

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION**

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
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File #	

Company: Liebl & Barrow Engineering, Inc.
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DS 2018-027

Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

Florida Building Code – 6th Edition (2017)
Section 110.8.6

Background Information

Liebl & Barrow Engineering, Inc. (“the Petitioner”) has been providing structural engineering and construction inspection services since the company was founded in 1998. Liebl & Barrow Engineering, Inc. has worked on over 2,500 projects in its almost 20 years of existence. The two principals of the company are both active Professional Engineers (PE) and Special Inspectors (SI). The company President, Richard S. Barrow, has been practicing engineering for over 30 years (FL PE #49231, SI #2015), and the Vice-President, Brian O. Liebl, has been practicing engineering for over 37 years (FL PE #43087, SI #1087).

Liebl & Barrow Engineering, Inc. is hoping to provide threshold inspections for an arts center that is in schematic design. That center is to have over 8,000 sf of assembly occupancy and an occupant content over 1400 which qualifies this structure as a “threshold building” per Section 553.71, *Florida Statutes*. A structural inspection plan will be provided by the Engineer of Record in accordance with Section 553.79(5), *Florida Statutes*. Our intent is to use engineers who have graduated from a four-year engineering education program in civil or structural engineering as Authorized Representatives for that project.

As a company that provides threshold inspections for many projects, Liebl & Barrow Engineering, Inc. is seeking clarification regarding Section 110.8.6 of the Florida Building Code – 6th Edition (2017) (“Section 110.8.6”) as it pertains to threshold inspections. The

Petitioner seeks a uniform interpretation as to whether the intent of Section 110.8.6 is to restrict the qualifications required of the Special Inspector's Duly Authorized Representatives to less than those enumerated in Section 61G15-35.004(2), *Florida Administrative Code* ("61G-35.004"). Specifically, we believe Authorized Representatives are considered qualified if they meet at least one of the following qualifications:

61G15-35.004 - Common Requirements to All Engineers Providing Threshold Building Inspection Services as Special Inspectors.

(2) Special Inspectors utilizing Authorized Representatives shall ensure the Authorized Representative is qualified by education, licensure, or training to perform the duties assigned by the Special Inspector. Effective January 1, 2017, those qualifications shall include:

- (a) Licensure as a professional engineer or architect, or
- (b) Graduation from a four-year engineering education program in civil, structural or architectural engineering, or
- (c) Possession of a professional Architecture degree, or
- (d) Registration as a building inspector or general contractor, or
- (e) Four years of Threshold Building inspection training on non-Threshold Buildings performed under the supervision of a Special Inspector who was in responsible charge of the trainee's work, or
- (f) Possess certification(s) in the following area(s); (abbreviated text, qualifications in subsection (f) are not relevant to this declaration)

Petitioner believes that a proper interpretation of Section 110.8.6 does not limit or restrict Authorized Representatives of the Special Inspector to only Special Inspectors (SI) or building inspectors licensed under Part XII of Chapter 468, *Florida Statutes* unless that is a requirement in the structural inspection plan prepared in accordance with Section 553.79(5)(a), *Florida Statutes* ("Section 553.79(5)(a)").

Section 110.8.6 of the Florida Building Code states:

110.8.6 The building department may allow a special inspector to conduct the minimum structural inspection of threshold buildings required by this code, Section 553.73, *Florida Statutes*, without duplicative inspection by the building department. The building official is responsible for ensuring that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, *Florida Statutes*, or certified as a special inspector under Chapter 471 or 481, *Florida Statutes*. Inspections of threshold buildings required by Section 553.79(5), *Florida Statutes*, are in addition to the minimum inspections required by this code.

The Petitioner believes that limiting Authorized Representatives to only Special Inspectors and licensed building inspectors is a harsh and restrictive interpretation of Section 110.8.6 in that it imposes additional requirements which do not otherwise exist, and thus puts an undue burden on its company and staff. The Petitioner provides both engineering and inspection services; therefore, its staff consists primarily of capable engineers who should be allowed to perform both of those functions. Restricting Authorized Representatives to only two options (Special Inspectors and licensed building inspectors) effectively negates all qualification options set forth in 61G15-35.004(2) except for option (d) and does not allow for the use of duly qualified engineers, including licensed Professional Engineers. This creates an unusual situation where a Professional Engineer may seal design documents for a project but would not be qualified to act as an Authorized Representative to inspect his own design. The Petitioner submits that removing engineers from inspections is not the intent of Section 110.8.6, Chapter 471, *Florida Statutes* (“Chapter 471”), or 61G15-35.004. Such an interpretation that limits those who may qualify as Authorized Representatives is not in the best interest of the public, unfairly puts the Petitioner and other companies wishing to use engineers as Authorized Representatives at a competitive disadvantage, and burdens the owner with the additional cost of scheduling duplicative inspections if engineers who are not licensed as Special Inspectors or building inspectors are used as Authorized Representatives.

