~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 19, 2011

**H. 3474**

Introduced by Rep. Sandifer

S. Printed 5/19/11--H.

Read the first time January 27, 2011.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3474) to amend Section 6‑8‑20, as amended, Code of Laws of South Carolina, 1976, relating to the duties of the South Carolina Building Codes Council, so as to separate, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/SECTION 1. Section 6‑9‑40 of the 1976 Code, as last amended by Act 54 of 2007, is further amended to read:

“Section 6‑9‑40. (A)(1) The council is authorized to review, adopt, modify, and promulgate the building codes referenced in Section 6‑9‑50, ~~provided that~~ in accordance with the following :

~~(1)~~(a) A notice of intention to adopt a code, adopt a new edition of a code, or modify an existing code must be published in the State Register as a Notice of General Interest, on websites published by the Department of Labor, Licensing and Regulation, and must be provided to each local building department with instructions for its prominent display~~;~~.

~~(2)~~(b) The notice must include:

~~(a)~~(i) the address to which interested persons may submit written comments; and

~~(b)~~(ii) a period of not less than one hundred eighty days during which comments may be received~~;~~.

~~(3)~~(c) Comments must be assigned to a study committee appointed by the council which shall publish a Notice of General Interest in the same manner as provided in item (a) setting out the committee’s scope of review. The notice must give instructions for filing an intention to appear before or provide evidence or comments to the committee, or both. The committee must be comprised of at least three people with different technical backgrounds~~;~~. ~~and~~

~~(4)~~(d) The committee shall hold at least one public meeting, accept evidence and comments, and make a written recommendation to the council. Within one hundred eighty days from the end of the comment period, the council shall adopt, modify, or deny the recommendations from the committee. The council may modify or amend the code after a finding on the record that the modifications provide a reasonable degree of public health, safety, and welfare.

(2) ~~Any~~ An amended or modified code ~~shall~~ must be codified as provided for in Section ~~1‑23‑90~~ 6‑9‑55. The council shall determine whether the amended or modified code becomes effective on the first day of January or July. However, a code amended or modified pursuant to subsection (A)(1) does not take effect until the council has promulgated the code amendment or modification as a regulation pursuant to Section 6‑9‑55.

(B)(1) If it is discovered at any time between building code cycles that an existing building code requirement constitutes a new threat to the life or safety of building occupants that was unknown when the building code was last approved, an emergency building code modification may be made by the council. An emergency building code modification shall take effect on a date established by the council.

(2) The council must provide notice of a request for an emergency building code modification in the same manner as required for a regular council meeting.

(3) The council must conduct a hearing to consider an emergency building code modification at an open council meeting, and all proponents and opponents must be given ample time to state their positions.

(4) An emergency modification of a regulation pursuant to this subsection or the Administrative Procedures Act is not a permanent modification of the regulation until the council has complied with the requirements of subsection (A)(1) and Section 6‑9‑55.

(C) Modifications promulgated pursuant to this section do not require readoption by the council for subsequent editions of the building codes. Upon submission of a formal request, existing modifications ~~shall~~ must be reconsidered each time a new edition of the building code is considered for adoption by the council.”

SECTION 2. Section 6‑9‑55 of the 1976 Code, as added by Act 232 of 2010, is amended to read:

“Section 6‑9‑55. (A)(1) The council shall promulgate as regulations, in accordance with the procedure and requirements contained in Article 1, Chapter 23, Title 1, the Administrative Procedures Act, any provision of or amendment to any building code that was adopted pursuant to Section 6‑9‑40(A) that would affect construction requirements for one‑family or two‑family dwellings.

(2) If a modification is requested to be made, or is made, to a regulation pursuant to the Administrative Procedures Act, the provisions of the Administrative Procedures Act govern, and the council is not required to also comply with the provisions of Section 6‑9‑40(A)(1).

(3) If an emergency arises pursuant to Section 6‑9‑40(B) requiring a modification of a regulation, the council may proceed under the emergency provisions of the Administrative Procedures Act or Section 6‑9‑40(B), or both; if both, the provisions of both run concurrently and must be construed so as not to create a conflict. However, to permanently modify the regulation, the council shall comply with the provisions of Section 6‑9‑40(A)(1) and promulgate the modification in accordance with this section.

(B) No building code provision that would otherwise become effective after the effective date of this section concerning construction requirements for one‑family or two‑family dwellings shall be enforced until the effective date of the regulations required to be promulgated by this section.

~~(B)~~(C) Notwithstanding ~~subsection (A)~~ the provisions of this section, a regulation mandating the installation of an automatic residential fire sprinkler system in one‑family or two‑family dwellings shall not become effective at any time before January 1, 2014.”

