

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA BUILDING COMMISSION

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Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/5/2015
File #	

**In re: Petition for Declaratory Statement filed by
Frank LaPete and Responsible Energy
Codes Alliance.**

DS 2015-086

MOTION TO INTERVENE IN DECLARATORY STATEMENT PROCEEDINGS

Impact Window Affordability and Safety Association (“IWASA”), Armstrong Building Contractors, Inc. d/b/a SIW Impact Windows (“SIW”), Lawson Industries, Inc., and Euro Tech Industries, Inc. (collectively, “Interveners”), pursuant to Rule 28-105.0027, Florida Administrative Code, request leave of the Florida Building Commission (“FBC”) to intervene as parties in this proceeding, in opposition to the Petition for Declaratory Statement filed by Frank LaPete and Responsible Energy Codes Alliance (collectively, “Petitioner”). Interveners further request a hearing in accordance with Section 120.57, Florida Statutes. In support of this Motion, Interveners state as follows:

Identification of Agency

1. The name and address of the agency affected is the Florida Department of Business and Professional Regulation, Florida Building Commission, 1940 N. Monroe Street, Tallahassee, Florida 32399.

Identification of Interveners and Substantial Interests Affected

2. The names of the Interveners are the Impact Window Affordability and Safety Association, Armstrong Building Contractors, Inc. d/b/a SIW Impact Windows, Lawson Industries, Inc., and Euro Tech Industries, Inc. For purposes of the proceedings relating to the above-referenced Petition for Declaratory Statement, the contact information for Interveners is that of its legal counsel:

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3. IWASA is an unincorporated association whose members include Innovative Window Concepts, L.L.C., a Florida limited liability company; Euro Tech Industries, Inc., a Florida corporation; EGS International, LLC, a Florida limited liability company; TM Windows, LLC, a Delaware limited liability company with its principal place of business in Pompano Beach, Florida; Armstrong Building Contractors, Inc. d/b/a SIW Impact Windows, a Florida corporation; Lawson Industries, Inc., a Florida corporation; and Jupiter Glass Specialties, Inc., d/b/a Southeastern Door Company, a Florida corporation. IWASA's members manufacture and/or install all types of fenestration and their business activities primarily are conducted in Southeast Florida, including Broward, Miami-Dade and Palm Beach Counties. IWASA members' customers include residential homeowners, condominium associations, multifamily rental unit owners and commercial property owners. Replacement of fenestration in existing buildings that are not being renovated (as defined under Fla. Stat. § 553.902(6) and Section R202 of the Florida Building Code–Energy Conservation) constitutes a significant portion of the business of IWASA's members.

4. SIW is based in Palm Beach County, Florida and manufactures and installs impact-resistant windows and doors. SIW has been in business for more than 13 years and employs approximately 45 people full time. Replacement of fenestration in existing buildings

that are not being renovated (as defined under Fla. Stat. § 553.902(6) and Section R202 of the Florida Building Code–Energy Conservation) constitutes a significant portion of SIW’s business.

5. Lawson Industries, Inc. is a manufacturer of aluminum doors and windows, primarily for residential purposes. Lawson is based in Miami-Dade County, Florida and employs 204 people. Replacement of fenestration in existing buildings that are not being renovated (as defined under Fla. Stat. § 553.902(6) and Section R202 of the Florida Building Code–Energy Conservation) constitutes a significant portion of Lawton’s business.

6. Euro Tech Industries, Inc. is based in Broward County, Florida, employs 18 people, and manufactures impact windows and doors for the boutique replacement fenestration industry as well as new construction. Euro Tech has seen a 25% to 35% downturn in replacement fenestration business since July 1, 2015. Replacement of fenestration in existing buildings that are not being renovated (as defined under Fla. Stat. § 553.902(6) and Section R202 of the Florida Building Code–Energy Conservation) constitutes a significant portion of Euro Tech’s business.

7. Interveners’ substantial interests are at stake in these proceedings because Petitioners seek a blanket declaration “that replacement fenestration products in existing structures must meet the U-factors and SHGC requirements set forth in the Florida Building Code, 5th Edition (2014), irrespective of whether the building is classified as a ‘renovated building’ under the code definition.” As manufacturers and installers of fenestration products that do not meet the heightened requirements referenced in Petitioners’ requested relief, much of Interveners’ inventory and equipment would be rendered obsolete in the event that the Commission grants the requested relief. Relatedly, Interveners would be required to incur substantial costs in connection with testing and retooling for new windows. In the experience of IWASA members, it takes approximately one year to have a new product approved for

installation under the Building Code. Thus, IWASA members also are at risk of losing substantial revenue during the time it takes them to redesign, retool, test, and obtain approval for fenestration that meets the heightened U-factor requirements.

8. Additionally, because windows that comply with the heightened U-factor requirements are more expensive and require more labor as a result of their increased size and weight, Interveners would be required to pass the cost increase to consumers by marking up their windows from 20 to 50 percent. This will deter customers from replacing their existing windows (or using a professional installer) and will thereby cost Interveners substantial business.

9. Interveners are entitled to intervention as of right because their substantial interests stand to be affected by these proceedings, as explained above. *See* Rule 28-105.0027, Florida Administrative Code. This Motion is timely because it was filed within 21 days of publication of notice in the Florida Administrative Register, which occurred on July 15, 2015. *Id.* Interveners' response to the Petition is incorporated below.

**MOTION TO DISMISS PETITION OR, IN THE ALTERNATIVE, FOR A
DECLARATORY STATEMENT THAT LOCAL ENFORCEMENT AUTHORITIES
PROPERLY MAY INTERPRET THE CODE TO PROVIDE THAT REPLACEMENT
FENESTRATION IN EXISTING, NON-RENOVATED BUILDINGS IS EXEMPT FROM
THE ENERGY CONSERVATION REQUIREMENTS OF THE CODE**

I. THE PETITION SHOULD BE DISMISSED.

A. The Petition seeks an impermissibly broad declaratory statement.

The proper function of a declaratory statement is to set out “an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the *petitioner’s* particular set of circumstances.” Fla. Stat. § 120.565(1) (2015) (emphasis supplied). For that reason, the courts have consistently interpreted the statute “as limiting an agency’s

power to issue broad statements of policy in the guise of a declaratory statement[.]” *Tampa Elec. Co. v. Fla. Dept. of Community Affairs*, 654 So. 2d 998, 999 (Fla. 1st DCA 1995).

“A declaratory statement may not be employed in place of a rule to require compliance with general agency policy.” *Fla. Dept. of Bus. and Professional Reg. v. Inv. Corp. of Palm Beach*, 747 So. 2d 374, 380 (Fla. 1999). “If an agency is presented with a petition for a declaratory statement requiring a response that amounts to a rule, the agency should decline to issue the statement and initiate rulemaking.” *Id.* at 381. Although an agency may issue a properly limited declaratory statement that indicates that the agency will subsequently “initiate rulemaking to establish an agency statement of general applicability[.]” *id.* at 376, that is not what Petitioners seek here. Instead, Petitioners seek a broad declaration in the form of a final order “that replacement fenestration in existing structures must meet the U-Factors and SHGC requirements set forth in the Florida Building Code, 5th Edition (2014), irrespective of whether the building is classified as a ‘renovated building’ under the code definition.” [Petition, ¶11(b)].

A “rule” is defined as an “agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.” Fla. Stat. § 120.52(16) (2015). The First District Court of Appeal has previously examined whether an agency declaratory statement “amounts to a rule.” *Lennar Homes, Inc. v. Dept. of Bus. and Professional Regulation*, 888 So. 2d 50, 54 (Fla. 1st DCA 2004). The declaratory statement in *Lennar Homes* “not only determined the applicability of several Chapter 718 statutes to Lennar’s particular purchase contract, it announced a broad agency policy that prohibited the use of arbitration provisions in condominium purchase and sale

agreements.” *Id.* Here, of course, the Commission cannot determine the applicability of the statutes and regulations at issue to Petitioners’ particular contracts because they have failed to identify any contracts. And just as the agency in *Lennar Homes* could not “use the declaratory statement proceeding as a vehicle to announce a broad policy against arbitration,” *id.*, the Commission cannot use these proceedings as a vehicle to announce the broad ruling sought here. *Tampa Elec. Co.*, 654 So. 2d at 999 (declaratory statement setting forth “broad agency policy” that applied to “an entire class of persons” was impermissibly broad).

Remarkably, Petitioners’ counsel took precisely this position when representing the intervener in the proceedings for Petition DS 2012-021, arguing that the petition improperly sought “a broad statement of general applicability that meets the definition of a rule” because the petition sought a declaration on the very same issue presented in these proceedings—whether replacement windows must meet the thermal efficiency standards set forth in Table R402.1.1 regardless of whether the 30 percent threshold is met (i.e., regardless of whether the building is classified as a “renovated building”). Just as Petitioners’ counsel argued in opposing Petition DS 2012-021, “a statement of general applicability that would apply to **all** window manufacturers whose products are sold in Florida, and to **all** window vendors and **all** window installers, as well as to **all** local governmental entities in Florida” would constitute a “rule” and therefore must be done through the rulemaking process. [*See* DS 2012-021, Custom Window Systems, Inc.’s Motion to Dismiss (emphasis in original)].