The Petitioner believes that the qualifications of Authorized Representatives of the Special Inspector need only be in accordance with Chapter 471 and 61G15-35.004 for items to be inspected per the structural inspection plan prepared by the engineer or architect of record per Section 553.79(5)(a). Qualifications required by Chapter 468, *Florida Statutes* simply do not apply to items inspected under the threshold inspection plan.

The Petitioner’s contentions are upheld by the following sources, which accompany this petition:

- 1) Declaratory Statement DS2016-092 and the Florida Building Commission’s interpretation in their 2017 agenda and minutes for January 2017.
- 2) “Latest Revision to F.A.C. 61G15-35 Defines Qualifications for Threshold Building Inspectors and Authorized Representatives” submitted by William C. Bracken; P.E. in the April 2016 newsletter (Volume 4 – Issue 4) provided by the Florida Board of Professional Engineers.

In view of the foregoing, the Petitioner submits that a building department or building official cannot require a Special Inspector’s duly Authorized Representatives to have qualifications in excess of those required by Section 553.79(5), *Florida Statutes*, Chapter 471, *Florida Statutes* and Chapter 61G15-35.004, *Florida Administrative Code* for items to be inspected as part of the structural inspection plan.

Question

Can a building department or building official require the Special Inspector’s duly Authorized Representative, to be licensed or certified under Part XII of Chapter 468 which is in excess of the requirements of the duly Authorized Representative as described in Section FS 553.79(5), FS 471, and FAC 61G15-35.004 for items to be inspected as part of a structural inspection plan issued in accordance with FS 553.79(5)?

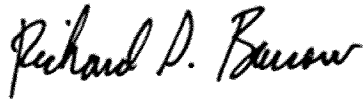
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Summary:

Petitioner respectfully believes the answer to the question outlined above is “NO”. If the answer is “Yes”, then most of the qualifications outlined in Section 61G15-35.004 (2), *Florida Administrative Code* are nullified by Florida Building Code Section 110.8.6. If the answer is “Yes”, duly qualified engineers, including Professional Engineers, may not act as Authorized Representatives of the Special Inspector without duplicative inspections by the building department. This is contrary to the intent of Florida Building Code Section 10.8.6, Chapter 471, *Florida Statutes*, Section 61G15-35.004, *Florida Administrative Code* and Section 553.79 (5), *Florida Statutes*, and results in an undue burden on firms who chose to hire engineers rather than building inspectors to perform threshold inspections.

Respectfully Submitted,

Liebl & Barrow Engineering, Inc.



By: _____ 4-09-18

Richard S. Barrow, P.E., President

Attachments:

Declaratory Statement DS2016-092

Latest Revision to F.A.C. 61G15-35 Defines Qualifications for Threshold Building Inspectors and Authorized Representatives

Issue: DS2016-092. The Petitioner, Universal Engineering Sciences, Inc.

Petitioner in DS2016-092 seeks clarification of the following question:

Question: Can a building department or building official require a Special Inspector's Duly Authorized Representative, to be licensed or certified under Part XII of Chapter 468 which is in excess of the requirements of the Duly Authorized Representative as described in Section 553.79(5).

Background:

Situation:

Petitioner's firm, Universal Engineering Sciences, Inc., provides among other services, threshold inspections under F.S. 553.79(5). This statute stipulates the Special Inspector shall be licensed by the State of Florida under chapter 471 (*Engineer*)* or 481 (*Architect*)*. Statute 553.79(5) also states the requirements of the Special Inspector's duly authorized representative. Universal Engineering Sciences has provided these services since the inception of the statute in the 19810's for approximately 10,000 structures in approximately 90% of the state's municipalities.

** Italics added by staff.*

Recently some building offices have required that the duly authorized representative of the Special Inspector be qualified as a building inspector or a Special Inspector under Part XII of chapter 468, Florida Statutes or be certified as a Special Inspector.

