

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA ASSOCIATION OF THE
AMERICAN INSTITUTE OF ARCHITECTS,
INC.,

Case No. _____

Petitioner,

v.

FLORIDA BUILDING COMMISSION,

Respondent.

_____ /

**PETITION FOR THE ADMINISTRATIVE DETERMINATION
OF THE INVALIDITY OF A PROPOSED RULE**

Pursuant to section 120.56, Florida Statutes, Petitioner Florida Association of the American Institute of Architects, Inc. (“Petitioner” or “FAAIA”) requests an administrative determination of the invalidity of Respondent Florida Building Commission’s Proposed Rule 61G20-2.002, Florida Administrative Code, purporting to implement the triennial update process for the Florida Building Code, among other things, as provided in section 553.73, Florida Statutes. In support of its Petition, FAAIA states as follows:

I. IDENTIFICATION OF PARTIES

1. Petitioner Florida Association of the American Institute of Architects, Inc., is a professional association representing roughly 2,700 architects licensed in the state of Florida. As Florida architects, FAAIA’s members are intimately familiar with and subject to the compliance with the requirements of the Florida Building Code (the “Code”). For purposes of this proceeding, FAAIA’s address and telephone number are that of its undersigned counsel.

2. The Florida Building Commission (the “Commission”) is a state agency created and located within the Department of Business and Professional Regulation for administrative

purposes. The Commission is the state agency responsible for the development and maintenance of the Florida Building Code under chapter 553, Florida Statutes, and Rule Chapter 61G-20, Florida Administrative Code. The Commission's address is 2601 Blair Stone Road, Tallahassee, Florida 32399.

II. DESCRIPTION OF THE CHALLENGED PROPOSED RULE

3. On November 15, 2017, the Commission published a Notice of Proposed Rule to substantially amend Rule 61G20-2.002, Florida Administrative Code (the "Proposed Rule"). Fla. Admin. Reg., Vol. 43, No. 221, at 5188 (Nov. 15, 2017). A copy of the Proposed Rule as published in the *Florida Administrative Register*, is attached as Exhibit A. The Proposed Rule is the subject of this Petition.

III. FACTS DEMONSTRATING THAT PETITIONER HAS STANDING TO CHALLENGE THE PROPOSED RULE

4. FAAIA's licensed Florida architect members are subject to the requirements of the Code in the practice of their profession, and can potentially be subject to discipline or held liable for negligence if they fail to comply with the requirements of the Code. *See, e.g., Seibert v. Bayport Beach & Tennis Club Ass'n*, 573 So. 2d 889, 891 (Fla. 2d DCA 1990)(statutory remedy and common law negligence theories each provided independent basis for finding liability derived from architect's violating the Code); *Juhn v. Dep't of Prof'l Reg.*, 431 So. 2d 180 (Fla. 1st DCA 1983)(architect can be subjected to discipline for failure to comply with applicable codes). The Proposed Rule substantially affects Petitioner's architect members as it impacts the process of updating the Code as required by section 553.73, Florida Statutes, and could ultimately result in the Code subjecting architects and other construction professionals, as well as the public, to unsafe or unreasonable requirements.

5. FAAIA has been authorized to file this Petition on behalf of its architect members who would be substantially affected should the Proposed Rule be adopted. FAAIA therefore has standing to pursue this rule challenge. *See NAACP, Inc. v. Florida Bd. of Regents*, 863 So. 2d 294 (Fla. 2003) (confirming that association with members who are substantially affected by proposed rule has associational standing to pursue rule challenge on behalf of members).

IV. GROUNDS FOR THE INVALIDITY OF THE PROPOSED RULE

6. Any person substantially affected by a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority. § 120.56(1), Fla. Stat.

7. An “invalid exercise of delegated legislative authority” is an “action that goes beyond the powers, functions, and duties delegated by the Legislature.” § 120.52(8), Fla. Stat. A rule is an “invalid exercise of delegated legislative authority” if any one of the following, among others, applies:

- (b) The agency has exceeded its grant of rulemaking authority;
- (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented;
- (d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;
- (e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or
- (f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

§ 120.52(8), Fla. Stat.

8. Furthermore, section 120.52(8), Florida Statutes, provides that:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. **An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy.** Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(emphasis added).

9. Pursuant to section 120.52(8), Florida Statutes, the Proposed Rule is an invalid exercise of delegated legislative authority because it enlarges, modifies, and contravenes the provisions of Florida Statutes it purports to implement.