Indeed, while Petitioners allege on Page 3 of the Petition that they would be “unable to determine whether the appropriate specifications, requirements and costs required for replacement of fenestration in existing buildings will be consistently applied in all jurisdictions across Florida . . .” in the absence of the relief sought, they do not even allege that they have

interests anywhere outside of Tallahassee. Instead, they appear to be seeking a blanket declaration that would apply to all window manufacturers and installers in Florida, and to all local governmental entities in Florida. In this regard, the instant Petition is no different than the one that Petitioners' counsel opposed in 2012, and it is improper for the same reason.

B. The Petition does not adequately describe Petitioner's particular set of circumstances.

The Petition states only that “LaPete has been requested to estimate a contract price for the installation of windows on an existing home located in Tallahassee, Florida, but is uncertain of the energy efficiency standards such replacement windows will be required to meet.” [Petition, ¶3]. Similarly, as to Petitioner RECA, the Petition alleges only that RECA consists of industry organizations “who promote energy conservation through thermal efficient building code requirements, a substantial number of which are directly affected by such code provisions,” and that some of them would have standing to file the Petition in their own right. [Petition, ¶4]. In opposing the last petition for declaratory statement to be filed on this issue in 2012 [DS 2012-021], Petitioners' counsel took the position that even allegations such as those of Petitioner LaPete are inadequate to describe a petitioner's “particular set of circumstances” for purposes of a declaratory statement, noting that the particular project had not been identified. [See Custom Window Systems, Inc.'s Motion to Dismiss, DS 2012-021, p. 3 n. 6; p. 9]. The inadequacy of Petitioner RECA's allegations is even more glaring, as RECA does not even attempt to identify any particular set of circumstances in which the statutes and regulations at issue might apply specifically to RECA.

II. ALTERNATIVELY, THE COMMISSION SHOULD ISSUE A DECLARATION THAT LOCAL AUTHORITIES MAY CONCLUDE THAT REPLACEMENT FENESTRATION IN EXISTING BUILDINGS IS EXEMPT FROM THE ENERGY CODE UNLESS THE BUILDING IS “RENOVATED.”

A. Because Local Enforcement Agencies Have Already Issued Their Own Interpretations, an Appeal is the Exclusive Remedy for Resolving Disputes over Such Interpretations.

Section 553.775(1), Florida Statutes, recites the legislative intent that the Building Code “be interpreted by building officials, local enforcement agencies, and the commission in a manner that protects the public safety, health, and welfare at the most reasonable cost to the consumer by ensuring uniform interpretations throughout the state and by providing processes for resolving disputes regarding interpretations of the Florida Building Code and the Florida Accessibility Code for Building Construction which are just and expeditious.” In a recent article authored by Petitioner RECA and by Petitioners’ counsel, they took the position that “it is ultimately the decision of the local Building Official to interpret the Code requirements for replacement windows.” See Eric Lacey and Fred Dudley, *Replacement Windows: Florida’s Energy Future is in Your Hands (Again)!* [**Exhibit A**]. Interveners agree.

At least three local building officials (all in Southeast Florida) have exercised their statutory duty and authority to interpret the Code pursuant to Section 553.775(1). Specifically, from July 9–20 of this year, the local building authorities in Miami-Dade, Broward, and Palm Beach Counties all issued formal interpretations to the effect that replacement fenestration is exempt from the Energy Code as long as the replacement cost does not exceed 30 percent of the assessed value of the building. [**Composite Exhibit B**]. To the extent that Petitioners are substantially affected by the interpretations of South Florida building officials, their remedy would have been to appeal the decisions of the local building authorities to the Commission rather than to seek an improper declaratory statement. See Fla. Stat. § 557.775(3)(c) (2015)

(establishing procedure for review by Commission and providing that the procedure is “the exclusive remedy for addressing requests to review local interpretations of the Florida Building Code”). In any event, the local interpretations are correct and should remain undisturbed, as explained below.

B. Existing buildings that are not “renovated buildings” are exempt from the Energy Code.

Section 553.903, Florida Statutes, which was adopted in 1977, provides that the Florida Thermal Efficiency Code “applies to all new and renovated buildings in the state, *except exempted buildings*, for which building permits are obtained after March 15, 1979, and to the installation or replacement of building systems and components with new products for which thermal efficiency standards are set by the Florida Building Code-Energy Conservation.” (emphasis added). Section R101.4.8 provides as follows, in pertinent part: “Buildings exempt from the provisions of the Florida Building Code, Energy Conservation, *include existing buildings except those considered renovated buildings*, changes of occupancy type, or previously unconditioned buildings to which comfort conditioning is added.” (emphasis added). Under Florida statute, a “renovated building” means “a residential or nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or exterior envelope conditions, if the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.” Fla. Stat. § 553.902(6) (2015). Section R202 of the Florida Building Code–Energy Conservation, 5th Edition (2014) contains an identical definition of “renovated building” (substituting the word “provided” for the word “if”).

Taking these provisions together, existing buildings are exempt from the Florida Building Code–Energy Conservation unless they are renovated buildings (i.e., unless the estimated cost of renovation exceeds 30 percent of the assessed value of the structure). Petitioners nonetheless

seek a declaratory statement that all existing buildings—even those that are not “renovated buildings”—must comply with the heightened U-factor and SHGC requirements of the Florida Building Code–Energy Conservation, 5th Edition.

The substantive provisions of Section 553.903 have not changed since the last time the Commission considered the applicability of the energy conservation requirements to replacement fenestration in 2012 [DS 2012-021]. The primary development in the interim has been the amendment to Section R101.4.7 of the Energy Conservation Code, which sets thermal efficiency standards for “building systems and components where new products are installed or replaced in existing buildings,” and which now defines “systems and components” to include “replacement fenestration.” Prior to 2014, the Building Code never defined replacement fenestration as a building system or component. Petitioners contend that Section R402.3.6, which imposes the U-factor and SHGC requirements in Table R402.1.1 on replacement fenestration, supersedes the statutory exemption—an exemption that is still recognized in the Florida Building Code itself under Section R101.4.8, which exempts from the Energy Conservation Code’s requirements those existing buildings that do not constitute “renovated buildings.”

Petitioners acknowledge that Section R101.4.8 would exempt existing, non-renovated buildings from the heightened requirements, but argue that “the requirements for replacement fenestration and other components in existing buildings listed in Sections R101.4.7 and R402.3.6 are specific, and under section R101.4 and by generally accepted rules of statutory interpretation, if there is any perceived conflict between code provisions, the more specific requirements govern over general requirements.” [Petition, p. 5]. This argument fails for several reasons.

First, there is no conflict between Code provisions because Section R101.4.8 provides that the entire Code does not apply to existing, non-renovated buildings. Section R101.4.8

provides in pertinent part that “[b]uildings exempt from the *provisions* of the Florida Building Code, Energy Conservation, include existing buildings except those considered renovated buildings . . .” (emphasis added). This is not an exemption from any particular requirement, but is instead an unqualified exemption from the Florida Building Code, Energy Conservation *in its entirety*. Thus, an existing building is exempt from *all* of the provisions—including the heightened requirements of Section R402.3.6, the interpretation provision of Section R101.4, and even the characterization of replacement fenestration as “systems and components” in Section R101.4.7—unless the existing building is a “renovated building.”

To determine whether a building is exempt from the Code in its entirety pursuant to Section R101.4.8, one must still look to the statutory definition of “renovated building”: “a residential or nonresidential building undergoing alteration that varies or changes insulation, HVAC systems, water heating systems, or exterior envelope conditions, if the estimated cost of renovation exceeds 30 percent of the assessed value of the structure.” In other words, the plain language of Section R101.4.8 provides that the applicability of the entire Florida Building Code, Energy Conservation to existing buildings turns on whether the building is “renovated.” If the renovations fall below the 30 percent threshold, the existing building is not “renovated” and therefore it is “exempt from the provisions of the Florida Building Code, Energy Conservation.”

Simply put, Section R101.4.8 governs the applicability of the entire Code, including the requirements that Petitioners seek to impose, and it provides that the requirements do not apply to existing buildings unless they are “renovated.” This provision precludes the relief that Petitioners seek: the Commission cannot enter the requested declaratory statement that the new requirements apply irrespective of whether the building is “renovated” for the simple reason that the applicability of the entire Code is, by its very terms, dependent upon whether the building is

“renovated.” This alone is sufficient reason to deny the requested declaratory statement.

Moreover, absent from Petitioners’ analysis is any mention of the generally accepted rule of interpretation as between a statute and a regulation: “When any conflict exists between the statute and the regulation, the statute, of course, controls.” *Canal Ins. Co. v. Continental Cas. Co.*, 489 So. 2d 136, 138 (Fla. 2d DCA 1986). Although Petitioners seek a declaration that the “thermal efficiency standards for replacement building systems and components established by the Commission under Florida Statutes Section 553.903 apply irrespective of whether the building meets the definition of ‘renovated building’ [Petition, p. 5], the standards established by the Commission cannot supersede the statutory exemption.