SECTION 3. This act takes effect upon approval by the Governor./

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND SECTION 6‑8‑20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUTIES OF THE SOUTH CAROLINA BUILDING CODES COUNCIL, SO AS TO SEPARATE THE COUNCIL INTO THE SOUTH CAROLINA COMMERCIAL BUILDING CODES COUNCIL AND THE SOUTH CAROLINA RESIDENTIAL BUILDING CODES COUNCIL; TO AMEND SECTION 6‑9‑5, AS AMENDED, RELATING TO THE PUBLIC POLICY FOR BUILDING CODES, SO AS TO MAKE SPECIFIC REFERENCE TO BOTH THE COMMERCIAL BUILDING CODES COUNCIL AND THE RESIDENTIAL BUILDING CODES COUNCIL; TO AMEND SECTION 6‑9‑20, AS AMENDED, RELATING TO AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES, SO AS TO MAKE SPECIFIC REFERENCE TO BOTH THE COMMERCIAL BUILDING CODES COUNCIL AND THE RESIDENTIAL BUILDING CODES COUNCIL; TO AMEND SECTION 6‑9‑40, AS AMENDED, RELATING TO BUILDING CODE ADOPTION PROCEDURE, SO AS TO CLARIFY THE AUTHORITY OF BOTH THE COMMERCIAL BUILDING CODES COUNCIL AND THE RESIDENTIAL BUILDING CODES COUNCIL; TO AMEND SECTION 6‑9‑63, RELATING TO THE COMPOSITION AND FUNCTIONS OF THE SOUTH CAROLINA BUILDING CODES COUNCIL, SO AS TO DEFINE THE COMPOSITION OF BOTH THE COMMERCIAL BUILDING CODES COUNCIL AND THE RESIDENTIAL BUILDING CODES COUNCIL; AND TO AMEND SECTION 6‑9‑105, RELATING TO CODE VARIATIONS BASED ON PHYSICAL OR CLIMATOLOGICAL CONDITIONS, SO AS TO INCLUDE GEOLOGICAL CONDITIONS AS A CONSIDERATION FOR A VARIANCE, AND TO MAKE SPECIFIC REFERENCE TO THE APPROPRIATE COUNCIL FOR THE SUBMISSION OF PROPOSED VARIANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 6‑8‑20 of the 1976 Code, as last amended by Act 20 of 2009, is further amended to read:

“Section 6‑8‑20. (A) The South Carolina Commercial Building Codes Council and the South Carolina Residential Building Codes Council jointly ~~is~~ are responsible for the registration of a building codes enforcement officer, contract inspector, and special inspector pursuant to this chapter. The ~~council~~ councils, or ~~its~~ their designated ~~representative~~ representatives, may conduct hearings and proceedings required by law or considered necessary by the ~~council~~ councils. The Department of Labor, Licensing and Regulation shall employ and supervise personnel needed to administer this chapter. The ~~council~~ councils may promulgate regulations for the proper enforcement of this chapter.

(B) The ~~council~~ councils shall keep a record of ~~its~~ their hearings and proceedings and publish a roster of ~~its~~ their registrants. A registrant shall notify the appropriate council of a change in required information within ten days of the change.”

SECTION 2. Section 6‑9‑5 of the 1976 Code, as last amended by Act 83 of 2003, is further amended to read:

“Section 6‑9‑5. (A) The public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens. To secure these purposes, a person performing building codes enforcement must be certified jointly by the South Carolina Commercial Building Codes Council and the South Carolina Residential Building Codes Council, and this act is necessary to provide for certification.

(B) To clarify the intent of the General Assembly and address questions ~~which~~ that might arise or have arisen with respect to provisions of the nationally known codes ~~which~~ that have been or are in place, only those portions or provisions of the nationally known building and safety codes, which relate to building standards and safety, are binding upon a state or local governmental entity or agency ~~which~~ that adopts the building and safety codes authorized or required by this chapter.

(C) To further clarify the intent of the General Assembly, Chapter 9, Title 23 continues to apply to a person who may act under authority of the State Fire Marshal.~~and that~~ The allocation of inspection duties among local officials is not dictated by Title 6, but remains a matter for the local authority.”

SECTION 3. Section 6‑9‑20 of the 1976 Code, as last amended by Act 83 of 2003, is further amended to read:

“Section 6‑9‑20. Municipalities and counties may establish agreements with other governmental entities of the State to issue permits and enforce building codes in order to provide the services required by this chapter. The South Carolina Commercial Building Codes Council ~~(council)~~ and the South Carolina Residential Building Codes Council together jointly may assist in arranging for municipalities, counties, or consultants to provide the services required by this chapter to other municipalities or counties if a written request from the governing body of the municipality or county is submitted to the appropriate council.”