A. The Proposed Rule Enlarges, Modifies, and Contravenes the Law Implemented Because it Injects a Standard for Approval Into the Triennial Update Process that is Unsupported in Statute.

10. The Proposed Rule purports to change the triennial update process for the Florida Building Code to conform the Proposed Rule with changes made to section 553.73, Florida Statutes, in 2017. *See* Ch. 2017-149, Laws of Florida.

11. Chief among the Proposed Rule changes is the requirement that only provisions of certain model codes that are “needed to accommodate the specific needs of this state” may be included in the Florida Building Code when the triennial update is adopted.

12. Specifically, the Proposed Rule provides, in part, as follows:

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

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

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

2. No sooner than ninety days after the latest updates of the model codes are published, a complete listing of the changes to the model codes will be posted and made available for public review on the Commission's website.

3. No sooner than one hundred fifty days after the listing of the changes to the model codes is posted, the Commission's Technical Advisory Committees (TACs) will meet to review the changes to the model codes and make recommendations to the Commission regarding those changes that are needed to accommodate the specific needs of this state. The TACs' recommendations will be posted on the Commission's website for further public review.

4. No sooner than ninety days after posting the TACs' recommendations, the Commission will meet to vote whether to approve the TACs' recommendations regarding the latest changes to the model codes that are needed to accommodate the specific needs of this state. After Commission approval, the approved

changes to the Florida Building Code needed to accommodate the specific needs of this state will be made available on the Commission's website. The public will then have the opportunity to submit amendments to the Florida Building Code and the approved changes to the Florida Building Code pursuant to Subsection (3) of this rule.

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

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

(emphasis added).

13. The Proposed Rule enlarges, modifies and contravenes the statute by injecting this standard for approval into the triennial updating process that is nowhere to be found in statute.

i. The Florida Building Code Update and Amendment Process Prior to the 2017 Amendments to Section 553.73, Florida Statutes.

14. Prior to the 2017 changes, the statute required that the Florida Building Code be updated every 3 years. *See* § 553.73(7)(a), Fla. Stat. (2016) (“The commission, by rule adopted pursuant to ss. 120.536(1) and 120.54, shall update the Florida Building Code every 3 years.”)

15. This update was a re-adoption of a new Florida Building Code every three years whereby the Commission was required to “select the most current version” of certain international codes to “form the foundation codes of the updated Florida Building Code, if the version has been adopted by the applicable model entity.” § 553.73(7)(a), Fla. Stat. (2016). The international codes included: the International Building Code; the International Fuel Gas Code; the International Existing Building Code; the International Mechanical Code; the International Plumbing Code; the International Residential Code; the National Electrical Code; and the International Energy Conservation Code (collectively, the “Model Codes”), which were adopted as the foundation code for the updated Code.

16. The Commission had authority to modify any portion of the foundation codes but “only as needed to accommodate the specific needs of this state.” The same was true for changes to the foundation codes based on the Commission’s own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments so long as such changes were needed “to modify the foundation codes to accommodate the specific needs of the state.” § 553.73(7)(d), Fla. Stat. (2016). In other words, the Model Codes were the foundation code and could only be deviated from to the extent “needed to accommodate the specific needs of this state.”

17. The Florida Building Code technical amendment process to adopt amendments to the adopted Code is separate and distinct from the triennial Code update adoption process. Section 553.73(9)(a), Florida Statutes, provides that the Commission “may approve technical amendments to the Florida Building Cod once each year for statewide or regional application upon a finding that the statement,” among other things, “is needed in order to accommodate the specific needs of this state.” Again, this process allows for making changes or deviations to the adopted Florida Building Code to address specific issues that are needed to accommodate the specific needs of the state.

ii. The Florida Building Code Update and Amendment Process as Modified by the 2017 Legislative Changes.

18. In 2017 the Florida Legislature made certain changes to section 553.73, Florida Statutes, relating to the adoption and amendment of the Florida Building Code.

19. Under the newly amended statute, the Commission must still “adopt an updated Florida Building Code every 3 years.” § 553.73(7)(a), Fla. Stat. (2017). However, instead of requiring that the Florida Building Commission adopt the Model Codes as the foundation code,

the statute requires that the Commission “review . . . the most current updates of the [Model Codes]” when updating the Florida Building Code. *Id.*

20. The Commission must “adopt any updates to [the Model Codes] or other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development.” *Id.*

21. There is no language in the amended section 553.73, Florida Statutes, to support the requirement that the Commission, in considering whether to adopt any update in the Model Codes must specifically determine that the change in the Model Code is “needed to accommodate the specific needs of this state.”