Finally, it is an accepted industry definition that fenestration is part of the exterior envelope of a building structure, as “the envelope includes everything that separates the interior of a building from the outdoor environment.” See Chris Arnold, *Building Envelope Design Guide-Introduction*, National Institute of Building Sciences (2009) (available at https://www.wbdg.org/design/env_introduction.php). This definition is built into the statute: “Exterior envelope physical characteristics” is defined by statute to mean “the physical nature of those elements of a building which enclose conditioned spaces through which energy may be transferred to or from the exterior.” Fla. Stat. § 553.902(3) (2015). Plainly, fenestrated products such as windows serve to enclose conditioned spaces through which energy may be transferred to or from the exterior (i.e., the outdoor environment). Thus, the statute defines fenestrated products in accordance with industry standards—as part of the envelope. The 2014 Energy Code’s re-characterization of fenestrated products in Section R101.4.7 to classify them as “systems and components” contradicts, and must yield to, the statute. And in any event, as

explained above, neither Section R101.4.7 nor any other provision of the Energy Code applies to existing, non-renovated buildings pursuant to the plain language of Section R101.4.8.

C. Imposition of the Energy Code Requirements on Consumers in Climate Zone 1 Violates the Statutory Directive to Regulate in the Manner Most Cost-Effective to the Consumer and in a Manner that Addresses Regional Differences.

Section 553.901, Florida Statutes, requires the Department of Business and Professional Regulation to “determine the most cost-effective energy-saving equipment and techniques available and report its determinations to the commission, which shall update the [Florida Building Code-Energy Conservation] to incorporate such equipment and techniques.” The term “cost-effective” means “cost-effective to the consumer.” *Id.* (emphasis added). Section 553.73(3), Florida Statutes, mandates that the Commission “shall incorporate within sections of the Florida Building Code provisions which address regional and local concerns and variations.” Moreover, once the Code is updated to incorporate the most cost-effective provisions for consumers, the entities tasked with interpretation of the Code are required to interpret it “in a manner that protects the public safety, health, and welfare at the most reasonable cost to the consumer.” Fla. Stat. § 553.775(1) (2015) (emphasis added).

As more fully explained in Interveners’ written comments [**Composite Exhibit C**], agency nullification of the 30 percent rule would result in increased costs to the consumer of 20 to 50 percent. It would also result in even more drastic cost-inefficiencies to South Florida consumers (i.e., consumers in Climate Zone 1) because they would be required to purchase fenestration products with a higher *U*-factor (and therefore a higher cost) than what is necessary for the region.

Additionally, the new, heightened requirements would result in a “checkerboard” effect for ongoing and future replacement fenestration projects because Energy Code-compliant

windows look different and will prevent a uniform appearance when paired with existing windows in a particular structure. The aesthetic ramifications will discourage many homeowners from even undertaking a replacement fenestration project because many of them replace their windows on a piecemeal basis due to budgetary constraints. And in some instances, mismatched windows will also violate local zoning ordinances or condominium or homeowners' association regulations. This is of particular concern in Climate Zone 1, which is known for a high concentration of community associations. For associations with ongoing replacement projects, an intervening declaratory statement that would require them to adopt the new, more costly standard would have numerous adverse consequences to the consumer, in the form of increased special assessments to pay for the more expensive work, the need to undo work that has already been done because it is no longer compliant with the new standards, or otherwise.

Moreover, as demonstrated in the IECC Compliance Guide for Homes in Florida [Exhibit D], there are genuine regional differences between the insulation needs in North (or even Central) Florida (Climate Zone 2) and those in South Florida (Climate Zone 1). Those differences, including the markedly distinct indoor-outdoor temperature differentials that exist in Climate Zone 1 versus Climate Zone 2, greatly affect the cost savings and returns on investment that consumers will realize from replacement fenestration that complies with the heightened requirements of the Energy Code. Consumers in Climate Zone 1 will realize a lower return on their investment than their Climate Zone 2 counterparts, as a result of the lower temperature differentials and reduced need for Energy Code-compliant windows.

Plainly, these concerns underscore the need for flexibility in local interpretations of the Building Code, a need that is recognized in the Florida Statutes. *See Fla. Stat. §§ 553.73(3), 553.775(1) (2015)*. Local building officials, more than anyone else, are in position to judge

whether replacement work that amounts to less than 30 percent of the assessed value provides the homeowner with a sufficient energy savings or return on investment that would justify the additional 20-50 percent cost of installing fenestration that meets the new requirements. To prohibit local variations in interpretation and to issue a declaratory statement that would require all Climate Zone 1 consumers to purchase unnecessary and costlier replacement windows in the name of uniformity would reduce the cost-effectiveness to the consumer and would ignore regional differences in contravention of statutory mandate.

Statement of Relief Requested

WHEREFORE, Interveners respectfully request the following relief:

(1) that this Motion to Intervene be granted and that Interveners be allowed to participate in these proceedings as a party thereto; AND

(2) that the Commission (a) enter an Order denying the issuance of the requested declaratory statement or otherwise dismissing the Petition as improper or, in the alternative, (b) enter an Order otherwise limiting the scope of any declaratory statement so that it does not apply to Climate Zone 1, or, in the alternative, (c) issue a declaratory statement that local enforcement authorities may interpret the Building Code to hold that replacement fenestration is exempt from the requirements of the Florida Building Code–Energy Conservation, 5th Edition (2014) unless the estimated cost of renovation exceeds 30 percent of the assessed value of the structure; AND

(3) to the extent that Petitioners argue that there is an ambiguity in the Florida Statutes or Building Code, or to the extent that a disputed issue of material fact exists, that an evidentiary hearing be set in accordance with Section 120.57, Florida Statutes (2015).

DATED: August 4, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2015, a true and correct copy of the foregoing was filed with the Agency Clerk, Department of Building and Professional Regulation, and was thereafter served via electronic mail upon **Fred R. Dudley, Esq.**, and **David P. Healy, Esq.**, Dudley, Sellers & Healy LP, counsel for Petitioners, at dudley@mylicenselaw.com; upon **Drew Winters**, Acting Executive Director, Florida Building Commission, at Drew.Winters@myfloridalicense.com; and upon **April Hammonds**, Assistant General Counsel, at April.Hammonds@myfloridalicense.com.

/s David Axelman

David Axelman, Esq.

EXHIBIT A

Replacement Windows: Florida's Energy Future Is in Your Hands (Again)!

By Eric Lacey and Fred Dudley for the Responsible Energy Codes Alliance¹

The Florida Building Commission took action at its August 7th meeting that places the responsibility of enforcing the Florida Energy Conservation Code's requirements for residential window replacement back into the hands of Florida's Building Officials. In recent months, unofficial opinions of Commission Staff members and a few industry stakeholders had been issued on the subject of replacement windows, and some Building Officials who had been enforcing the Florida Energy Conservation Code's requirements for replacement windows received conflicting opinions on the subject.

While the ultimate decision about how to enforce the requirements of the code ultimately rest with the local Building Official, this article outlines the relevant parts of Florida law and the Florida Energy Conservation Code with the intent of helping Building Officials make a better informed decision about how to apply these requirements.

Replacement Window Efficiency Requirements Are New to Florida's 2010 Energy Conservation Code.

Florida law directs the Florida Building Commission to adopt the International Energy Conservation Code (IECC) as its "foundation code," and to adopt amendments only where necessary to "maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction."² One important

¹ Fred Dudley is a partner at the law firm of Holland & Knight, and Eric Lacey chairs the Responsible Energy Codes Alliance. RECA is a broad coalition of energy efficiency professionals, regional organizations, product and equipment manufacturers, trade associations, and environmental organizations that promote the adoption and implementation of improved building energy codes and, in particular, the most recent version of the IECC nationwide. For more information about RECA, visit our website: www.reca-codes.com.

² Florida Statutes Ch. 553.71(7)(a).

In our view, The Florida Energy Conservation Code requirement is clear: When some or all windows are replaced, the new units must meet the same efficiency requirements that apply to new windows in the 2010 FBC-EC (U-factor 0.65, SHGC 0.30).

 <p>Millennium 2000 Vinyl-Cast Wood Frame Double-Paneled Argon Fill • Low-E Product Type: Vertical Slider</p>			
World's Best Window Co.		ENERGY PERFORMANCE RATINGS	
U-Factor (U.S./ft ²)	0.35	Solar Heat Gain Coefficient	0.25
ADDITIONAL PERFORMANCE RATINGS			
Visible Transmittance	0.51	Air Leakage (U.S./ft ³)	0.2
<small>Manufacturer's name and model number apply to this specific product. For more information, visit the manufacturer's website. For more information, visit the manufacturer's website. For more information, visit the manufacturer's website.</small>			

Look for the NFRC label on the window to verify compliance with the Florida Energy Conservation Code.

provision in the IECC is the replacement fenestration requirement, section 402.3.6. This provision has been in the IECC for over a decade, and has been adopted all over the country. Florida's requirement, as adopted by the Commission in the 2010 Florida Energy Conservation Code, is identical:

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.

Although most state and regional window manufacturers are familiar with this requirement, Florida Building Officials may be less familiar with it because it appears in Florida's Energy Conservation Code for the first time in the 2010 version (which became effective March 15, 2012). Like other new requirements such as high-efficacy lighting, the replacement fenestration section was adopted straight from the IECC as part of the Commission's multi-month process of meeting the Legislature's intent to make the IECC the "foundation code" for Florida's energy code.

In our view, the Florida Energy Conservation Code requirement is clear: When windows are replaced, the new units must meet the same efficiency requirements that apply to new windows in the 2010 FBC-EC (U-factor 0.65, SHGC 0.30).

