

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

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	7/9/2015
File #	

FRANK LAPETE and RESPONSIBLE ENERGY
CODES ALLIANCE,

Petitioners,

DS 2015-086

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

Petitioner, FRANK LAPETE (herein "LaPete") and RESPONSIBLE ENERGY CODES ALLIANCE (herein "RECA"), by and through their undersigned legal counsel, pursuant to Section 120.565, Florida Statutes (2014), and Rule 28-105, Florida Administrative Code, hereby petition for a DECLARATORY STATEMENT regarding provisions of the Florida Building Code, Energy Conservation Volume, 5th Edition (2014). In support thereof, Petitioners state as follows:

Identification of the Agency

1. The name and address of the agency affected is:

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION, FLORIDA BUILDING COMMISSION
1940 N. Monroe Street, Tallahassee, Florida 32399

Identification of Petitioners

2. For purposes of this petition, the names and addresses of the Petitioners are:

Frank LaPete and
Responsible Energy Codes Alliance
% Fred R. Dudley, Esq.
Dudley, Sellers & Healy, LP
3522 Thomasville Road, Suite 301
Tallahassee, Florida 32309
(850) 292-3471 Direct
(850) 222-7339 Fax
dudley@mylicenselaw.com

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3. Petitioner LaPete is the holder of an active current Certified General Contractor's license #CGC011493 issued by the agency for state-wide contracting services, who constructs both new and remodeled residential and non-residential buildings, the construction of which are directly impacted by the Florida Building Code. In particular, LaPete has been requested to estimate a contract price of 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. Without such standards, LaPete is unable to specify the types of replacement windows required and the costs thereof.

4. Petitioner, RECA, is an unincorporated association consisting of construction product and equipment manufacturers, trade associations and other organizations who promote energy conservation through thermal efficient building code requirements, a substantial number of which are directly affected by such code provisions, some of whom would have standing to file this petition on their own. The interests RECA seeks to protect are relevant to its organizational purposes, but the statement and relief sought herein does not require the participation of its individual members.

5. For purposes of this petition, the names, addresses, and telephone numbers of the Petitioner's representative, which shall be the address for service purposes, are:

Fred R. Dudley, Esq.
Bar No. 111060
Dudley, Sellers & Healy LP
3522 Thomasville Road, Suite 301
Tallahassee, FL 32309
Phone: (850) 294-3471
dudley@mylicenselaw.com

Statement Being Sought

6. Petitioners seek a determination that all replacement fenestration in existing buildings must comply with U-factor and SHGC requirements consistent with R402.3.6, Florida Building Code, Energy Conservation, 5th Edition (2014) irrespective of whether the building meets the code definition of “renovated building.”

Statutory Provisions and Agency Rules for Which Statement is Sought

7. Section 553.903, Florida Statutes (2014) which establishes the scope and applicability of the Florida Building Code-Energy Conservation, including 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...”

8. Section R101.4.7, Florida Building Code, Energy Conservation, 5th Edition (2014), which sets thermal efficiency standards for a list of specific “building systems and components where new products are installed or replaced in existing buildings,” and which shall meet the minimum efficiency requirements of the code. This section specifically lists “replacement fenestration.”

9. Section R402.3.6, Florida Building Code, Energy Conservation Volume, 5th Edition (2014), which specifies that “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 R402.1.1.”

Substantial Effect of Statutes and Rules on Petitioners

10. In the absence of the statement being sought herein, Petitioners are 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,

thereby risking possible noncompliance with the building code (which, in the case of LaPete, may constitute a violation of the licensing laws resulting in the loss of, or sanction being imposed against, his license). The lack of a uniformly-applied thermal efficiency standard could also create an unequal playing field among manufacturers and suppliers of windows, as well as the contractors who must specify the correct products in bids.

Relief Requested

11. Petitioners request the following relief:

(a) This petition be referred to the Energy Conservation Technical Advisory Committee (“TAC”) of the Commission for a public hearing on this petition, and that a recommendation be made by that TAC to the full Commission for a final public hearing hereto.

(b) A Final Order be entered finding 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.

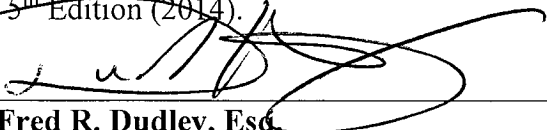
(c) Such other relief granted Petitioners as may be appropriate in the circumstances.

Discussion and Proposed Finding

We believe that consistent with Section R402.3.6 and Section R104.1.7 of the Florida Building Code-Energy Conservation, 5th Edition (2014), where some or all of an existing fenestration unit is replaced with a new fenestration product, the new unit must meet the applicable U-factor and SHGC requirements of Table R402.1.1. Replacement fenestration is specifically listed among the “systems and components” in code section R101.4.7 that must meet specified thermal efficiency standards “where new products are installed or replaced in existing buildings”,

and is within the Commission's authority to regulate the installation or replacement of building systems and components under Florida Statutes Section 553.903.

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." Although code section R101.4.8 lists "existing buildings" among several general categories of buildings which are exempt from the provisions of the code, 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. Moreover, to completely exempt existing buildings from the Commission's authority to regulate would run contrary to the more specific thermal efficiency standards set in sections R101.4.7 and elsewhere in the code, and would place the code in conflict with Florida Statutes. The Commission acted within its authority under Florida Statutes Section 553.903 when it set efficiency requirements for replacement fenestration in existing buildings in the Florida Building Code, Energy Conservation, 5th Edition (2014).



Fred R. Dudley, Esq.

Fla. Bar No. 0111060

By David P Healy, Esq.

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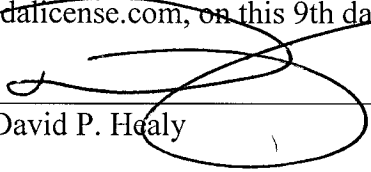
(850) 294-3471

Attorneys for Petitioners:

FRANK LAPETE and RESPONSIBLE ENERGY
CODES ALLIANCE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this petition has been hand-delivered to FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, ATTENTION: AGENCY CLERK, with a true and complete copy to DREW WINTERS, ACTING EXECUTIVE DIRECTOR, FLORIDA BUILDING COMMISSION, by e-mail to Drew.Winters@myfloridalicense.com and to APRIL HAMMONDS, ASSISTANT GENERAL COUNSEL, by e-mail to April.Hammonds@myfloridalicense.com, on this 9th day of July 2015.



David P. Healy