22. The technical amendment restrictions were unchanged by the 2017 legislation so annual technical amendments may only be adopted “as needed to accommodate the specific needs of this state.” *See* §§ 553.73(7)(c) and 553.73(9)(a)1.

iii. The Proposed Rule Enlarges, Modifies and Contravenes the Statute by Prohibiting Inclusion of any Provision of the Model Codes in the Triennial Update Process Except Upon a Specific Finding that the Provision is “Needed to Accommodate the Specific Needs of this State”.

23. Consistent with the amended statute, the Proposed Rule states that the Commission may amend the Florida Building Code “to update the Florida Building Code every three years pursuant to subsection 553.73(7), Florida Statutes,” and that “when updating the code, the Commission shall review the most current updates to the [Model Codes] . . .” Proposed Rule 61G20-2.002(2)(a).

24. This is where the similarities end, however, as the remainder of the above-quoted sentence concludes that the review of the Model Codes as part of the triennial update is done “for

the purpose of determining whether the latest changes to the [Model Codes] are needed to accommodate the specific needs of this state.” *Id.*

25. The Proposed Rule then goes on to describe four steps to be taken for the review of material to be included in the updated Building Code. *Id.* at 61G20-2.002(2)(a)1.- 4. Among those steps are two separate stages of review, one by a Technical Advisory Committee of the Commission, and then by the full Commission, for purposes of determining changes that are “needed to accommodate the specific needs of this state.” *Id.* at 61G20-2.002(2)(a)3.- 4.

26. In other words, provisions of the Model Codes may be included in the updated Florida Building Code if and only if it can be established that such provisions are “needed to accommodate the specific needs of this state.” No such requirement is found in section 553.73, Florida Statutes, with regard to the triennial update to the Florida Building Code.¹

27. Because the Proposed Rule places restrictions or limitations on the potential updates to the Florida Building Code that are not provided or supported by section 553.73, Florida Statutes, the Proposed Rule enlarges, modifies or contravenes the statute and is an invalid exercise of delegated legislative authority.

B. The Proposed Rule Enlarges, Modifies, and Contravenes the Law Implemented Because it Purports to Allow the Commission to Select the Model Codes it Will Consider in the Triennial Update Process.

28. The Proposed Rule also includes a provision that purports to allow the Commission authority to select which Model Codes will be used to conduct its review during the triennial update process. Specifically, the Proposed Rule provides, in part, that:

¹ As noted above, sections 553.73(7)(c) and 553.73(9) relating to technical amendments do require that such amendments may only be adopted where needed to accommodate the specific needs of this state. As discussed, the adoption of the Florida Building Code every 3 years is distinct from the technical amendment process. Indeed, the Proposed Rule itself notes that an “amendment” is “an alteration to the adopted provisions of the Florida Building Code.” The purpose of the triennial update process is to adopt the Florida Building Code. Amendments, including technical amendments, are a distinct from the adoption process. The standard for adoption of technical amendments in sections 553.73(7)(c) and 553.73(9) simply does not apply to the triennial adoption of the Florida Building Code.

. . . For the purpose of conducting this review, the following steps will be undertaken:

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

Proposed Rule 61G20-2.002(2)(a)1.

29. Section 553.73(7), Florida Statutes, specifies the Model Codes that are to be used by the Commission in conducting the triennial update process, to wit:

The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electric Code, which is copyrighted and published by the National Fire Protection Association. . . . The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901.

§ 553.73(7)(a), Fla. Stat. (2017) (emphasis added).

30. There is nothing in the statute that allows the Commission to determine and select the Model Codes it will review for purposes of the triennial update process. Rather, these Model Codes are mandated by statute.

31. The rule enlarges, modifies and contravenes the statute by purporting to allow the Commission to deviate from the Model Codes specified in statute to be used for the triennial update of the Florida Building Code and is therefore an invalid exercise of delegated legislative authority.

V. STATEMENT OF RELIEF SOUGHT

FAAIA thus respectfully requests:

1. A hearing according to sections 120.569 and 120.57, Florida Statutes;
2. An order from the Administrative Law Judge that the Proposed Rule is an invalid exercise of delegated legislative authority; and
3. Further relief as the Administrative Law Judge deems just, including but not limited to an award of attorneys' fees pursuant to section 120.595, Florida Statutes.