Harmonizing the Energy Conservation Code with Florida Law

After the publication of the 2010 Florida Energy Conservation Code, some industry stakeholders questioned the authority of Florida's Building Officials to enforce the Code's replacement window requirements in existing buildings. Although the Energy TAC and the Commission spent several meetings trying to sort out the correct application of Florida Statute and the Code, in the end, the Commission took the following position:

1. All staff comments, proposals, interpretations or opinions, written or oral, relative to window replacement issues are withdrawn and of no effect.
2. Local building officials continue to have the authority and responsibility to apply energy regulations as they apply to window replacement.

Thus, it is ultimately the decision of the local Building Official to interpret the Code requirements for replacement windows.

The Replacement Fenestration section of the Florida Energy Conservation Code can be read consistently with Florida law. The Florida Legislature delegates the authority to the Florida Building Commission to set thermal efficiency standards in the form of a statewide Energy Conservation Code.

Does the Energy Code Apply to a Replacement Window Project? Yes. Here's why:

1. Does the estimated cost of alterations to the building exceed 30%?
 - If so, it's a "renovated building" and must comply with the statutory list of requirements. See Florida Statutes, Section 553.906. The altered portion of the building must meet the same requirements for fenestration as in new construction: U-Factor 0.65, SHGC 0.30.
2. If the alterations cost less than 30%, has the Commission set "thermal efficiency standards" for the replacement "systems and components" in question?
 - For replacement fenestration, the Commission has set a specific efficiency requirement: U-Factor 0.65, SHGC 0.30.

"553.903 **Applicability.** – This part shall apply to all new and renovated buildings in the state, except exempted buildings, for which building permits are obtained after March 15, 1979, and to the installation or replacement of building systems and components with new products for which thermal efficiency standards are set by the Florida Energy Efficiency Code for Building Construction. The provisions of this part shall constitute a statewide uniform code."

(Emphasis added.) The statute establishes three categories for which the Commission is authorized to set thermal efficiency standards: 1) New buildings; 2) Renovated buildings; and 3) Installation or replacement of building systems and components with new products.

The term "Renovated Buildings" is defined by the statute as "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."³ It is clear that when a renovation exceeds 30% of the assessed value (which is very rare), the altered portion of the building will have to meet all of the thermal efficiency requirements outlined in the "Renovated Buildings" section of the statute (Section 553.906), including windows.

As for the "installation or replacement of building systems and components," where the Commission has set specific "thermal efficiency requirements" for those replacement building components and systems, the thermal efficiency standards apply – regardless of the cost of the renovation. Since a window clearly qualifies as a building component," the Commission has properly set specific requirements for windows installed in existing buildings. Thus, in a typical window replacement context, a Code Official could apply the questions in the sidebar to determine the applicability of the Code.

³ Florida Statute Ch. 553.902.

Efficient Replacement Windows Can Have a Major Impact on Florida's Energy Future

The Commission's decision to include the replacement fenestration requirement in the 2010 Florida Energy Conservation Code can make a huge impact across the state, if the Code is properly enforced. Over 75% of all windows sold in Florida are replacement windows. Over the last three years, that is an average of 1.85 million windows a year. If just half of these windows are replaced with moderately efficient windows that meet the requirements in the 2010 Code, Florida stands to benefit in several ways. According to the Efficient Windows Collaborative:

- Florida citizens could save \$12 million in energy bills every year.
- Florida could save the equivalent of one 50 MW peaking power plant every year through reduced peak electricity demand.
- Cooling equipment can be downsized when it is replaced, saving homeowners money.

Deciding how to apply the requirements of the Energy Conservation Code to a particular alteration is ultimately up to the building code official. Given the potential positive impact of energy efficiency on Florida's future, this decision requires careful thought. Florida law and the Florida Energy Conservation Code, when properly read together, set reasonable requirements for efficient, high-quality windows in new and existing buildings. For more information about the Responsible Energy Codes Alliance, visit our website at www.reca-codes.com.



EXHIBIT B



Department of Planning,
Zoning & Building
2300 North Jog Road
West Palm Beach, FL 33411-2741
(561) 233-5000

Planning Division 233-5000
Zoning Division 233-5201
Building Division 233-5100
Code Enforcement 233-5000
Contractor Certification 233-5525
Administration Office 233-5005
Executive Office 233-5228
www.pbcgov.com/plz

**Palm Beach County
Board of County
Commissioners**

Shelley Yara, Mayor
Mary Lou Berger, Vice Mayor
Hil R. Valche
Eulette Budick
Steven L. Abrams
Melissa McKinlay
Porella A. Baylor

County Administrator
Robert Weisman

*"An Equal Opportunity
Affirmative Action Employer"*

printed on recycled paper

July 20, 2015

To All Interested Parties:

RE: Window Replacements and the Florida Building Code, 5th Edition (2014) -
Energy Volume in Unincorporated Palm Beach County

There have been a significant number of questions raised, and interpretations still vary widely throughout the County and State, regarding the proper application of the requirements in the Florida Building Code Energy Conservation Volume (ECV) that are applicable to window replacements in existing buildings. This confusion has occurred because of conflicting language within the ECV itself, combined with confusing language in the Florida Statute which grants the authority for the code.

Specifically, ECV Section R(C)101.4.7 states that replacement fenestration (windows) must comply with the requirements of the ECV. This seems to agree with Florida Statute 553.903, which provides the basis for the rule. However, ECV Section R(C)101.4.8 appears to exempt the work if the total value of work performed does not reach the threshold of a "renovated building."

There are valid arguments to be made on both sides of this issue. However, there have been no substantive changes to either the relevant statutes or code language since the Florida Building Commission issued a Declaratory Statement on this subject in 2012 for the 2010 Florida Building Code. Accordingly, it is my determination that Palm Beach County will continue to consider window replacements to be exempt from ECV compliance for permits issued in Unincorporated Palm Beach County unless the total cost of the replacements reach 30% of the structure, or until such time as the Florida Building Commission issues a Declaratory Statement or other directive to clarify this matter for the affected stakeholders.

However, all stakeholders are urged to carefully consider that a rule, such as the ECV, is required to comply with Florida law. In this case, there are clear contradictions between the two. It is also unclear whether Florida Building Commission action or an Attorney General Opinion will ultimately be required to reconcile this seeming contradiction. Therefore, all stakeholders should be prepared to address the impact that potential increased thermal efficiency rules, if implemented, will have on their pending window retrofit projects and act accordingly.

If you need further assistance in understanding what effect this interpretation may have on your project, please feel free to contact me at 561-233-5102.

Sincerely,

Doug Wise
Building Director/Building Official

attachments



BROWARD COUNTY
BOARD OF RULES AND APPEALS

**FBC 5th Edition (2014) Energy
Conservation Code
FORMAL INTERPRETATION (#12)**

ONE NORTH UNIVERSITY DRIVE
SUITE 3500-B
PLANTATION, FLORIDA 33324

PHONE: 954-765-4500
FAX: 954-765-4504

www.broward.org/codeappeal

2015 Voting Members

- Mr. Ron Burr
Chair
- Mr. Jeffrey Lucas, Deputy Fire Chief
Vice-Chair
- Mr. John Famularo,
Roofing Contractor
- Mrs. Shalanda Giles Nelson,
General Contractor
- Mr. Gary Elzweig, P.E.
Structural Engineer
- Vacant
- Master Plumber
- Mr. Gregg D'Amico,
Mechanical Contractor
- Mr. Allan Kozich, P.E.
Electrical Engineer
- Mr. Kenneth B. Wynn
Representative Disabled Community
- Mr. John Sims,
Master Electrician
- Vacant
- Consumer Advocate
- Mr. Abbas H. Zaackria, CSI
Architect
- Vacant
- Mechanical Engineer


2015 Alternate Board Members

- Mr. Steven Feller, P.E.
Mechanical Engineer
- Mr. Alberto Fernandez,
General Contractor
- Mr. Daniel Lavrich, P.E.
Structural Engineer
- Assistant Chief Jeff Moral, CFO
Fire Service
- Mr. David Rice, P.E.
Electrical Engineer
- Vacant
- Master Plumber
- Mr. David Tringo,
Master Electrician
- Mr. William Platt,
Roofing Contractor
- Vacant
- Architect

Board Attorney
Charles M. Kramer, Esq.

Board Administrative Director
James DiPietro

—ESTABLISHED 1971—

DATE: July 9, 2015
TO: All Building Officials
FROM: James DiPietro 
Administrative Director
SUBJECT: Windows Replacement

At its meeting of July 9, 2015 the Broward County Board of Rules and Appeals approved the following interpretation.

When windows are replaced they may be exempt from the *Florida Building Code-Energy Conservation, 5th Edition (2014)*.

In the *Florida Building Code-Energy Conservation, 5th Edition (2014)*, C101.4.8 and R101.4.8 state: "Buildings exempt from the *Florida Building Code, Energy Conservation*, include existing buildings **except those considered renovated buildings**, changes of occupancy type, or previously unconditioned buildings to which comfort conditioning is added."

Renovated Buildings is defined in C202 and R202 of the *Florida Building Code-Energy Conservation, 5th Edition (2014)* as: "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."

Considering these sections, replacement of windows (including any other renovation that may be going on) in an existing building that does not exceed 30 percent of the assessed value of the structure must comply with the requirements of the *Florida Building Code, Existing Building* but they do not need to comply with the *Florida Building Code, Energy Conservation*.

