HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 635 Building Permits
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Brackett	Anstead

SUMMARY ANALYSIS

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction by local governments through the issuance of permits and completion of inspections.

It is unlawful to construct, erect, alter, repair, secure, or **demolish** any building without first obtaining a building permit. Any construction work that requires a building permit also requires plan reviews and inspections by the building official to ensure the work complies with the Building Code.

The state's Chief Financial Officer, as the State Fire Marshal, is required to adopt the Florida Fire Prevention Code (Fire Prevention Code), which sets forth fire safety standards for property, and is enforced by local fire safety officials within each local government in the state.

If a building is subject to the Fire Prevention Code, a building permit also requires plan reviews and inspections by the local fire safety official.

If the local building official or plans examiner finds that building plans do not comply with the Building Code, the local building official or inspector must identify the specific plan features that do not comply with the Building Code, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information to the permit applicant.

The bill:

- Requires local governments that make substantive changes to building plans to notify the permitholder of the specific reasons for changes.
- Prohibits local governments from making substantive changes to plans after a permit has been issued unless the changes are required for compliance with the Building Code or the Fire Prevention Code.
- Requires a building official or inspector who requests another person review building plans, notify the local government if such person determines the plans do not comply with the Building Code.
- Requires a local fire official to notify the permit applicant if building plans do not comply with the Fire Prevention Code and give specific reasons why the plans are not in compliance.
- Allows a plans reviewer, inspector, building official or fire safety inspector to be disciplined for failure to notify the appropriate person of the reasons for making substantive changes to building plans.
- Prohibits local governments from prohibiting or restricting private property owners from demolishing single-family buildings that are in certain flood zones, while exempting certain historic buildings.
- Limits the review process for applications for such demolition permits and provides that such applications may not be subject to additional local regulations or public hearings.
- Prohibits local governments from requiring additional building requirements for new homes built on the construction site of such demolished single-family buildings.

The bill does not appear to have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Building Code and Fire Prevention Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.[1]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[2] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[3]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[4]

The Florida Building Commission (Building Commission) was statutorily created to implement the Building Code. The Building Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[5]

Building Code Administrators, Inspectors, and Plans Examiners

Building code administrators, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate. The BCAIB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[6]

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.[7]

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 4, 2022).
[2] *Id.*
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan. 4, 2022).
[4] *See* s. 553.72(1), F.S.
[5] Ss. 553.73, and 553.74, F.S.
[6] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.
[7] S. 468.603(2), F.S.

A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with the Building C ode and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:[8]

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with the Building Code. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:[9]

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

Florida Fire Prevention Code

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[10] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Prevention Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Prevention Code every three years.[11] When adopting the Fire Prevention Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:[12]

- NFPA's Fire Code (1);
- Life Safety Code (101); and

[8] S. 468.603(4) and (5), F.S.
[9] S. 468.603(8), F.S.
[10] S. 633.104, F.S.
[11] S. 633.202, F.S.
[12] S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by

- Guide on Alternative Approaches to Life Safety (101A).

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[13]

The most recent Fire Prevention Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Prevention Code took effect on December 31, 2020.[14]

The Building Code and the Fire Prevention Code

The Building Code and the Fire Prevention Code work parallel, but are independent of each other. The Building Commission updates and adopts the Building Code, which must reference the Fire Prevention Code. However, the Fire Prevention Code is adopted, modified, interpreted, and maintained by DFS. The Building Commission may not adopt a fire prevention or life safety code, and nothing in the Building Code may affect the statutory powers, duties, and responsibilities of any local fire safety official or DFS.[15]

Conflicting requirements between the Building Code and the Fire Prevention Code must be resolved by agreement between the Building Commission and the State Fire Marshal. The agreement must be in favor of the requirement that offers the greatest degree of life safety or alternatives that would provide an equivalent degree of life safety and an equivalent method of construction.[16]

If the Building Commission and State Fire Marshal are unable to agree on a resolution, the question must be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest life safety, or alternatives that would provide an equivalent degree of life safety and an equivalent method of construction.[17]

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Building Code.[18] These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[19]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.[20]

Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector to conduct all fire safety inspections required by law.[21]

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partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Jan. 4, 2022).

[13] *Id.*

[14] Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Jan. 4, 2022).

[15] S. 553.73(1), F.S.; Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).