Dated: December 6, 2017

Respectfully submitted,

/s/ D. Ty Jackson

J. Michael Huey (FL Bar 130971)

D. Ty Jackson (FL Bar 041216)

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*Counsel for Petitioner, Florida Association of
the American Institute of Architects, Inc.*

for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 760.06(12) FS.

LAW IMPLEMENTED: 760.11(1) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Cheyanne Costilla, General Counsel, Florida Commission on Human Relations, 4075 Esplanade Way, Room 110, Tallahassee, FL 32399-7020, (850)488-7082, cheyanne.costilla@fchr.myflorida.com

THE FULL TEXT OF THE PROPOSED RULE IS:

60Y-5.0011 Answer.

(1) Respondent may file an answer to the complaint within 25 days of the date the complaint was filed with the commission of notice of the filing. The answer shall be verified. The person filing the answer shall mail a copy to the complaining party.

(2) The answer may be reasonably and fairly amended at any time prior to the issuance of a determination pursuant to Rule 60Y-5.004, F.A.C.

Rulemaking Authority 760.06(12) FS. Law Implemented 760.11(1) FS. History—New 2-5-04, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Cheyanne Costilla, General Counsel

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Michelle Wilson, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: 11/6/17

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 11/14/17

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Florida Building Commission

RULE NOS.: RULE TITLES:

61G20-2.001 Commission Organization and Operations

61G20-2.002 Statewide Amendments to the Florida Building Code

PURPOSE AND EFFECT: To amend the Commission's operational procedures in order to comply with changes mandated by section 11, chapter 2017-149, Laws of Florida.

SUMMARY: The rules will be amended to reduce the voting threshold for the approval of amendments to the Florida Building Code by technical advisory committees to a two-thirds vote. The triennial update process for the Code will be changed in order to conform with changes made to section 553.73, F.S., and the form used for submitting proposed amendments will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Commission conducted an analysis of the proposed rule's potential economic impact and determined that it did not exceed any of the criteria established in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 553.73(3), (7), (8), (9), 553.76(1), 553.77(1)(a), FS.

LAW IMPLEMENTED: 553.73(3), (6), (7), (8), 553.74, 553.75 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: December 12, 2017, 8:30 a.m.

PLACE: Marriott Resort Hutchinson Island, 555 NE Ocean Boulevard, Stuart, FL 34996

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 10 days before the workshop/meeting by contacting: Barbara Bryant, Building Codes and Standards Office, Division of Professions, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399, (850)487-1824, fax: (850)414-8436.. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Thomas Campbell, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-0772, (850)717-1823.

THE FULL TEXT OF THE PROPOSED RULE IS:

61G20-2.001 Commission Organization and Operations.

(1) through (10) No change

(11) Resolution of petitions for declaratory statement shall be resolved as provided in Chapter 120, F.S., and Chapter 28-105, F.A.C. Chapters 120 and ch. 28, F.A.C., upon a vote of the majority of Commissioners or Committee members present. Resolution of petitions for waiver of accessibility requirements shall be resolved as provided in Chapter 61G20-4, F.A.C.

(12) In all other matters, excepting procedural motions and votes on amendments to the Florida Building Code by Technical Advisory Committees, a 75% supermajority voting requirement will supercede the normal voting requirements used in Robert's Rules of Order for decision making on all motions. The Commission and all of its Committees shall only consider motions to approve and not consider motions to deny. In addition, the Commission and all of its Committees shall utilize their adopted meeting guidelines for conduct during meetings.

(13) through (17) No change

Rulemaking Authority 553.76(1), 553.77(1)(a) FS. Law Implemented 553.74, 553.75 FS. History—New 5-15-75, Amended 4-18-78, Formerly 9B-3.04, Amended 9-7-00, 11-20-01, 9-13-07, Formerly 9B-3.004, 9N-2.001, Amended.

Substantial rewording of Rule 61G20-2.002 follows. See Florida Administrative Code for present text.

61G20-2.002 Statewide Amendments to the Florida Building Code

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

(a) Amendment means an alteration to the adopted provisions of the Florida Building Code. Amendments shall include all alterations as referenced herein, whether adopted by the Commission for statewide or regional application; or the local authority having jurisdiction, referred to as local amendments. More specifically,

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

2. Technical amendment needed to accommodate the specific needs of this state includes but is not limited to amendments to the Florida Building Code that provide for the following:

a. Establish minimum life safety construction requirements to protect buildings and their occupants from fire, wind, flood, and storm surge using the latest technical research and engineering standards for buildings and materials products.

b. Provide for flood protection provisions that are consistent with the latest flood protection requirements of the National Flood Insurance Program.

c. Maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal

Emergency Management Agency, and the United States Department of Housing and Urban Development.