ISSUED: July 9, 2015
EFFECTIVE DATE: June 30, 2015

****PLEASE POST AT YOUR PERMIT COUNTER****



Department of Regulatory and Economic Resources
Board Administration Section
11805 S.W. 26 Street (Coral Way) Rm. 230
Miami, Florida 33175
Tel (786) 315-2573 Fax (786) 315-2570
www.miamidade.gov/development

MEMO

TO: All Building Officials in Miami-Dade County

FROM:  Secretary of the Board
Board of Rules and Appeals (BORA)

DATE: July 17th, 2015

SUBJECT: BORA Interpretation – Exemption Clarification / FBC Energy Conservation
Sections R and C101.4.8

At their meeting of July 16, 2015, the Board of Rules and Appeals was asked to interpret Section C101.4.8 and R101.4.8 of the *Florida Building Code, Energy Conservation* volume. The Board considered the extent and scope of the exemption contained in the following sections:

C101.4.8 and R101.4.8 Exempt buildings. Buildings exempt from the provisions of the Florida Building Code, Energy Conservation, include existing buildings except those considered renovated buildings, changes of occupancy type, or previously unconditioned buildings to which comfort conditioning is added. Exempt buildings include those specified in Sections C101.4.8.1 through C101.4.8.4.

The Board assessed the intent of the referenced sections as they relate to construction work for existing buildings, and the relevance of the exemption to both the building as a whole and components and systems.

After deliberation, the Board interpreted the replacement of windows, including any other renovation which may be taking place, in an existing building that does not exceed 30% of the assessed value of the structure must comply with the requirements of the *Florida Building Code, Existing Building* but is not required to comply with the *Florida Building Code, Energy Conservation*.

Should you have any questions, please contact Michael Goolsby, Board and Code Administration Division Director at (786) 315-2508.

EXHIBIT C

Eurotech Industries, Inc.
4201 NE 12th Terrace
Oakland Park, Florida 33334
Phone No. 954-630-9967, Fax No. 954-630-0217

August 4, 2015

Agency Clerk
Florida Building Commission
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399

**RE: Petition for Declaratory Statement before the Florida Department of
Business & Professional Regulation, DS 2015-086**

Dear Sirs,

**A. History of ETI & how the new 2014 Energy Code is affecting our
business:**

Eurotech Industries, Inc. (ETI), was founded in the City of Oakland Park, Florida in 1997, by Mr. Angelo Petreccia, its owner & president. Its principal business is manufacturing European Style impact windows and doors for the boutique replacement fenestration industry, high rise condominium fenestration replacement industry and new high-end home construction industry. ETI has a dealer based marketing & sales approach, with forty dealers and replacement fenestration contractors located in the State of Florida.

ETI has a fulltime labor force of eighteen employees, at our Oakland Park, Florida Location. ETI's main business is in manufacturing European Style non-thermally broken aluminum windows and doors. ETI has just completed the thermal testing for its non-thermally broken aluminum windows and doors, but is currently testing and revising its thirteen Miami Dade NOA's for its non-thermally broken aluminum window and door product lines. The New 2014 Florida Energy Code is forcing ETI to produce testing and documentation to show that ETI's product lines have been tested for NFRC-100, 200 & 500 thermal test requirements, with twenty-two different glass types. ETI is also in the process of adding additional tests for TAS 201,202 & 203 and having its engineering revised for submission to Miami Dade Product Control. ETI has to revise all of its current NOA's for changed structural requirements in the New 2014 Florida Building Code also.

ETI is in the process of submitting all of its current NOA's, with the necessary engineering revisions for the 2014 Florida Building Code, then will have to submit the revisions for the requirements of the 2014 Florida Energy Code and paying a

second time for these additional requirements. One of our concerns with making the new changes applicable throughout the entire state is that the revised code was not officially published until March 15, 2015 and was implemented on June 30, 2015. The usual time in our industry is a year for this process. ETI is projecting the added costs at the following: 160K for testing laboratories, 40K for product test sample material costs, 50K for engineering expenses, 35K for Product Approval fees and 90K for additional plant equipment & tooling. Please note: these costs do not include ETI's internal costs that will reach a projection of 50K, without overhead costs.

ETI is also a fabricator of PVC Windows & Doors for the non-impact & large missile impact market. ETI has five current Miami Dade NOA's for its Large Missile Impact Rated PVC Windows & Doors. ETI is currently ready to submit necessary testing & documentation for two more and testing for three other NOA's.

B. Description of Fenestration Market for Florida Climate Zone 1:

South Florida & Southwestern Florida is a very unique fenestration market since we have the highest prescribed wind loads in the United States and aluminum is the best product for the prescribed wind loads. The problem is that our local industry has been mandated by the State of Florida to comply with Federal Energy Regulations, under the 2014 Florida Energy Code.

Our local industry has been forced to lower our U. Factor of our non-thermally broken aluminum fenestration systems. The new requirement forces the current aluminum window and door manufactures to retool, test, engineer and revise all current product lines for the replacement fenestration market. The existing homeowner is now paying the cost difference between monolithic tinted laminated glazing and insulated laminated glazing with a high performance low e coating.

The additional cost to the existing homeowner is between 40% & 85%. There are many factors besides just material cost difference.

1. Increased cost of glazing to typical impact window & door manufacturer:
Typical cost 7/16" Clear on Clear w/ .090" Gray Tinted PVB is \$ 8.79 sq./ft., add of a triple silver low e coating \$1.70 to \$2.78 sq./ft., additional third piece of glass, 3/16" clear tempered to make insulated unit: \$ 6.00 sq./ft.
2. Increased hardware costs:
 - A. Heavier balances for single hung windows.
 - B. Heavier hinges for casement windows.
 - C. More hinges for hinged door units for increased weight.
 - D. Heavier wheels for sliding glass doors and horizontal rolling windows.
3. Amortization of testing, engineering and governmental costs and new plant equipment.
4. Increased factory labor costs due to increased weight.
5. Increased warranty costs due to insulated glass unit.

6. Increased labor costs due to material handling and unloading, requires twice the amount of employees, due to OSHA regulations.
7. Fenestration Replacement Contractors will have to increase crew sizes due to unit weights.
8. Increased labor costs for Replacement Fenestration Contractor due to frame depths being deeper, wood bucks being replaced and interior surfaces being redone.
9. Increased product liability insurance costs, due to increased costs.

C. Visual Appearance Problems for Replacement Fenestration Market:

1. ETI and other fenestration replacement manufactures are currently supplying product on many high-rise condominium projects in South Florida. The individual unit owners due to the condominium bylaws are funding these replacement projects. Some of these projects have a one- to five-year duration and the new energy code will cause the glazing to have a checkered board effect to the glazing color on the structures, due to the fact that many are ongoing.
2. Problems will arise from Local Zoning and community boards due to the new visual appearances.
3. Visual problems to homeowner on three pieces of glass, that has been heat strengthen or tempered, will have roll wave distortion, the high performance low e coatings will highlight it.
4. The new SHGC will dramatically change the visual appearance of these projects. A compromise needs to be found.

D. Conclusions:

After speaking at Miami Dade & Broward County Board of Rules and Appeals meetings, also meeting with several other manufacturers with Palm Beach County Building Officials, they have instituted the 30% rule for exception of the 2014 Florida Energy Code for replacement fenestration projects. The local code officials have noted that the new code requirement adds a tremendous cost for the U. Factor of the replacement fenestration product, but the balance of the structure does not need to meet these requirements.

I would like to bring to your attention Federal House Bill HR 1273, that is currently in the House of Representatives in Washington. It includes language that says the following: "any new federal code or regulation has to have a minimum on a ten year energy saving payback". I have worked with several other window and door manufacturers that currently market and reside in South Florida and we have preformed the cost payback analysis of window and door fenestration replacement package on an existing residential home. The calculations keep coming back that the difference between a monolithic laminated glazing and insulated laminated glazing, with a low E coating, has a 30 to 40 year payback in energy savings costs. Most

homeowners these days do not remain in their homes that long, and they will never realize that payback.

After sitting in on and participating in the discussions at the Miami Dade & Broward County BORA meetings, the one item that has made the biggest impression on me was affordability. We all have lived through the brutal downturn of the construction market over the last seven years, we have made some improvement due to several reasons, sales & remodeling of foreclosed homes, increased availability of financing to potential home owners and first time homebuyers and new construction. Our industry has not gained back the health it once had.

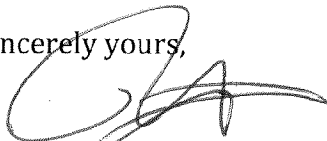
“Affordability” is the replacement fenestration industry driver in South Florida. After looking at our quotes and orders received since the 1st of July 2015, speaking to several replacement fenestration dealers and contractors, I am seeing a 25% to 35% downturn in business. The new home fenestration sales have not been affected since the homeowner’s design professional can do an overall energy calculation and by adding insulation they can show insulated glazing and a low SHGC is not required for the new home.