[16] S. 553.73(1), F.S. Similar provisions apply if a local building official and local fire safety official cannot agree. *See* s. 553.73(11), F.S.

[17] *Id.*

[18] Ss. 633.108 and 633.208, F.S.

[19] Ss. 633.208 and 633.214(4), F.S.

[20] S. 633.118, F.S.

[21] S. 633.216(1), F.S.

A fire safety inspector is a person who is officially assigned the duties of conducting fire safety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities. Fire safety inspectors are certified and regulated by the State Fire Marshal and are separate from building officials, inspectors, and plans examiners who are regulated by the BCAIB.[22]

Building Permits

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[23] Every local government must enforce the Building Code and issue building permits.[24]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[25] A building permit is not valid until the fees for the permit have been paid.[26]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[27] Any construction work that requires a building permit also requires plan reviews and inspections by the building official to ensure the work complies with the Building Code.[28]

Building Plans – Current Situation

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.[29]

An application for a permit must include building plans. A local enforcing agency may not issue a permit until the building official or plans examiner has reviewed the building plans and determined that they comply with the Building Code.[30]

A building official or plans examiner does not review building plans to determine if they comply with the Fire Prevention Code. If the building or structure is subject to the Fire Prevention Code, the local fire safety official must also review the building plans.[31] A local enforcing agency may not issue the permit until the local fire safety official has approved the plans. However, if the building or structure is not subject to the Fire Prevention Code, the local enforcing agency may not require the local fire safety inspector to review the plans.[32]

When the building official issues the permit, the building official must also approve the plans by writing or stamping, "Reviewed for Code Compliance" on the plans. The local building official must keep one set of plans and another set must be returned to the applicant, who must keep the set at the work site.[33]

[22] Ss. 633.102(12) and 633.216, F.S.
[23] S. 553.72, F.S.
[24] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[25] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[26] S. 109.1 of the Seventh edition of the Florida Building Code (Building).
[27] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[28] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).
[29] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[30] S. 553.79(2), F.S.
[31] *Id.*
[32] *Id.*
[33] S. 107.3.1 of the Seventh edition of the Florida Building Code (Building).

Construction work must be in accordance with the approved plans, and any changes made during construction that are not in compliance with the approved plans must be resubmitted for approval as an amended set of construction documents.[34]

If the **local building official or plans examiner** finds that building plans do not comply with the Building Code, the local building official or inspector must **identify the specific plan features** that do not comply with the **Building Code**, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information to the permit applicant.[35]

If a building official or plans reviewer **denies a permit** application, revokes, or requests a modification of a building permit, the building official or plans reviewer must give the permit applicant a **reason for denying**, revoking, or requesting a modification of the permit. The reason must be based on compliance with the Building Code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the **Building Code** or a local ordinance, is grounds for discipline against the building official or plans reviewer's license.[36] The Fire Prevention Code is not currently included in these provisions.

However, current law is not clear on whether local governments must notify permitholders about the specific reasons why buildings plans do not comply with the Building Code or the Fire Prevention Code, if they make or require **substantive changes** to building plans after the permit is issued.

According to the sponsor, there have been industry reports that building inspectors and local fire officials are making substantive changes to building plans after the building permit has been issued, which deviate from the Building Code or Fire Prevention Code. These changes can lead to delays in construction and can also increase the costs of construction.[37]

Building Plans – Effect of the Bill

The bill provides that if a building official or inspector requests another person to review building plans and that person identifies specific plan features that do not comply with the Building Code, the building official or inspector must provide this information to the local enforcing agency.

If a local government determines that building plans in an application for a building permit do not comply with the **Fire Prevention Code**, the local fire official must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the determination is based, and provide this information to the permit applicant. If the local fire official is a certified fire safety inspector, failing to provide such information to the permit applicant is grounds for discipline against the local fire official's certificate.

The bill provides that after a local government issues a building permit, the local government may not make or require any **substantive changes** to the building plans unless the changes are required for compliance with the Building Code, the Fire Prevention Code, or local amendments to such codes.

If a local government makes substantive changes to building plans after the permit is issued, the local government must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder. If the changes are required to comply with the Fire Prevention Code, the local fire official must also provide this information to the permitholder.