Petitioner feels the building departments are miss-reading Section 110.8.6 of the Florida Building Code as below:

FBC-Building

Section 110.8.6: The building department may allow a special inspector to conduct the minimum structural inspection of threshold buildings required by this code, Section 553.73, Florida Statutes, without duplicative inspection by the building department. The building official is responsible for ensuring that any person conducting inspections is qualified as a building inspector under Part XII of Chapter 468, Florida Statutes, or certified as a special inspector under Chapter 471 or 481, Florida Statutes. Inspections of threshold buildings required by Section 553.79(5), Florida Statutes are in addition to the minimum inspections required by this code.

Petitioner feels the intent of this paragraph is for the occasion where the Building Department does not wish to or cannot perform their required structural inspections and in that instance ***if*** the Special Inspector's Duly Authorized representative is also qualified as a building inspector under Part XII of Chapter 468, then the building department does not have to provide the duplicative inspection.

Petitioner provided the requirements for the Special Inspector's Duly Authorized representative as follows:

Chapter 61G15-35.004(2) F.A.C. Special Inspectors utilizing Authorized Representatives shall ensure the Authorized Representative is qualified by education, licensure, or training to perform the duties assigned by the Special Inspector. Effective July 1, 2016, those qualifications shall include:

(e) Four years of Threshold Building Inspection training on non-Threshold Buildings performed under the supervision of a Special Inspector who was in responsible charge of the trainee's work.

Note, the Special Inspector's Duly Authorized Representative is **NOT REQUIRED** (emphasis by petitioner) to be qualified as a Building Inspector.

Petitioner does not believe that the department can require the Special Inspector's Duly Authorized Representative to have certification above and beyond that which is required under Section 553.79(5).

Petitioner's firm has recently provided a proposal for threshold inspections services for a 22-story residential building. The Special Inspection Plan prepared by the engineer of record requires the Special Inspector and His Duly Authorized Representative to meet the requirement of Section 553.79(5).

Petitioner feel that these excessive requirements are placing an undue burden on their company, staff and clients.

Florida Statutes

553.79 Permits; applications; issuance; inspections.—

(5)(a) The enforcing agency shall require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to and approved by the enforcing agency before the issuance of a building permit for the construction of a threshold building. The purpose of the structural inspection plan is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record. The contractor's contractual or statutory obligations are not relieved by any action of the special inspector. The special inspector shall determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency. A fee simple title owner of a building, which does not meet the minimum size, height, occupancy, occupancy classification, or number-of-stories criteria which would result in classification as a threshold building

under s. 553.71(12), may designate such building as a threshold building, subject to more than the minimum number of inspections required by the Florida Building Code.

(b) The fee owner of a threshold building shall select and pay all costs of employing a special inspector, but the special inspector shall be responsible to the enforcement agency. The inspector shall be a person certified, licensed, or registered under chapter 471 as an engineer or under chapter 481 as an architect.

(c) The architect or engineer of record may act as the special inspector provided she or he is on the Board of Professional Engineers' or the Board of Architecture and Interior Design's list of persons qualified to be special inspectors. School boards may utilize employees as special inspectors provided such employees are on one of the professional licensing board's list of persons qualified to be special inspectors.

(d) The licensed architect or registered engineer serving as the special inspector shall be permitted to send her or his duly authorized representative to the job site to perform the necessary inspections provided all required written reports are prepared by and bear the seal of the special inspector and are submitted to the enforcement agency.

Staff Analysis: Based on the above facts and circumstances, staff provides the following answers to proponent's questions:

Question:

Can a building department or building official require a Special Inspector's Duly Authorized Representative, to be licensed or certified under Part XII of Chapter 468 which is in excess of the requirements of the Duly Authorized Representative as described in Section 553.79(5).

Answer: Since the proposed level of work is limited to those inspections that are required by Section 553.79(5) Florida Statutes and does not include the inspection of the minimum structural requirements of the FBC, the provisions of Section 110.8.6 of the 5th Edition (2014) Florida Building Code, Building do not apply to the project in question.

Latest Revision to F.A.C. 61G15-35 Defines Qualifications for Threshold Building Inspectors & Authorized Representatives

Submitted by: William C. Bracken, PE, SI, CFM

Back in 2014 FBPE began working on revising *F.A.C. 61G15-35 - Responsibility Rules of Professional Engineers Providing Threshold Building Inspection*. The goal of this effort was to update and create uniformity between the obligations of the Threshold Inspector and the qualification requirements of the Threshold Inspector's Authorized Representative.