The Florida Building Commission should not rush to force every jurisdiction to adopt the same approach until a full comprehensive analysis can be made of this situation. The replacement fenestration industry is currently about a 150-200 Million Dollar per year industry, and it employs about 800 employees that live in south and southwest Florida and that earn a average of \$43,000 per year. This industry pays about \$6,000,000 annually in sales taxes, \$3,200,000 in local building department permit fees, not counting local business and real estate taxes. I do not know how to tell the 25% to 35% of the employees of my customers that they will be out of a job, or tell the existing homeowner that government has made his desire of a safe home for a hurricane unaffordable.

I believe that if this is implemented, homeowners will turn to un-licensed, underground, unregulated contractors to replace their windows and doors with impact rated products, with no thermal requirements and no building permits being applied for.

Eurotech Industries, Inc., would be substantially affected by the outcome of Declaratory Statement DS 2015-086 and thus, respectfully requests that the Energy Technical Advisory Committee and The Florida Building Commission respect the judgment of the local building enforcement officials who apply the 30% value exception permitted under the law.

Sincerely yours,



Thomas S. Metzger
Sales Manager

Eurotech Industries, Inc.
4201 NE 12th Terrace
Oakland Park, Florida 33334
Phone No. 954-630-9967, extension: 103
Fax No. 954-630-0217
Email: tmetzger@etiwindows.com

August 4, 2015

Agency Clerk

Florida Building Commission

Department of Business & Professional Regulation

1940 North Monroe Street

Tallahassee, Florida 32399

RE: Petition for Declaration Statement before the Florida Department of Business & Professional Regulation, DS2015-086

To whom it may concern,

EGS International LLC is a manufacturer of sliding glass doors and windows, and is located at; 3133 SW 25th Street Pembroke Park, FL 33009. EGS has been in business manufacturing non-impact and Hurricane impact resistant aluminum and glass products for the building envelope since 1988. EGS would like to point out several issues that would have a profound negative effect on its business and ultimately on the consumer of all fenestration products in the State of Florida.

EGS sells its products to a large base of privately owned and operated small glass businesses, general contractors and installers that are licensed in the State of Florida. The consumers of our products are typically homeowners in residential homes, commercial hotels, and condominiums. Our average project size is \$6,500. - \$35,000.00 + and we employ eleven people. Most of our projects involve window replacements that are not part of projects that are considered renovations under the Building Code.

Applying the 2014 Florida Energy Code to all window replacements that are not part of renovations would severely hurt our business. Based on our experience, the cost to EGS for re-design and develop (engineering, testing implementation) of each new product would be a minimum of \$110,000.00. Additionally, re-tooling of the facility may be required and those additional costs would be passed directly on to the vendor and ultimately to the consumer. This total amount could exceed 45% in increased cost to the homeowner or end user. This increase in cost would devastate the "replacement" market as most homeowners would choose not to replace their windows and doors. In the current economy the outcome would impact manufacturers and installers alike. Should the homeowners or businesses choose not to replace the windows and/or doors due to higher costs the following events that would occur:

{5623549:}

- The original doors and windows would remain and not provide any improvement in air/water infiltration or any energy savings (SHGC or U-value)
- Less Protection - The safety of the occupant could be in jeopardy from “Windborne Debris” if the building were older than 20 years old
- Any decrease of insurance premiums for replacement windstorm protection would disappear

Additionally, EGS does not believe that any significant energy savings or return on investment (ROI) for the homeowner will occur within a ten year period. It has been discussed with energy professionals that the actual ROI might actually be over twenty five years. It should be pointed out that the basis for the state creating the proposed energy code ZONE 1 and ZONE 2 performance requirements may lack the proper thermal testing for a sub-tropical environment required thereby not meeting the muster for a ten year ROI for newly developed product as required by the energy Savings and Building Efficiency Act.

As Florida is a sub-tropical climate prone to “tropical cyclonic events”, stronger, more time tested and durable fenestration products are required. The new proposed energy code will introduce a “non recyclable, non-environmentally friendly” product to our environment as well that lacks the properties to meet higher design pressures whereas traditional aluminum and/or steel products are typically installed. Additionally, these proposed energy efficient frame systems are not available in many standard “architectural designs” that many homeowners desire. Again, this will prevent homeowners from replacing their windows and doors. As energy values are not mutually exclusive to IGU’s or vinyl, the same performance requirements are comparable, less costly and achievable using existing replacement products.

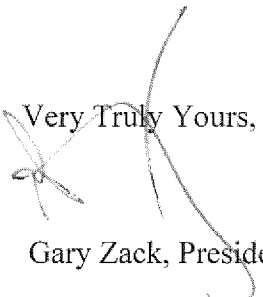
Another aspect of this proposed energy code will be in the weights and sizes of the new fenestration products. IGU’s (insulated glass units) are approximately 30% heavier. This will require more installers lifting heavier products and will lead inevitably lead to more workmen’s compensation claims as well as higher labor cost.

With these heretofore mentioned considerations, EGS fears that the market will revert to “illegal manufacturing and installations” with installers performing work without pulling required permits, carrying proper licenses and/or insurances. This will affect the safety of the consumer and will possibly eliminate their legal protections. Additionally, this will have a pervasive negative effect on all manufacturers that are properly manufacturing product according to the FBC and attempting to sell a legitimate product in the State of Florida.

Finally, EGS, as an FBC- compliant manufacturer has the intent of making the life, safety, and customer satisfaction of the end user of our products “Job #1”. The proposed energy code only represents one facet of the performance requirements in the sub-tropical environment of the State of Florida. As this proposed energy code may appear to present a good cause, it lacks the integrity in product design and performance that the consumers of the State of Florida deserve.

The local building enforcement officials are in the best position to make these judgments in their own jurisdictions. Creating a “one size fits all” requirement for the entire state fails to take the climate and construction differences of the different regions of our state into account.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gary Zack', is written over the text 'Very Truly Yours,'.

Gary Zack, President

EGS International LLC



8501 N.W. 90TH STREET, MEDLEY, FL 33166
PHONE: (305) 696-8660 • FAX: (305) 696-6006 • SALES FAX: (305) 693-1237

MANUFACTURER OF QUALITY ALUMINUM
WINDOWS AND GLASS DOORS

August 4, 2015

Agency Clerk

Florida Building Commission

Department of Business & Professional Regulation

1940 North Monroe Street

Tallahassee, Florida 32399

RE: Petition for Declaratory Statement before the Florida Department of Business & Professional Regulation, DS 2015-086

To whom it may concern,

Lawson Industries, Inc. is a founding member of the Impact Window Affordable & Safety Association and also seeks to intervene in these proceedings to oppose the effort to remove the 30% exemption rule for replacement windows and doors..

Lawson manufactures aluminum doors and windows, primarily for residential purposes. Lawson was started in 1960, and was purchased by Harold Bailey, the current owner, in 1986. Our manufacturing facility is based in Medley, Florida (NW Miami-Dade County). We have satellite branches in Boynton Beach, Florida and Tampa, Florida. These branches sell an installed product to the larger tract builders. The retro-fit jobs are done through a network of independent distributors.

Among other uses, our products are used in single family homes, town homes, condominiums, apartment buildings, and clubhouses. The majority of our replacement products sold are impact resistant, which accounts for about 96-98% of retro-fitted jobs. In new construction, the ratio is approximately 80% impact, and 20% non-impact.

For economic reasons, a lot of homeowners replace their windows and doors a few at a time. The effect of forcing them to buy windows with glass that does not match their existing glass would make the house look like someone had made a huge mistake. The same effect goes for condos. Some owners may replace their windows, while others won't, or cannot afford to do so. This would create a "checkerboard effect", and would be unacceptable to the homeowners' association.

If a homeowner is forced to use highly efficient products, their cost could be 40 to 50% higher, and one of two things could happen: they could either choose not to replace their windows and doors, or do so without getting a permit. With either one of those scenarios, the question of the safety of the home during a hurricane could be uncertain. If they keep the old windows, and do not have shutters, the home is at risk. If they have new windows installed and they are not properly inspected, they may not meet code and could fail during a hurricane. The state's goal of supporting upgraded products in retrofitted homes and buildings would be defeated.

Lawson Industries currently employs 204 people. The prospect of the reduction of sales could affect the livelihood of many of these people. There are seven or eight other aluminum companies that would also be affected by this change, and the amount of people whose livelihood could be affected by this could total into the hundreds.

As our association title states, we advocate for the consumer for the affordability and safety of their homes. This is a very serious issue here in South Florida. Removing the 30% rule could have an adverse effect on their safety if another Hurricane Wilma or, God forbid, another Hurricane Andrew should come. Since South Florida building officials are in the best position to judge what is the most cost-effective means of supporting consumers in the updating of their homes, they should be left to interpret the Code's provisions as they apply to South Florida consumers.

Thank You,



Larry A. Olson

Sales Manager

Lawson Industries, Inc.

Ph: 305-696-8660



SOUTHEASTERN DOOR COMPANY

Manufacturers of Custom Sliding Glass Doors

August 4, 2015

Florida Building Commission
Department of Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399

RE: Petition for Declaratory Statement DS 2015-086

Dear Sir/Madame:

The purpose of this letter is to inform you that Southeastern Door Company requests to be party to the Petition for Declaratory Statement DS 2015-086 currently before the Florida Department of Business and Professional Regulation. We believe that Southeastern Door Company, its employees, customers and material suppliers have a substantial interest in the outcome of the declaratory statement as we manufacture aluminum impact resistant doors.