The bill provides that a plans reviewer or inspector who fails to provide a building official with the reasons for making or requiring substantive changes to building plans is subject to discipline against

[34] S. 107.4 of the Seventh edition of the Florida Building Code (Building).
[35] S. 553.79(2), F.S.
[36] S. 553.79(1), F.S.
[37] Testimony from Representative Randall Scott Maggard, *1/12/2022 House Regulatory Reform Subcommittee*, https://thefloridachannel.org/videos/1-12-22-house-regulatory-reform-subcommittee/ (last visited Jan. 17, 2022).

their license. Failing to provide a permit applicant or permitholder with the reasons for making or requiring substantive changes to building plans is grounds for discipline against a building official's license.

The bill also provides that a local fire official, who is a certified fire safety inspector, who fails to provide a permitholder with the specific reasons for making or requiring substantive changes to building plans is subject to discipline against their certification.

Demolition Building Permits – Current Situation

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or **demolish** any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[38]

According to news reports, since 2019, there has been an uptick in permits to demolish older single-family homes in South Florida in order to build new single-family homes.[39]

Some local governments in Florida have adopted land development regulations that determine certain older single-family buildings to be historic. Some local governments have placed restrictions on property owners from obtaining permits for the demolition of the older single- family buildings that the local governments have deemed historic. Below are examples of such regulations:

- Prohibiting certain building permits, such as demolition permits, for buildings that are being considered for historic designation.[40]
- Requiring a public hearing before a preservation board.[41]
- Requiring a special demolition permit.[42]
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:[43]
    - The colors, pattern, and trim used in the building's façade.
    - Design of the roof.
    - The proportions and relationships between doors and windows.

Proponents to these land development regulations argue that people buy property in order to demolish homes that are designed by noteworthy architects, owned by famous people, or reflect Florida's history. Proponents argue these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.[44]

Opponents of these regulations argue that these older homes are damaged, do not meet the Building Code's minimum flood elevation requirements, and can be demolished for a new home that meets the requirements of the current Building Code.[45]

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[38] S. 553.79(1), F.S.
[39] Pedro Portal, *More demolition applications for historic houses in Miami Beach*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166757.html (last visited Jan. 12, 2022).
[40] *Id.*
[41] Article 8, Coral Gables Zoning Code; *Preserving Our Past*: A Guide to Historic Preservation in Coral Gables, https://evogov.s3.amazonaws.com/media/91/media/52093.pdf (last visited Jan. 17, 2022).
[42] Sec. 54-71., Town of Palm Beach Code of Ordinances.
[43] Sec. 54-122., Town of Palm Beach Code of Ordinances.
[44] Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022) https://www.miamiherald.com/opinion/editorials/article257198932.html (last visited Jan. 17, 2022).
[45] Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166737.html (last visited Jan. 12, 2022); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/ (last visited Jan. 17, 2022).

Demolition Building Permits – Effect of the Bill

The bill provides that a local law, ordinance, or **regulation may not prohibit** or otherwise restrict the ability of a private property owner to obtain **a building permit to demolish** his or her single-family residential structure provided that:

- Such structure Is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program;[46]
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

An application for a demolition permit for such single-family structure may only be reviewed administratively for compliance with the Building Code, Fire Prevention Code, local amendments to such codes, and any regulations applicable to a similarly situated parcel. Such applications may not be subject to any additional local land development regulations or public hearings.

A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.

If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new single-family residential structure constructed on the site of the demolished structure that would not otherwise be applicable to a similarly situated vacant parcel.

The bill provides that this does not apply to a:

- Structure designated on the National Register of Historic Places;[47]
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

B. SECTION DIRECTORY:

Section 1. Amends s. 553.79, F.S., relating to permits; applications; issuance; inspections.

Section 2. Amends s. 633.208, relating to minimum fire safety standards.

Section 3. Provides an effective date of July 1, 2022.

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[46] In order to support the National Flood Insurance Program, FEMA identifies, publishes, and periodically updates flood hazard data nationwide. This data is provided to communities in the form of a Flood Insurance Rate Map and Flood Insurance Study report, typically prepared in a countywide format. FEMA, *Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019*, https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited Jan. 17, 2022).

[47] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Jan. 17, 2022); National Park Service, *How to List a Property*, https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm (last visited Jan. 17, 2022).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact is unknown because it is unclear how often building plans are changed by building officials and local fire safety officials after the plans are approved by the local building department. It is also unclear about how often local governments prohibit or restrict single-family property owners from demolishing the single-family structures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES