process could be at least partially solved if the ICC (and building code officials demanded) adopted a new model code every five years instead of the current three-year cycle. It is our understanding that numerous standards development groups have moved or are moving to a five-year cycle for standards development. Three-year code change cycles are not conducive to code understanding and education. If the primary concern is selling codebooks, then charge more. Remember the basis for the Florida Building Code was a simple formula: Code Compliance = Single Code + Education.

In closing, FHBA thanks you for the opportunity to provide input and for your consideration in these very important matters. We look forward to working with the Commission and the staff at the rule development workshops. If there are any questions, please do not hesitate to contact Douglas Buck at dbuck@fhba.com or Joe Belcher at joe@jdbcodeservices.com at your earliest convenience.