# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB TR 06-05 Residential Manufactured Building Regulation
**SPONSOR(S):** Transportation Committee
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Transportation Committee | | Thompson J.T. | Miller P.M. |
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## SUMMARY ANALYSIS


PCB TR 06-05 relates to the regulation of residential manufactured buildings. The powers relating to this regulation are transferred by the bill from the Department of Community Affairs (DCA) to the Department of Highway Safety Motor Vehicles (DHSMV) by a type two transfer, as defined in s. 20.06 (2), F.S.

The 2005 Legislature created the Manufactured Housing Regulatory Study Commission (Commission). The purpose of the Commission was to review the programs regulating manufactured and mobile homes which are currently located within the DHSMV and to review the sources of funding of these programs to determine if the programs are or can be self-sustaining. PCB TR 06-05 implements the legislative changes recommended by the Commission. The authority of the Commission to operate terminates on February 15, 2006.

The DCA and the DHSMV are authorized to enter into interagency agreements with each other regarding the regulation of residential manufactured buildings

The related rules of the DCA and the Florida Building Commission that were in effect on June 30, 2006, must become rules of the DHSMV and must remain in effect until specifically amended or repealed in the manner provided by law.

Any judicial or administrative action involving regulation of residential manufactured buildings by the DCA will not be affected by this act. Should any such action occur the DHSMV must be substituted as a party in interest.

There is an indeterminate fiscal impact to the state for transferring the regulation of residential manufactured buildings from DCA to DHSMV. However, the PCB gives DHSMV the authority to establish fees by rule to pay for the cost of administering the program.

This act will take effect July 1, 2006.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government:

- PCB TR 05 increases the responsibilities, obligations, and work for the DHSMV by transferring all statutory powers, duties, and functions relating to the regulation of residential manufactured buildings, including, but not limited to, certification of manufacturers and recertification of residential manufactured housing.
- PCB TR 05 gives all statutory authority and responsibility for the enforcement of laws relating to the regulation of residential manufactured buildings to the DHSMV, including, but not limited to, enforcement of requirements under the Florida Building Code through plan review and inspection.
- PCB TR 05 decreases the responsibilities, obligations, and work for the DCA by transferring all power relating to the regulation of residential manufactured buildings to DHSMV as a type two transfer, as defined in s. 20.06 (2), F.S.
- PCB TR 05 Authorizes subcontracting or outsourcing of services or activities to DHSMV. DHSMV may use third party inspectors or its own personnel to inspect residential manufactured building units or systems or the component parts, together with the plans, specifications, and quality control procedures to ensure the units, systems, or component parts comply with the Florida Building Code and to label units complying with those standards. DHSMV inspectors would have to be licensed as under Chapter 468, F.S., which relates to regulation of building code administrators and inspectors.

B. EFFECT OF PROPOSED CHANGES:

PCB TR 05 will transfer all powers and responsibilities relating to residential manufactured buildings from the Department of Community Affairs (DCA) to the Department of Highway Safety Motor Vehicles (DHSMV) by a type two transfer, as defined in s. 20.06 (2), F.S.

Background –

The 2005 Legislature created the Manufactured Housing Regulatory Study Commission (Commission) by enacting s. 21 of ch. 2005-164, Laws of Florida. (See also s. 47 of ch. 2005-147, Laws of Florida.) The purpose of the Commission was to review the programs regulating manufactured and mobile homes which are currently located within the DHSMV and to review the sources of funding of these programs to determine if the programs are or can be self-sustaining. PCB TR 06-05 implements the legislative changes recommended by the Commission. The authority of the Commission to operate terminates on February 15, 2006.

According to the Manufactured Housing Regulatory Study Commission, approximately 1.4 million people live in 900,000 manufactured or mobile homes in Florida and many other people live in modular homes in Florida. Thousands of businesses including manufacturers, retailers, community owners, developers, installers, transporters, suppliers, finance companies, insurance companies and various other service firms are involved in these industries.

Specifically, there are 8 manufacturing companies with 15 locations throughout Florida involved in the building of approximately 18,000 new manufactured homes annually. There are 1,312 licensed retailers, 516 licensed installers and approximately 4,500 manufactured home communities/mobile home parks in Florida. Around 35,000 people are employed by the industry. The manufactured housing

industry is responsible for generating in excess of $250 million per year in tax revenues to the State of Florida.

For purposes of this analysis, mobile home, manufactured home, manufactured building and modular home mean the following:

- *Mobile Home* - a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities. See s. 320.01(2)(a), F.S.
- *Manufactured Home* - a mobile home fabricated on or after June 15, 1976, in an off-site manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying the section is built in compliance with the National Manufactured Home Construction and Safety Standards Act. See s. 320.01(2)(b), F.S.
- *Manufactured Building* - a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating, or other service systems manufactured in manufacturing facilities for installation or erection as a finished building or as part of a finished building, which shall include, but not be limited to, residential (modular home), commercial, institutional, storage, and industrial structures. However, the term does not include mobile homes. See s. 553.36(12), F.S.
- *Modular Home* - a manufactured building constructed as a residential dwelling unit.

