

JDB CODE SERVICES, INC.

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To: Paula Ford, Clerk of the Commission
Florida State Department of Business and Professional Regulation
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Subject: Request to amend Petition for Declaratory Statement before the Florida Building Commission RE: Chapter 553.902, 553.903, and 553.906, and Florida Building Code, Energy Conservation, 2010 with Supplements, Sections 101.4, 101.4.1, Table 101.4.1, and Section 402.3.6

Please consider this a request to amend the Declaratory Statement on the application of Florida Statute and the Florida Building Code, Energy Conservation, 2010, as they relate to replacement fenestration dated March 2, 2012.

AWP Windows and Doors, LLC, is a manufacturer with a product line that will be adversely affected by the application of new code provisions for replacement windows within a twelve month period that do not constitute a renovation as defined by the code and Florida Statute. The Aluminum Association of Florida (AAF) is an organization of contractors specializing in the construction of aluminum structures. AAF has standing in

this issue as a substantially affected party because a number of AAF members sell and replace fenestration.

AWP Windows and doors reports the application of the new provisions for all window replacements not simply to those meeting the statutory or code definition of “renovation” will have a severe chilling effect on the industry. Estimated costs for compliance are estimated at more than 50% increase per unit. For example, the cost for a homeowner wishing to upgrade from inefficient jalousie windows to new more efficient windows currently is approximately \$115.00 to \$127.00 per unit; the cost will increase to \$275.00 to \$350.00 per unit to comply with the 2010 Florida Building Code, Energy Conservation, requirements for new construction. In addition, simply upgrading fenestration products does not guarantee increased energy efficiency due to the interaction of the building and its systems. Reportedly, window upgrades have negatively affected the ability of existing HVAC systems to adequately remove moisture from the building atmosphere. AWP Windows and Doors and AAF believe relief from this burden on the citizens of Florida was the intent of the Legislature when adopting the 30% renovation rule in 1978 and the reason it has been maintained in statute.

Discussion: AWP Windows and Doors and AAF believe there are conflicts between Florida Statute and the 2010 Florida Building Code, Energy Conservation, and conflicts within the 2010 Florida Building Code, Energy Conservation (FBCEC hereinafter). Further, we believe the adoption of Section 402.3.6 of the FBCEC has the unintended consequence of contravening statutory provisions.

Florida Statute specifically defines the term renovated building to include the alteration of exterior envelope conditions. Clearly, windows fall under this definition.

Chapter 553.902, Florida Statutes. Definitions.

(3) “Renovated building” means a residential or nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or **exterior envelope conditions**, provided the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.

(Emphasis provided.)

Further, Florida Statute specifically addresses thermal efficiency standards for renovated buildings.

Chapter 553.906, Florida Statutes. **Thermal efficiency standards for renovated buildings.**—Thermal designs and operations for **renovated** buildings for which building permits are obtained after March 15, 1979, **shall take into account** insulation; **windows**; infiltration; HVAC, service water heating, energy distribution, lighting, energy managing and auxiliary systems design and equipment selection and performance. **Such buildings shall not be required to meet standards more stringent than the provisions of the Florida Energy Efficiency Code for Building Construction. These standards apply only to those portions of the structure which are actually renovated. (Emphasis provided.)**

The FBCEC specifically provides for the proper application of the code to existing buildings in Chapter 1, Administration, by stating existing buildings shall meet criteria of Table 101.4.1. According to Note d to Table 101.4.1 the code does not apply to renovations with an estimated cost, equal to or less than, 30 percent of the assessed value of the structure. AWP Windows and Doors and AAF believe Note d to Table 101.4.1 and the definition of renovation contained in the code are intended to incorporate provisions related to construction contained in Florida Statute into the Florida Building Code.

101.4.1 Existing buildings. Existing buildings shall meet the criteria in Table 101.4.1 as appropriate to the condition described. Except as specified in this chapter, this code shall not be used to require the removal, *alteration* or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this code. (Emphasis provided.)