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

e. Maintain coordination with the Florida Fire Prevention Code.

f. Provide for the latest industry standards and design.

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

(b) Strengthens means to make more stringent and provide for greater lifesafety.

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

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

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

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

2. No sooner than ninety days after the latest updates of the model codes are published, a complete listing of the changes to the model codes will be posted and made available for public review on the Commission's website.

3. No sooner than one hundred fifty days after the listing of the changes to the model codes is posted, the Commission's Technical Advisory Committees (TACs) will meet to review the changes to the model codes and make recommendations to the Commission regarding those changes that are needed to accommodate the specific needs of this state. The TACs' recommendations will be posted on the Commission's website for further public review.

4. No sooner than ninety days after posting the TACs' recommendations, the Commission will meet to vote whether

to approve the TACs' recommendations regarding the latest changes to the model codes that are needed to accommodate the specific needs of this state. After Commission approval, the approved changes to the Florida Building Code needed to accommodate the specific needs of this state will be made available on the Commission's website. The public will then have the opportunity to submit amendments to the Florida Building Code and the approved changes to the Florida Building Code pursuant to Subsection (3) of this rule.

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

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

(3) Amendments to the Florida Building Code submitted pursuant to Subsections 553.73(7), F.S., 553.73(8), F.S., and 553.73(9), F.S., shall be submitted on the Code Amendment Proposal Form, No. 61G20-1.001, effective XXXXX 2017, adopted and incorporated herein, which may be found on the Building Code Information System at http://www.floridabuilding.org/cm/cm_code_srch.aspx, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-08786> or by contacting the Department of Business and Professional Regulation, Office of Codes & Standards, 2601 Blair Stone Road, Tallahassee, Florida 32399-0772. The Code Amendment Proposal Form shall be submitted online at http://www.floridabuilding.org/cm/cm_code_srch.aspx and shall be reviewed by Commission staff for sufficiency. Commission staff shall ascertain 1) whether the amendment to the code has been submitted in legislative format, 2) if the rationale for amending the code has been provided, and 3) if all required questions regarding fiscal and other impacts have been answered by the proponent. The term "NA" or "Not applicable" shall be considered an insufficient answer to statutorily required questions. If a proposed code amendment is submitted more than two weeks prior to the deadline established and staff finds the proposal to be insufficient, staff shall notify the proponent via email of the nature of its insufficiency and that if the proponent of the amendment elects to resubmit the proposal curing the insufficiency, it must be resubmitted prior to the deadline. Once a Code Amendment Proposal has been found sufficient, Commission staff shall verify such status online, enabling the Building Code Information System to show the proposal to the general public for comment. Code Amendment Proposals found insufficient shall not be verified or considered as building code amendments in the code amendment process.

(a) Each proposed amendment will be heard first by the appropriate Technical Advisory Committee, which will consider the proposal and all documentation submitted therewith, and consider whether to recommend approval by a two-thirds vote. If the proposal fails to achieve a two-thirds

favorable vote, it is forwarded to the Commission for action based upon the applicable criteria. The Committee may modify the proposed amendment if it provides the documentation required by subsection 61G20-1.001(3), F.A.C. After modification, the Committee must then vote whether to recommend adoption as amended. If the proposed amendment as modified fails to achieve a two-thirds favorable vote, the proposal is forwarded to the Commission for action.

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

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

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

(4) Each amendment approved for adoption by the Florida Building Commission pursuant to Subsection 553.73(9), F.S., shall take effect no earlier than three months after the rule amendment is filed for adoption with the Department of State. Rulemaking Authority 553.73(3), (7) ~~;~~ ~~(8)~~; (9), 553.76(1), (2), (4), 553.77 FS. Law Implemented 553.73(3), (6) ~~;~~ ~~(7)~~; (8), 553.76(2), 553.77 FS. History—New 11-20-01, Amended 6-8-05, 2-28-06, 9-13-07, 7-30-08, Formerly 9B-3.050, 9N-2.002, Amended 7-1-13, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Florida Building Commission

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Building Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 08, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 25, 2017.