Southeastern Door Company has been a locally owned family business in South Florida for over 40 years with a strong interest in the replacement and retrofit markets. We currently provide a substantial amount of product to existing hotel resorts, retirement facilities and condo communities throughout Florida. The issue at hand is by forcing these existing buildings to meet criteria for u-factor and SHGC, it not only increases cost but it creates conflict between existing product and new insulated glass with low-e coatings that would be required. If declaratory statement DS 2015-086 is approved, we will no longer be able to provide our product to these users.

We believe that Florida Statutes 553.902, which defines renovated buildings to include 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, should be strictly followed as the Legislature intended. Also, the statute is consistent with the definition of renovated buildings in the current code. Section R101.4.8 clearly defines the exemption rule.

Southeastern Door Company would be substantially affected by the outcome of Declaratory Statement DS 2015-86 and thus, respectfully requests the Energy Technical Committee and the Florida Building Commission reject the declaratory statement to eliminate the 30% exemption.

Sincerely,

Troy Weizer
President



August 3, 2015

Agency Clerk
Florida Building Commission
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399

Re: Petition for Declaratory Statement before the Florida Department of Business and Professional Regulation DS 2015-086.

The purpose of this letter is to inform you that TM Windows, LLC. Formally requests to be a party to the Petition for Declaratory Statement DS 2015-086 currently before the Florida Department of Business and Professional Regulation. TM Windows, its employees and customers have a substantial interest in the outcome of this declaratory statement as a manufacturer of windows and doors with its biggest market within the State of Florida.

TM Windows has been manufacturing windows and doors in South East Florida for the residential and commercial markets since 1972. We manufacture a complete range of aluminum and vinyl products designed to meet Florida's stringent building codes and resist its unique climate. We enjoy a reputation of being a premier manufacturer of high quality products for the impact resistant fenestration market. Our 125,000 square feet manufacturing facility located in Pompano Beach, employees over 140 people and services more than 300 different customers who distribute our products throughout the State of Florida.

We believe that Declaratory Statement DS 2015-086 could impact our ability to sell products to the home remodeling market if the 30 percent threshold with respect to renovations is not adhered to as provided in Florida Statutes and the 2014 Florida Building Code. We believe that Florida Statutes, Section 553.902, which defines "renovated building" as a residential or nonresidential building undergoing an alteration provided the estimated cost of renovation exceeds 30 percent of the assessed value of the structure should be strictly followed as the Legislature intended.

If Declaratory Statement DS 2015-086 is approved to eliminate the 30 percent threshold specifically for fenestration products, homeowners seeking to improve their windows and doors will be forced to use a more expensive product for their remodeling projects. In most cases, the energy savings resulting from the upgraded windows and doors, could not justify the additional

August 3, 2015
Page 2

investment that is being forced onto the homeowners, within a reasonable timeframe. This could have a detrimental effect our company and to our industry, as many consumers may opt to not upgrade their windows as they do not see a meaningful advantage to their increased cost. TM Windows, LLC. respectfully requests that the Energy Technical Advisory Committee and the Florida Building Commission reject Declaratory Statement 2015-086 and allow the 30 percent threshold to remain in effect for renovated buildings.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Jorge Santaella', written in a cursive style.

Jorge Santaella
General Manager
TM Windows
1543 N Powerline Rd.
Pompano Beach, FL 33069

Raquel A. Rodriguez

8/3/15

McDonald Hopkins LLC

Southeast Financial Center

200 South Biscayne Blvd.

Suite 2600

Miami, Fl. 33131

Dear Ms. Rodriguez,

As per our conversation I felt it was imperative that I provide you with various details regarding the position of my company and the various factors as well as the negative implications concerning the proposed implementation of a State wide Florida Building code change pertaining to Energy Codes.

My company is Armstrong building Contractors/ DBA SIW Impact windows, located at 975 S. Congress Ave Suite 102 Delray Beach, Florida 33445. We are engaged in the business of manufacturing and installation of Hurricane Impact resistant windows & doors. We have been in business for over 13 years & currently employ approximately 45 Full time employees.

Our typical clientele are single family homeowners and condo owners. The majority of which are low to middle income individuals. Many are also retirees and are on a fixed income. Our typical project for replacement of windows & doors currently runs on average cost of \$8-15K. These figures are based on a common replacement of windows & or doors with Miami-Dade code approved laminated hurricane impact glass using (grey/ bronze)tinted glass.

The majority of our clientele also reside in established communities or condo developments, including mid rise & hi-rise buildings. According to various association requirements, homeowners are required to replace windows & or doors conforming to the rest of that community or building. This of course was to establish a uniformed look throughout. This is especially important in condos & buildings, so that a checkerboard look is avoided.

I as well as many other of my colleagues in the window & door industry are deeply concerned regarding the proposed changes to the energy codes as they apply to the Florida Building Code & the 30% rule (currently in affect) and as it applies to the Energy Savings and Building Efficiency Act (H.R. 1273). Where it requires that any code or proposal supported by the Department of Energy, must have a payback of 10 years or less.

Additionally, as a reference and previously stated by Mr. Joe Belcher an industry professional with over 35 years experience in the window & door industry as they pertain to code requirements. Mr. Belcher stated that the homeowner would NOT get any significant energy efficiency increase with the use of the

proposed so called "energy efficient" windows & doors. It is also in our opinion that that the actual time frame for cost payback would be more likely 20-30 years.

These proposed changes are in our professional opinion "irrelevant" to the unique climate conditions of South Florida. As you may very well know, the conditions that exist in the South Florida area (Most notably Hurricanes) have dictated various changes to the Florida Building Code over the years. These changes which were very well needed to have structures conform more to storm resistant products, since these are the unique conditions that exist in this part of the State.

It is additionally in our professional opinion through various cost calculations that implementing a fenestration Energy Code would increase costs on average of 30to 50%.

These proposed changes would have a tremendous negative impact on this industry in several ways including but not limited to the following:

1-Increased overall cost of product to the end user, which will make it unaffordable to many homeowners. This, as previously mentioned would be especially targeted to many retirees on fixed incomes and not physically able to deploy hurricane shutters.

2-Loss of overall business would lead to a 25% reduction of employees.

3-Our Company would have to re-tool our entire manufacturing facility at an estimated cost of between \$500-\$600K

4-Proposed change in product specifications would require new product engineering & testing at an additional cost of \$200k

5-Proposed change will result in an overall heavier product, which can lead to job site injuries.

6-Many homes that currently have certain or specific architectural window /door makeup, will have to be changed to meet the proposed requirements.

7-Proposed requirements will almost certainly lead to an increase in the Black window market, whereas many homeowners or so called handymen will attempt installations of windows & doors that do not meet the proposed changes. Additionally, avoiding requirements for building permits and of course a loss in local revenue gained by the each of the municipalities. This illegal unlicensed activity will in turn lead to a loss of jobs at the various municipalities due to a lack of properly permitted jobs.

Lastly, I am of the understanding that the proposed energy code changes related to the new construction industry regarding the "prescriptive method " would give an allowance for other means of energy efficiency to help comply with the overall energy savings. Therefore negating the need for energy efficient windows.

I look forward to speaking with you further regarding this very disturbing matter that will absolutely have a negative impact on the entire industry and other areas of concern.

If you have any questions, please feel free to contact me at (561) 274-8283

Professionally yours,

Abdiel Lopez

Armstrong Building Contractors



August 3, 2015

Agency Clerk
Florida Building Commission
Department of Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399

RE: Petition for Declaratory Statement DS 2015-085

To whom it may concern,

The purpose of this letter is to inform you that Innovative Window Concepts, LLC requests to be party to the Petition for Declaratory Statement DS 2015-085 currently before the Florida Department of Business and Professional Regulation. We believe that Innovative Window Concepts, LLC, its employees, customers and material suppliers have a substantial interest in the outcome of the declaratory statement, as we manufacture aluminum impact resistant windows and doors.

Innovative Window Concepts, LLC has been a leader in the manufacturing of aluminum impact windows and doors for 13 years. Our product line is geared toward the retrofit market utilizing products that are both energy efficient and installer friendly. We have employed up to 53 manufacturing, office staff and management team members that are focused on quality and product integrity. We work with multiple raw material providers who share our commitment to innovative product development and market growth. We dedicate our efforts to manufacturing only and leave the installation to an expert dealer base that has a unique understanding of our market needs.

Specifically, we believe that Florida Statutes 553.902, which defines renovated buildings to include 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, should be strictly followed as the Legislature intended. We believe the statute is consistent with the definition of renovated buildings in the current code. Section R101.4.8 clearly defines the exemption rule. Additionally the Florida Building Code defines fenestration as Skylights, roof windows, vertical windows (fixed or moveable), opaque doors, glazed doors, glazed block and combination opaque/glazed doors. Fenestration includes products with glass and non glass glazing materials.



Agency Clerk
Page Two
July 31, 2015

Florida Statue 553.902 and the current edition of the Florida Building Code are consistent in their definition of fenestrated products, their application to the building envelope and exemption criteria. It is our position that there is no distinction between systems and components as found in the code or exterior envelope conditions as found in the Florida statue. Both terms are functionally the same as defined by Florida Statue 553.902. "Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which energy may be transferred to or from the exterior.