Current Situation – Federal and State Law:

**Construction and Inspection programs of manufactured homes and modular homes**

In 1974, the United States Congress established federal construction and safety standards for manufactured homes in order to:

- Reduce the number of personal injuries and deaths;
- Reduce the amount of insurance costs and property damage resulting from manufactured home accidents; and
- To improve the quality and durability of manufactured homes. See 42 U.S.C. 5401, et seq.

The National Manufactured Home Construction and Safety Standards Act of 1974 (Act) directed the Secretary of the United States Department of Housing and Urban Development (HUD) to establish appropriate manufactured home construction and safety standards. These standards (HUD Code) are found in 24 C.F.R. 3280 and apply to all manufactured homes constructed for sale to purchasers in the United States on or after June 15, 1976 (the effective date of the standards). The State of Florida has statutorily adopted the HUD Code by enacting s. 320.823, F.S.

What the HUD Code does:

- The HUD Code is performance based and specifically designed for compatibility with the factory production process and establishes standards for structural design, construction, fire safety, energy efficiency and transportation from the factory to the customer's home site.
- The HUD Code includes performance standards for heating, plumbing, air conditioning and thermal and electrical systems. Every manufactured home is built in a factory, under controlled conditions, and has a label affixed on the exterior of each section of the home indicating the home has been designed, constructed, tested and inspected to comply with the HUD Code.
- Ensures that no manufactured home may be transported from the factory unless it complies with the HUD Code and each section receives a certification label from an independent third party inspector. The HUD Secretary implements investigations and inspection responsibilities through the use of private and state inspection agencies.

- The HUD Code requires oversight of the manufacturers' engineering design of their homes and their quality assurance manuals for their plants by the Design Approval Primary Inspection Agency (DAPIA) which is a third party inspection agency. In addition, the DAPIA also coordinates with the third party inspection agency known as the Production Inspection Primary Inspection Agency (IPIA). The IPIA:

    - Has the responsibility to make sure the production facility programs and procedures are in accordance with the DAPIA approved quality assurance manual.
    - Conducts inspections of the homes produced in the factory to assure conformance with the approved design. Every home is inspected during at least one stage of production.
    - Makes a complete inspection of every phase of production and every visible part of each home in production.

The policy of HUD is to involve state agencies in the enforcement of the HUD Code to the maximum extent possible consistent with the capabilities of such agencies and the public interest.

*Responsibilities of the Department of Highway Safety Motor Vehicles*:

While an IPIA may be a private entity, DHSMV serves as HUD's contract IPIA in Florida.

The aforementioned IPIA functions are carried out by DHSMV's Bureau of Mobile Home and Recreational Vehicle Construction (Bureau). If a state chooses not to participate as an IPIA, manufacturers of manufactured homes may contract with HUD approved private IPIA entities.

As the exclusive IPIA in Florida, the Bureau is responsible for the in-plant inspection of all homes manufactured in Florida. The Bureau employs 16 compliance examiners/inspectors assigned to 15 Florida manufacturing plants. These 16 full-time employees perform the following duties:

- All lines of production in the plant are inspected on an ongoing basis to ensure the manufacturer's compliance with design specifications approved in accordance with the HUD Code.
- Inspectors visually observe the manufacturing process in each phase of construction to ensure conformance to the HUD Code. See s. 320.8255, F.S.
- The inspectors also evaluate the plant's quality control system on an ongoing basis to ensure the effectiveness of the system.
- Inspectors ensure all nonconformances are corrected while the home is still in the factory. Deviations from HUD Code are documented and action is taken to correct the deviations and prevent their reoccurrence.

All deviations from the HUD Code are documented and analyzed at Bureau headquarters to determine if further action is required to ensure the plant has rectified the causes of the deviations. HUD provides specific guidelines for IPIA's in this process and performs an annual audit of the IPIAs' effectiveness.

When each home section has been completed and passes final inspection, a HUD label is affixed to the home section attesting the home meets the HUD Code. (A HUD label is required on each section of a multi-sectional home.) No homes are allowed to leave the factory without a HUD label. See s. 320.827, F.S. The Bureau maintains an inventory of HUD labels and receives $32.00 (currently) for each label sold. The manufacturer purchases the labels from the bureau and, in addition, remits $39.00 directly to HUD for each label purchased. The revenue from the sale of HUD labels is intended to cover the expenses of operating the IPIA program. Section 320.8255(4), F.S., authorizes DHSMV to establish and set fees for HUD labels sufficient to cover the cost of administration of the IPIA program.