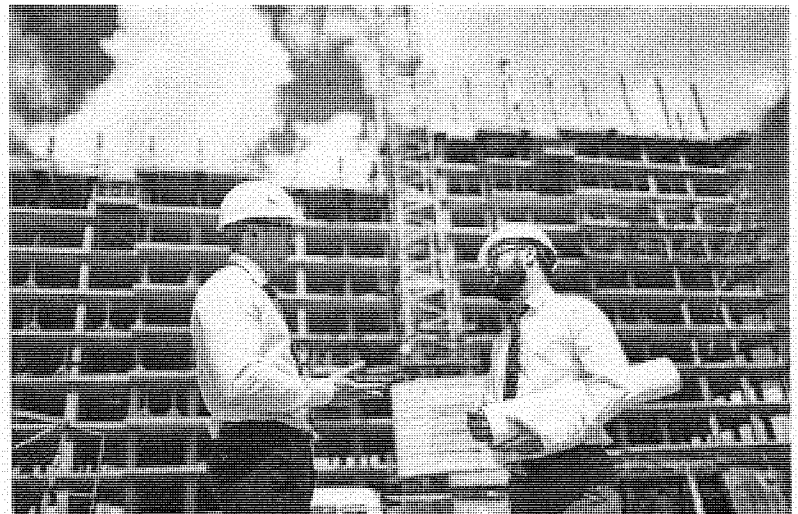
The process began after concerns were raised regarding the *Threshold Inspection* process and the qualification requirements of *Authorized Representatives*. Now, more than two years later, the revised rules include multiple paths to achieving a *Threshold Inspector's* certification that have been coordinated to mesh with more reasonable means of establishing requisite qualifications of the *Threshold Inspector's Authorized Representative*.

Regarding achieving a *Threshold Inspector's* certification, there exist two paths. The first path is for licensed professional engineers whose principal practice is structural engineering as defined in *F.A.C. 61G15-35.003(1)(b)*. This path basically requires two years of experience in the structural design of *Threshold Buildings* after having achieved licensure and three years of experience in performing structural field inspections on *Threshold Buildings*. It's also worth noting that structural design is defined to mean the design of all structural components of the building and cannot be limited to only specific structural component experience.

The second path is for licensed professional engineers whose principal practice is structural field inspections as explained in *F.A.C. 61G15-35.003(1)(c)*. This path basically requires five years of experience in performing structural field inspections on *Threshold Buildings* along with the following certifications: advanced concrete inspection, advanced structural masonry inspection, advanced post tensioning, basic structural steel and basic soils from nationally recognized entities.

As for the qualification requirements of the *Threshold Inspector's Authorized Representatives*, those are found in *F.A.C. 61G15-35.004(2)*. This section was expanded to provide six different methods of establishing the qualifications of *Authorized Representatives*. In summary, the six different methods include:

- a) Licensure as a professional engineer or architect; or
- b) Graduation from a four-year engineering education program in civil, structural or architectural engineering; or
- c) Possession of a professional Architecture degree; or
- d) Registration as a building inspector or general contractor; or
- e) Four years of Threshold Building inspection training on non-Threshold Buildings performed under the supervision of a *Special Inspector* who was in responsible charge of the trainee's work; or
- f) Possession of specific certifications prior to performing certain inspections, namely: advanced concrete inspection, advanced structural masonry inspection, advanced post tensioning, basic structural steel and basic soils from nationally recognized entities.



If you have any questions regarding the recent revisions to the rules or requirements mentioned in this article feel free to contact the Board office at (850) 521-0500, and ask to speak to someone in our *Legal* Department. You can view the most recent laws and rules currently in effect governing the practice of engineering within the State of Florida by going to our website at www.fbpe.org and selecting *Statutes and Rules* under the *Legal* section from our *Home* page.

William C. Bracken, PE, SI, CFM is a licensed Professional Engineer and Special Inspector in the State of Florida and is the President and Principal Engineer for Bracken Engineering located in Tampa, Florida. Mr. Bracken has been a structural engineer for more than 25 years and is licensed in 35 states. His career has centered on the practice of structural engineering, forensics, building related codes and disaster response.

Mr. Bracken is a senior structures specialist with the State of Florida's Urban Search and Rescue Program, a member of Hillsborough County Fire Rescue, has been an instructor for the International Code Council for the last 15 years, and has been named a Fellow within numerous engineering societies. Mr. Bracken has served on the FBPE Board since 2012 and was the Board's Vice-Chair for 2013-2014. He is currently serving his second term as FBPE's Chair.