SECTION 4. Section 6‑9‑40 of the 1976 Code, as last amended by Act 54 of 2007, is further amended to read:

“Section 6‑9‑40. (A) The ~~council is~~ two building codes councils are authorized to review, adopt, modify, and promulgate the appropriate building codes referenced in Section 6‑9‑50, provided that:

(1) A notice of intention to adopt a code, adopt a new edition of a code, or modify an existing code must be published in the State Register as ~~a Notice of General Interest~~ specified in Section 6‑9‑55, on websites published by the Department of Labor, Licensing and Regulation, and must be provided to each local building department with instructions for its prominent display~~;~~.

(2) The notice must include:

(a) the appropriate council reviewing the building codes and the address to which interested persons may submit written comments; and

(b) a period of not less than one hundred eighty days during which comments may be received~~;~~.

(3) Comments must be assigned to a study committee appointed by the appropriate council which shall publish a Notice of General Interest ~~in the same manner as provided in item (1)~~ setting out the committee’s scope of review. The notice must give instructions for filing an intention to appear before, or provide evidence or comments to the committee, or both. The committee must be comprised of at least three people with different technical backgrounds~~;~~. ~~and~~

(4) The committee shall hold at least one public meeting, accept evidence and comments, and make a written recommendation to the appropriate council. Within one hundred eighty days from the end of the comment period, the appropriate building codes council shall adopt, modify, or deny the recommendations from the committee. The appropriate council may modify or amend the code after a finding on the record that the modifications provide a reasonable degree of public health, safety, and welfare.

~~Any~~ An amended or modified code ~~shall~~ must be codified as provided for in Section ~~1‑23‑90~~ 6‑9‑55. The appropriate council shall determine whether the amended or modified code becomes effective on the first day of January or July.

(B)(1) If it is discovered at any time between building code cycles that an existing building code requirement constitutes a new threat to the life or safety of building occupants that was unknown when the building code was last approved, an emergency building code modification may be made by the appropriate council. An emergency building code modification shall take effect on a date established by the appropriate council.

(2) The appropriate council must provide notice of a request for an emergency building code modification in the same manner as required for a regular council meeting.

(3) The appropriate council must conduct a hearing to consider an emergency building code modification at an open council meeting, and all proponents and opponents must be given ample time to state their positions.

(C) Modifications promulgated pursuant to this section do not require readoption by the ~~council~~ councils for subsequent editions of the building codes. Upon submission of a formal request, existing modifications ~~shall~~ must be reconsidered each time a new edition of the building code is considered for adoption by ~~the~~ either council.”

SECTION 5. Section 6‑9‑63 of the 1976 Code, as added by Act 83 of 2003, is amended to read:

“Section 6‑9‑63. (A) Each member of the ~~council~~ two councils must be appointed by the Governor for a term of four years and until a successor is appointed and qualifies. The ~~council~~ South Carolina Commercial Building Codes Council consists of ~~sixteen~~ ten members composed of:

(1) an architect licensed in South Carolina;

(2) an engineer licensed in South Carolina from a list of qualified candidates submitted to the Governor by the South Carolina Council of Engineering and Surveying Societies;

(3) ~~a residential home builder licensed in South Carolina from a list of qualified candidates submitted to the Governor by the Home Builders Association of South Carolina;~~

~~(4)~~ a general contractor licensed in South Carolina from a list of qualified candidates submitted to the Governor by the Association of General Contractors;

~~(5)~~ ~~a representative of the modular building industry from a list of qualified candidates submitted to the Governor by the Manufactured Housing Institute of South Carolina;~~

~~(6)~~(4) a local code enforcement officer registered in South Carolina, who has five or more years of experience in enforcing commercial and residential building codes. This individual serves concurrently on both the South Carolina Commercial Building Codes Council and the South Carolina Residential Building Codes Council;

~~(7)~~(5) a local fire marshal or local fire chief designated by the State Fire Marshal;

~~(8)~~(6) a municipal administrator, manager, or elected official;

~~(9)~~ ~~a county administrator, manager, or elected official;~~

~~(10)~~(7) a representative designated by the State Engineer of the State Budget and Control Board;

~~(11)~~ ~~a representative of the general public who is not in the practice of home or commercial safety inspection, construction, or building, and who does not have any financial interest in these professions, and who does not have any immediate family member in these professions;~~