**Florida's construction and inspection programs of modular homes:**

Since 1971, Florida has regulated the construction of manufactured buildings to ensure such structures are built to meet minimum safety standards. Current regulations of manufactured buildings are known as the Florida Manufactured Building Act of 1979. See Part I of ch. 553, F.S.

The Florida Building Commission has been created by the Legislature and is, for administrative purposes, housed within DCA. See s. 553.74, F.S. As part of its responsibilities, the Florida Building Code Commission has adopted the Florida Building Code which does the following:

- Applies to the construction and modification of manufactured buildings. See s. 553.37, F.S.
- Establishes minimum standards for the design, construction, erection, alteration, modification, repair and demolition of buildings including modular homes.
- Ensures that no manufactured building (except certain exceptions set forth in s. 553.37(2), F.S.) may be installed in Florida unless the manufactured building is approved and bears an insignia approved by DCA. All manufactured buildings issued and bearing the DCA insignia are deemed to comply with the Florida Building Code and are exempt from local amendments enacted by any local government. See s. 553.37(2) through (6), F.S.

Within the state are two agencies which carry out the rules and responsibilities relating to the regulation of residential manufactured buildings. Those agencies are the Department of Highway Safety Motor Vehicles (DHSMV) and the Department of Community Affairs (DCA).

*Responsibilities of the Department of Community Affairs*:

The DCA works with the DHSMV to carry out the rules and regulations of residential manufactured buildings. Some of DCA's responsibilities include:

- Responsible for enforcement of the Florida Building Code requirements related to manufactured Buildings
- Authorized to delegate its enforcement responsibilities to a state department having building construction responsibilities or a local government. See s. 553.37(8), F.S.
- The DCA may also delegate its plan review and inspection authority to a state department having:
    - building construction responsibilities,
    - a local government,
    - an approved inspection agency,
    - an approved plan review agency, or
    - an agency of another state. See s. 553.37(8), F.S.

The DCA also:

- Ensures manufactured buildings meet the requirements of the Florida Building Code;
- Utilizes entities authorized by an appropriate licensing board to perform plan reviews and inspections for compliance with the Florida Building Code, certified by the DCA to perform that role, and selected by a manufacturer.

Third party entities are typically engineers or architects qualified and authorized to review plans and inspect buildings for compliance with the Florida Building Code pursuant to Chapters 471 and 481, Florida Statutes. These professionals have been required to take four hours of continuing education regarding the Florida Building Code and have a continuing obligation to take additional courses on the Code as determined by their respective licensing boards. Third party entities pay an initial application fee of $600.00 and an additional $900.00 upon certification and triennial renewal thereof.

Additionally, the DCA requires that the operation of manufacturing facilities is subject to a quality assurance program, and the activities of manufacturers and third-party entities is subject to audit by the Department's contractor.

The DCA has delegated the responsibility for inspection of modular homes to third-party agencies that have been certified by the DCA for that purpose. These agencies are also charged with reviewing the construction plans for the home as well as the manufacturers quality assurance manual. For third-party requirements see s. 428.2.1, Florida Building Code, Building Volume (2004).

*Post-Manufacture Installation Inspection*:

Installation programs, including regulation and inspection functions of the foundation system for manufactured/mobile homes and modular homes are not directly impacted by the bill. Each county or municipality in Florida is responsible for the onsite inspection of each manufactured/mobile home installation located within the jurisdiction of such entity prior to issuance of the certificate of occupancy. See s. 320.8285, F.S. Inspections for site-related activities are performed by building code enforcement personnel employed by the authority having jurisdiction and licensed by the Florida Building Code Administrators and Inspectors Board as required by Part XII of ch. 468, F.S. Once a modular home leaves the factory certified by the DCA, jurisdiction for enforcement is vested in other governmental agencies. Installation, repair and modification of a manufactured building is a construction activity required to be performed by individuals licensed by the Construction Industry Licensing Board as required in ch. 489, F.S. Plan review and inspection for site-related work is performed by building code enforcement personnel employed by the authority having jurisdiction and licensed by the Florida Building Code Administrators and Inspectors Board pursuant to Part XII of ch. 468, F.S. (The same inspectors who inspect site related activities for manufactured/mobile homes).

Proposed Changes -

PCB TR 06-05 initiates a type two transfer, as defined in s. 20.06(2), Florida Statutes, transferring regulatory authority and rules relating to residential manufactured buildings from DCA to DHSMV. This will provide continuity of regulation during the transition from one agency to the other. Because regulation of residential manufactured buildings is not a distinct unit within DCA, personnel and funds are not included in the transfer. The bill also substitutes DHSMV as a party in interest for any ongoing judicial administrative actions involving the regulation of residential manufactured buildings by DCA pending July 1, 2006.