**TABLE 101.4.1
NONEXEMPT EXISTING BUILDINGS^a**

Date-Related		
	Permitted before March 1979	Permitted after March 1979
Not previously conditioned	Minimum efficiency levels shall be met for components being changed: Envelope: Section 402 or 502 Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505	Considered an addition, meet current code
Occupancy type change	Minimum efficiency levels shall be met for components being changed. Envelope: Section 402 or 502 Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505	Meet current code ^c
Not Date-Related		
Addition	Meet code for addition ^{b, c}	
Renovation ^d	Minimum code envelope, equipment and lighting efficiency levels shall be met for components being changed. Envelope: Section 402 or 502 Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505	
New building systems (HVAC, service hot water or pool heating, lighting, motors)	New products installed or replaced in existing buildings shall meet the minimum efficiency allowed for that system. Equipment: Section 403 or 503, 504 Lighting: Section 404 or 505 HVAC indoor and outdoor units ≤ 65,000 Btu/h that are not designed to operate together shall be matched. HVAC equipment sizing is required per Section 403 or 503.	

^a An existing building or portion thereof shall not be altered such that the building becomes less energy efficient than its existing condition.

^b Minimum equipment efficiencies shall be met only when equipment is installed to specifically serve the addition or is being installed in conjunction with the construction of the addition.

^c If an existing building is unable to meet one or more current prescriptive code minimum requirements, it may be exempt from those minimum requirements if the entire building is brought into compliance by Section 405 or Section 506, as applicable.

^d Buildings undergoing alteration that vary or change insulation, HVAC systems, water heating systems, or exterior envelope provided that the estimated cost exceeds 30 percent of the assessed value of the structure (see Ch. 2, Definitions).

(Emphasis provided.)

RENOVATION. Any structural repair, reconstruction or restoration to a structure, the costs of which equals or exceeds, over a 1-year period, a cumulative total of 30 percent of the assessed value of the structure when that value is assessed, either:

1. Before the improvement or repair is started; or
2. Before the damage occurred, if the structure has been damaged.

For the purposes of this Code, renovation occurs when the first alteration of any wall, ceiling, floor, or other structural part or mechanical system of the building commences, whether or not that alteration affects the external dimensions of the structure. (FBCEC Chapter 2 – Definitions)

There is clearly a conflict between Section 101.4.1, Table 101.4.1, which requires compliance when the cost of replacement windows exceeds 30 percent of the assessed value of the structure and Section 402.3.6, which requires all replacement fenestration to comply with the 2010 FBCEC provisions.

402.3.6 Replacement fenestration. Where some or all of an existing fenestration unit is replaced with a new fenestration product, including sash and glazing, the replacement fenestration unit shall meet the applicable requirements for *U*-factor and SHGC in Table 402.1.1.

It has been opined that the conflict within the code between Section 101.4.1, Table 101.4.1 and Section 402.3.6 is addressed by Section 101.4, which states:

102.1 General. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

However, while this may be applicable for code provisions, it is our understanding the code cannot change or contravene Florida Statute. We further understand that Note d to Table 101.4.1 is intended to incorporate the statutory provisions previously cited (Ch.553.902, F.S.) Accordingly, we believe Section 102.1 is not applicable in this instance.

AWP Windows and Doors and AAF agree that should the cost of replacing windows within a twelve month period exceed thirty percent of the assessed value of the structure; or should window replacement be part of other renovations exceeding thirty percent of the assessed value of the structure, then FBCEC Section 402.3.6 is applicable. In the case of window replacement within a twelve month period that does not exceed thirty percent of the assessed value of the structure, AWP Windows and Doors and AAF believe the provisions of Table 101.4.1 *Note d* apply, and the replacement windows are not required to meet the new code requirements. It is understood the replacement windows would meet design criteria and would not reduce the existing energy efficiency of the building.

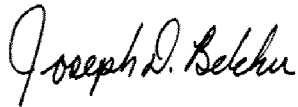
Accordingly AWP Windows and Doors and AAF ask the Florida Building Commission to issue a Declaratory Statement on the following:

1. Regarding replacement fenestration, are replacement of windows or doors required to meet the provisions of the FBCEC at Section 402.3.6 where the windows or doors replaced within a twelve month period do not meet the code definition of renovation?

2. Regarding replacement fenestration, are replacement of windows or doors required to meet the provisions of the FBCEC at Section 402.3.6 where the windows or doors replaced within a twelve month period do not meet the statutory definition of renovation?
3. Is Note d to Table 101.4.1 intended to codify Chapter 553.902 Florida Statute?
4. Regarding the conflict between Sections 101.4.1 and 402.3.6, does 101.4.1 prevail since it reflects statutory requirements?

Should there be any questions, you need further information, or you wish to discuss this request, please do not hesitate to contact me at your earliest convenience.

Respectfully yours,



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