~~(12)~~ ~~a disabled person;~~

~~(13)~~ ~~a representative of the property, casualty insurance industry;~~

~~(14)~~(8) a representative of the electrical industry who is either an engineer licensed in South Carolina or a master electrician from a list of qualified candidates submitted to the Governor by the Mechanical Contractors Association of South Carolina;

~~(15)~~(9) a representative of the mechanical or gas industry who is either an engineer licensed in South Carolina or a master mechanic from a list of qualified candidates submitted to the Governor by the Mechanical Contractors Association of South Carolina; and

~~(16)~~(10) a representative of the plumbing industry who is either an engineer registered in South Carolina or a master plumber from a list of qualified candidates submitted to the Governor by the Mechanical Contractors Association of South Carolina.

(B) The Residential Building Codes Council consists of seven members composed of:

(1) a residential home builder licensed in South Carolina from a list of qualified candidates submitted to the Governor by the Home Builders Association of South Carolina;

(2) a representative of the modular building industry from a list of qualified candidates submitted to the Governor by the Manufactured Housing Institute of South Carolina;

(3) a local code enforcement officer registered in South Carolina who has five or more years of experience in enforcing commercial and residential building codes. This individual serves concurrently on both the South Carolina Residential Building Codes Council and the South Carolina Commercial Building Codes Council;

(4) a county administrator, manager, or elected official serving on the county planning commission;

(5) a representative of the general public who is not in the practice of home or commercial safety inspection, construction, or building, and who does not have a financial interest in these professions, and who does not have an immediate family member in these professions;

(6) a disabled person, or an Aging in Place certified specialist;

(7) a representative of the property, casualty insurance industry.

(C) A vacancy must be filled in the manner of the original appointment for the unexpired portion of the term.

~~(C)~~(D) The primary function of the ~~council~~ councils is to accept all requests for variation from the series of codes listed in this chapter and to determine which variations, if any, are justified by local conditions and can be enacted after a finding on the record that the modification provides a reasonable degree of public health, safety, and welfare.

~~(D)~~(E) Each member of the ~~council~~ councils shall receive mileage, subsistence, and per diem as provided for other state boards, committees, or commissions for attendance at board meetings called by the chairman of the respective board.

~~(E)~~(F) The ~~council~~ councils shall elect from ~~its~~ their members a chairman and vice chairman. ~~The~~ Each council shall adopt regulations consistent with this chapter. A meeting may be called by the chairman on his own initiative and must be called by him at the request of three or more members of the appropriate council. Each member must be notified by the chairman in writing of the time and place of the meeting at least seven days before the meeting. ~~Nine~~ Six members constitute a quorum for the South Carolina Commercial Building Codes Council, and four members constitute a quorum for the South Carolina Residential Building Codes Council. When the councils meet together as a joint committee, nine members constitute a quorum. Each meeting is open to the public. An official decision of the ~~council~~ councils may be made only by a vote of at least two‑thirds of those members in attendance at the meeting.

(G) In the building codes adoption process, the building codes referenced in Section 6‑9‑50 will be assigned to the respective council based on the type of construction, commercial or residential, the building codes primarily effects. The South Carolina Commercial Building Codes Council will be responsible for adopting the following building codes: International Building Code, National Electrical Code, International Gas Code, International Plumbing Code, and International Mechanical Code. The South Carolina Residential Building Codes Council will be responsible for adopting the following building codes: International Residential Building Code. The South Carolina Commercial Building Codes Council and the South Carolina Residential Building Codes Council will jointly adopt the following building codes: International Energy Efficiency Code, International Fire Code, and International Green Building Code. The creation and release of new International Code Council building codes will be assigned for adoption to the appropriate council or councils based on whether the new building code primarily impacts commercial or residential construction.”

SECTION 6. Section 6‑9‑105 of the 1976 Code, as added by Act 83 of 2003, is amended to read:

“Section 6‑9‑105. (A) If a municipality or county contends that the codes authorized by this chapter do not meet its needs due to local physical, geological, or climatological conditions, the proposed variations and modifications must be submitted to the appropriate building codes council.

(B) The appropriate council may issue an approval after a finding on the record that the variation or modification provides a reasonable standard of public health, safety, and welfare.

(C) Where a boundary for a physical or climatological condition is referenced in a code, the appropriate council, upon adoption of the code, is required to define the boundary so that it approximates the physical or climatological area, using logical geographic features such as major highways, waterbodies, or ridgelines. Political boundaries may ~~not~~ be used ~~unless~~ when they approximate the physical area.”

SECTION 7. This act takes effect upon approval by the Governor.

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