Sections 320.870 through 320.878, F.S., the "Florida Residential Manufactured Building Act", is created by the bill. Current provisions under which residential manufactured buildings are regulated by DCA are revised and replicated in Chapter 320, F.S., which will authorize DHSMV to regulate residential manufactured buildings that are to be used as single-family dwelling units. DHSMV may use third party inspectors or its own personnel to inspect residential manufactured building units or systems or the component parts, together with the plans, specifications, and quality control procedures to ensure the units, systems, or component parts comply with the Florida Building Code and to label units complying with those standards. DHSMV inspectors would have to be licensed as under Chapter 468, F.S., which relates to regulation of building code administrators and inspectors.

PCB TR 06-05 amends ss. 553.36 and 553.38, F.S. to exclude single-family residential manufactured buildings from the definition of manufactured buildings under from Part I of Chapter 553, F.S., which is DCA's regulatory authority for manufactured buildings. These provisions clarify that except for applying Florida Building Code minimum construction standards to residential manufactured buildings, Chapter 553, F.S., does not apply to manufactured homes and residential manufactured buildings as regulated by DHSMV.

Finally, the bill directs the Division of Statutory Revision upon request, to assist in preparing draft legislation for 2007 Session to conform Florida Statutes to the changes the bill makes. This will assist with any follow-up "glitch" legislation needed.

C. SECTION DIRECTORY:

**Section 1** initiates a type two transfer, as defined in s. 20.06(2), Florida Statutes, transferring regulatory authority relating to residential manufactured buildings from the DCA to the DHSMV;

**Section 2** initiates a type two transfer, as defined in s. 20.06(2), Florida Statutes, transferring regulatory rules relating to residential manufactured buildings from DCA and the Florida Building Code Commission to the DHSMV;

**Section 3** substitutes DHSMV as a party in interest for any ongoing judicial administrative actions involving the regulation of residential manufactured buildings by DCA pending July 1, 2006;

**Section 4** creates s. 320.870, F.S., the "Florida Residential Manufactured Building Act";

**Section 5** creates s. 320.871, F.S., defining terms used in ss. 320.870-320.878, F.S.;

**Section 6** creates s. 320.872, F.S., to adopt minimum construction requirements of the Florida Building Code and the Florida Fire Prevention and Lifesafety Codes;

**Section 7** creates s. 320.873, F.S., to establish the duties and responsibilities of DHSMV; and provide rulemaking authority;

**Section 8** creates s. 320.874, F.S., to require a manufacturer certification for all residential manufactured buildings in the state;

**Section 9** creates s. 320.875, F.S., to establish a recertification process for relocated or modified residential manufactured homes;

**Section 10** creates s. 320.876, F.S., which states the department must enforce every provision of ss. 320.870 – 320.878 and rules adopted under ss. 320.870 – 320.878 and the provisions of Florida Building Code governing residential manufactured buildings;

**Section 11** creates s. 320.877, F.S., to authorize the department to seek injunctive or other relief;

**Section 12** creates s. 320.878, F.S., to establish the penalties for violating any of the provisions of ss. 320.870 – 320.878;

**Section 13** transfers and renumbers section 320.865, F.S. related to maintenance of records by DHSMV.

**Section 14** amends s. 553.36, F.S., to exclude single-family residential manufactured buildings from the definition of manufactured buildings. S. 553.36 is DCA's regulatory authority for manufactured buildings.

**Section 15** amends s. 553.38, F.S., to clarify the application of the Florida Building Code to single-family residential manufactured buildings;

**Section 16** directs the Division of Statutory Revision upon request, to assist in preparing draft legislation for 2007 Session to conform Florida Statutes to the changes the bill makes.

**Section 17** provides that the act will take effect July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See D. Fiscal Comments, below

2. Expenditures:

   See D. Fiscal Comments, below

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

PCB TR 06-05 authorizes the DHSMV to establish a schedule of fees to pay the cost incurred for the work relating to the administration and enforcement of ss. 320.870-320.878, F.S.

D. FISCAL COMMENTS:

The DCA has no "modular homes programs" which may be easily identified for accounting purposes. The manufactured buildings program, into which modular homes are integrated, is financially self-sustaining and DCA has reported the modular homes' program is self-sustaining.

PCB TR 06-05 authorizes the DHSMV to establish, by rule, a schedule of fees to pay the cost incurred for administration and enforcement of residential manufactured building regulation required by ss. 320.870-320.878, F.S. See s. 320.873 (7), F.S., created by the bill.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   PCB TR 06-05 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

DHSMV, DCA, and the Florida Building Code Commission appear to have sufficient existing rulemaking authority to implement the various provisions in PCB TR 06-05, should they become law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES