

VIA Electronic Mail and FedEx

Mo Madani
Office of Codes and Standards
Department of Business and Professional Regulation
2601 Blair Stone Road
Tallahassee, FL 32399

October 22, 2018

RE: RECA Response to Petition for Declaratory Statement of the Building Code Advisory Board of Palm Beach County Regarding Replacement Fenestration, No. 61G20-1.001

Dear Mr. Madani,

The Responsible Energy Codes Alliance offers the following brief response to the Petition for Declaratory Statement filed by the Building Code Advisory Board (BCAB) related to replacement fenestration per the invitation to submit a response in the notice of the Petition published in the Florida Register on October 1, 2018. These comments reflect our general views on the topic based on our experience and involvement in Florida's code development process.

RECA's mission is to promote improved building energy codes nationwide and we have participated in Florida's code development process for many years. In general, we are concerned with any potential code interpretation that may substantially limit the applicability of the energy code in existing buildings and that may limit the Commission's authority to establish code provisions that require certain replacement components to meet code requirements. As for replacement windows specifically, improved energy efficient fenestration has an enormous positive impact on existing homes in the state, and is appropriately required by the code when fenestration is replaced in existing buildings.

1. We Recommend That the Commission Consider Whether a Declaratory Statement Is the Appropriate Means to Address the Issues Raised in the Petition.

The BCAB Petition does not identify how the Florida Building Code applies to the Petitioner's particular set of circumstances, as required by Section 120.565, Florida Statutes and Florida Rules Section 28-105.001. The Petition cites both the commercial and residential code requirements, but it does not identify a specific project to which these requirements would apply. In effect, the Petition requests a general advisory and legal opinion on the viability and applicability of replacement fenestration requirements under the code. We do

not believe that this is the purpose of the declaratory statement process, where the result is generally limited to a fact-specific interpretation applicable solely to the project that is the subject of the request. Given the nature of the carefully circumscribed declaratory statement process, including the procedural requirements and limits, the Commission should consider whether the process can and/or should be utilized to address a public policy issue of broad general applicability and the potential problems associated with such an approach.

Moreover, in our view, even if this Petition is ultimately taken up by the Commission, any decision should be carefully and specifically limited to a particular set of circumstances related to the Petitioner, and the decision should clearly state that it is not to be applied more broadly.

2. Where the Florida Building Code Establishes a Specific Thermal Efficiency Requirement for a Replacement System or Component, That Requirement Applies Irrespective of Whether the Cost of Work is Over 30% of the Assessed Value of the Building.

If the Florida Building Commission decides to issue a Declaratory Statement, we believe the appropriate responses to the questions are as follows:

- As to **Question 1a**: Does Section 501.7 of the Energy Conservation Volume require the replacement windows to meet the solar heat gain coefficient listed in Table R402.2.1.2 of the Florida Energy Conservation Volume? **Yes.**
- **Question 1b**: Does Section 101.4.2 exempt the replacement windows since they don't exceed 30% of the assessed value of the structure? **No.**
- **Question 2a**: Does Section 501.7 of the energy Conservation Volume require the replacement window to meet the solar heat gain coefficient listed in Table R402.2.1.2 of the Florida Energy Conservation Volume? **Yes.**
- **Question 2b**: Does Section 101.4.2 exempt the replacement window since they don't exceed 30% of the assessed value of the structure? **No.**

The Commission acted within its authority in the Florida Building Code, 6th Edition to set reasonable efficiency requirements for replacement fenestration. The replacement fenestration provisions were originally adopted as part of the 2010 Florida Building Code, then clarified in the 5th Edition, and these clarifications were carried forward into the 6th Edition of the Florida Building Code adopted in 2017. Sections R501.7 and R503.1.1.1 clearly require replacement fenestration to meet the same SHGC requirements as fenestration used in new residential construction. The commercial requirements in sections C401.2.1 and C501.7 are essentially the same.

In setting the replacement fenestration requirements through the code update process, the Commission did not establish limits on the applicability of the requirements based on the assessed value of the structure. Further, the Florida Legislature has directed and authorized the Commission to set thermal efficiency requirements for replacement systems and components, and these requirements apply irrespective of whether the building meets the 30% threshold for a “renovated building.”

Questions 1b and 2b of the Petition ask whether the language in Sections R101.4.2/C101.4.2 exempt existing buildings from the replacement fenestration requirements unless they qualify as “renovated buildings,” that is, an alteration costs at least 30% of the assessed value of the building under Section 553.906, Florida Statutes. There are several reasons why this interpretation does not work:

- **Such an exemption would ignore the history and plain language of the statute.** In the late 1970’s, Florida statutes established three main categories of buildings for purposes of regulation – New, Renovated, and Exempt.¹ “Renovated Buildings” are defined as those buildings undergoing alterations where the cost of alterations exceeds 30% of the assessed value of the structure, and a list of specific requirements for these buildings can be found in Section 553.906, Florida Statutes.

However, in 1994, the Legislature added a fourth category to the scope of the Commission’s authority – “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.”² That language provides an additional means for the Commission to set requirements for individual components of the building without regard to whether the alterations are smaller than a 30% renovation.

- **Such an exemption would ignore the list of specific requirements that apply to existing buildings.** For the last few code cycles, the Commission has acted in response to the Legislature’s mandate and set requirements for specific replacement systems and components, including HVAC equipment, pool pumps, lighting, etc. A partial list of these replacement systems and components can be found in Sections 553.909 and 553.912, Florida Statutes, but the Legislature did not limit the

¹ See Florida Statutes Section 553.903. “Applicability.—This part 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. The provisions of this part shall constitute a statewide uniform code.”

² See Section 553.903, Florida Statutes.

Commission to that list. Starting in the 2010 Florida Building Code, and then again in the 5th and 6th Edition Codes, by that same authority, the Commission adopted the *IECC* provisions related to replacement fenestration, among other building components. (See Florida Building Code, 6th Edition, sections R501.7 and C501.7 for the current list of building systems and components for which thermal efficiency requirements are set.) This subset of replacement systems and components must meet the code irrespective of whether the building qualifies as a “renovated building.”

- **Such an exemption could curb the Commission’s ability to comply with the requirements of Section 553.903, Florida Statutes.** If existing buildings were completely exempt from regulation outside of a massive and costly alteration, then the Commission would not be able to effectively regulate these important systems at all. This would create a conflict with the statute, would keep the Commission from doing its job properly, and would not be in the public interest.

In our view, the most straightforward interpretation of the code and statutes—and the one that would not require a massive rewrite of the code or statutes—is as follows:

- Existing buildings that undergo alterations that exceed 30% of the assessed value of the structure must comply with the full list of requirements in Section 553.906, Florida Statutes, titled “Renovated Buildings.”
- All existing buildings that undergo alterations (including those for 30% or less of the assessed value of the structure) must comply with the shorter list of specific replacement systems and components in sections R501.7 and C501.7 of the Florida Building Code, 6th Edition. The Commission may continue to add items to this list in future editions of the code through the code development process, as it deems appropriate, per Section 553.903, Florida Statutes.
- Of course, there are still limited exceptions available. For example, repairs are not required to meet the energy code. Also, if there are historic preservation issues, conflicts with neighborhood covenants, architectural issues, or other special cases, a Building Official can exercise professional judgment on a case-by-case basis through section R102.1/C102.1. On the other hand, to exempt replacement windows from the code (outside of a massive renovation) would take that authority out of the hands of the Building Official to interpret the code, and we do not agree with that approach.

If the language of the statute is read in a way that creates a near-total exemption, we are concerned that it would be far too broad for what appears to be a limited set of concerns. Looking only at windows, in an average year we estimate that over 1 million windows will be replaced statewide. If a “30% exception” applies to basically exempt all replacement fenestration (and potentially other replacement systems and components) from the code

requirements except in very limited circumstances, the negative impact on energy use and cost, electrical peak demand, the environment, and homeowner well-being would be very substantial for the state. We are concerned that if such an exemption from the thermal efficiency requirements is created in this process, many other code requirements that apply to existing buildings could also be called into question, to the detriment of owners and occupants of these buildings.

Conclusion

In sum, we believe the Commission should carefully consider whether this Petition is an appropriate forum for the issues raised. However, if the Commission decides to address the issues raised in the Petition, we believe the most logical conclusion is that the Commission does have the authority to set and has set thermal efficiency requirements for existing buildings (including replacement window efficiency requirements) irrespective of the scale of alterations, and that the requirements set sections R501.7 and C501.7 of the Florida Building Code, 6th Edition are well within that authority.

Sincerely,

Eric Lacey
RECA Chairman