The fundamental issue at hand is cost. In an effort to adopt a one size fits all code, the homeowner in South Florida is being penalized by having to pay for a product with a stringent U value that has no merit in Miami but would be appropriate in Tallahassee. If declaratory statement DS 2015-086 is approved, Innovative Window Concepts along with its vendors and dealer base believe the additional costs associated with providing insulated laminated glass with high performance low e coatings will have a debilitating impact on the overall economy in South Florida including its employment levels, as well as limit the degree to which homeowners are willing to retrofit their homes for hurricane protection. The costs associated with developing new product lines, re-tooling existing facilities and loss of what would be obsolete inventory would run into the hundreds of thousands of dollars. These costs may not be acceptable to many small manufacturing companies. Our current estimates show that the increase in cost to our dealers would fall within a 20 to 50 percent up charge. In an already stingy market, homeowners have already shown us by canceled orders that they are not willing to spend additional monies where their return on investment is beyond their reasonable time frame.

Innovative Window Concepts, LLC would be substantially affected by the outcome of Declaratory Statement DS 2015-86 and thus, respectfully requests the Energy Technical Committee and the Florida Building Commission reject the declaratory statement to eliminate the 30% exemption.

Sincerely,

Pablo Ruiz
VP Operations

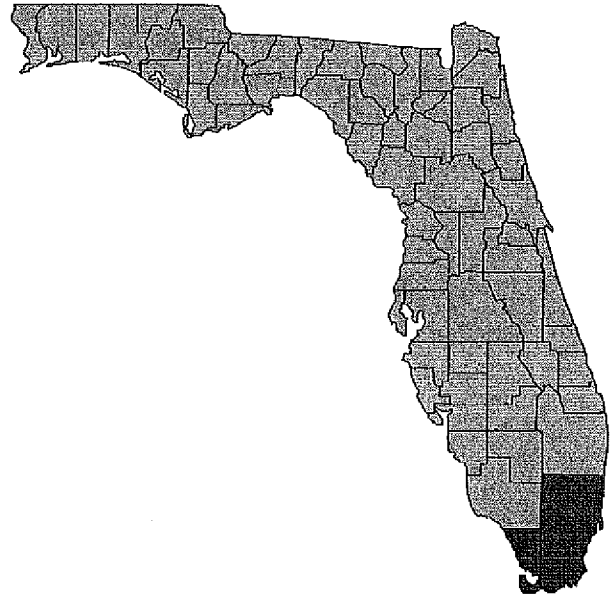
EXHIBIT D

IECC Compliance Guide for Homes in Florida

Code: 2012 International Energy Conservation Code

Step-by-Step Instructions

1. Using the climate zone map to the right, match the jurisdiction to the appropriate IECC climate zone. Use the simplified table of IECC building envelope requirements (below) to determine the basic thermal envelope requirements associated with the jurisdiction.
2. Use the "Outline of 2012 IECC Requirements" printed on the back of this sheet as a reference or a categorized index to the IECC requirements. Construct the building according to the requirements of the IECC and other applicable code requirements.



The 2012 International Energy Conservation Code

The 2012 IECC was developed by the International Code Council (ICC) and is currently available to states for adoption. The IECC is the national model standard for energy-efficient residential construction recognized by federal law. Users of this guide are strongly recommended to obtain a copy of the IECC and refer to it for any questions and further details on compliance. To obtain a copy of the 2012 IECC, contact the ICC or visit www.iccsafe.org. IECC compliance training is also available from many sources.

CLIMATE ZONE 2			
Alachua	Franklin	Lake	Pinellas
Baker	Gadsden	Lee	Polk
Bay	Gilchrist	Leon	Putnam
Bradford	Glades	Levy	Santa Rosa
Brevard	Gulf	Liberty	Sarasota
Calhoun	Hamilton	Madison	Seminole
Charlotte	Hardee	Manatee	St. Johns
Citrus	Heard	Marion	St. Lucie
Clay	Hernando	Marin	Sumter
Collier	Highlands	Nassau	Suwannee
Columbia	Hillsborough	Okaloosa	Taylor
DeSoto	Holmes	Okceehobee	Union
Duval	Indian River	Orange	Volusia
Escambia	Jackson	Osceola	Wakulla
Flagler	Jefferson	Palm Beach	Walton
	Lafayette	Pasco	Washington

Limitations

This guide is an energy code compliance aid for Florida based upon the simple prescriptive option of the 2012 IECC. It does not provide a guarantee for meeting the IECC. This guide is not designed to reflect the actual energy code, with amendments, if any, adopted in Florida and does not, therefore, provide a guarantee for meeting the state energy code. For details on the energy code adopted by Florida, including how it may differ from the IECC, please contact your local building code official. Additional copies of this guide are available on www.reca-codes.com.

CLIMATE ZONE 1			

	Windows			Insulation				Foundation		
	Fenestration U-Factor	Skylight U-Factor	Glazed Fenestration SHGC	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Slab R-Value and Depth	Crawl Space Wall R-Value
Zone 2	0.40	0.65	0.25	38	13	4/6	13	0	0	0
Zone 1	NR	0.7	0.25	30	13	4/6	13	0	0	0

NR indicates No Requirement

Outline of 2012 IECC Requirements for Florida Homes

The simplified table of building envelope requirements (on the previous page) applies to new residential buildings, as defined in the IECC, with wood framing and/or mass walls. For steel-framed buildings, the same window requirements apply; however, refer to IECC section R402.2.6 for specific ceiling, wall and floor insulation R-value requirements. The table also applies to all additions, alterations and replacement windows. The table is based upon the thermal envelope requirements in the 2012 IECC's prescriptive compliance option for the appropriate climate zones (Table R402.1.1) and does not reflect any state-specific amendments to the IECC.

Fenestration (IECC Sections R303.1.3, R402.3, R402.5)

- Fenestration (including all windows and doors) and Skylight U-factors are maximum acceptable levels. The Glazed Fenestration SHGC maximums apply to all windows, skylights and glazed doors (except certain skylights). An area-weighted average of fenestration products is permitted to satisfy these requirements.
- Window, door and skylight U-factors and SHGCs must be determined from a National Fenestration Rating Council (NFRC) rating that is independently certified and set forth on a label on the product or from a limited table of product default values in the IECC. See www.nfrc.org for more details on the NFRC rating system.
- Windows, skylights, and sliding glass doors must also be labeled in a manner to show that they meet the IECC's air infiltration requirements.
- Up to 15 square feet of glazed fenestration is permitted to be exempt from the U-factor and SHGC requirements. One side-hinged opaque door assembly up to 24 square feet is exempted from the Fenestration U-factor requirement. These exceptions apply in the prescriptive path only. Special exceptions may apply for Fenestration U-factor requirements in thermally isolated sunrooms. (see IECC section R402.3.5)

Insulation (IECC Sections R303.1.4 and R402.2)

- Insulation R-values are minimum acceptable levels and must be determined according to FTC rule.
- R-values for walls represent the sum of cavity insulation plus insulated sheathing, if any. The second R-value for mass walls applies when more than half the insulation is on the interior of the mass wall.
- The insulation for basement walls must be from the top of the wall down 10 feet below grade or to the basement floor, whichever is less. Basement wall insulation is not required in warm-humid locations as defined in IECC Figure R301.1 and Table R301.1. Insulation requirements for crawl space walls are further specified in IECC section R402.2.10.
- Floor insulation must be installed to maintain contact with the underside of the subfloor decking.
- Access doors from conditioned spaces to unconditioned spaces (e.g., attics and crawl spaces) shall be weatherstripped and insulated to a level equivalent to the insulation on the surrounding surfaces.
- Insulation requirements for slab on grade floors are further specified in IECC section R402.2.9. R-5 shall be added to the required slab edge R-values for heated slabs. Insulation

depth shall be the depth of the footing or 2 feet, whichever is less in climate zone 2 for heated slabs.

- Special Insulation exceptions related to ceilings with attic spaces, ceilings without attic spaces, masonry veneer and thermally isolated sunrooms are set forth in IECC section R402.

Ducts (IECC Section R403.2)

- Ducts must be tested and verified to have total leakage of no more than 4cfm/100 sq. ft. (or 3cfm if air handler is not installed), except where air handler and all ducts are inside conditioned space.
- Supply ducts in attics shall be sealed and insulated to a minimum of R-8. All other ducts shall be sealed and insulated to a minimum of R-6. Ducts or portions thereof located completely inside the building thermal envelope are exempted from the insulation requirement. Air handlers and filter boxes must also be properly sealed.

Air Sealing (IECC Section R402.4)

- The building envelope is required to be properly sealed and tested, and verified as having an air leakage rate no higher than 5 ACH. Recessed lighting must also be sealed to limit air leakage.

Documentation (IECC Sections R103, R303.3, R401.3)

- The appropriate construction documents and preventative maintenance information must be provided, along with a permanent certificate listing certain insulation, window and HVAC performance information.

Systems (IECC Section R403)

- HVAC system must be properly sized in accordance with ACCA Manual S based on building loads calculated in accordance with ACCA Manual J or other approved methodologies.
- Temperature controls must be installed, including a programmable thermostat where required.
- Mechanical system piping must be insulated to a minimum of R-3. Hot water piping must be insulated to R-3, with certain exceptions.
- Specific requirements apply to circulating hot water systems, mechanical ventilation, snow melt systems, and pools.

Lighting (IECC Sections R202 and R404.1)

- A minimum of 75% of lamps in permanently installed fixtures must be high-efficacy as defined in the IECC.