

2015 Regular Session

HOUSE BILL NO. 353

BY REPRESENTATIVE PONTI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

BUILDING CODES: Provides for the review of state uniform construction code enforcement

1 AN ACT

2 To enact R.S. 40:1730.22(F), 1730.22.2, 1730.23(J), 1730.23.1, 1730.34.1, and 1730.34.2,
3 relative to the review of the enforcement of the state uniform construction code; to
4 provide for a supervising council member; to establish the Building Code
5 Enforcement Officer Subcommittee; to provide for the membership, duties, and
6 powers of the subcommittee; to provide for the investigation and resolution of
7 complaints regarding violations of the state uniform construction code; to provide
8 for a local board of appeals; to require due process protections; to provide for
9 penalties; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1730.22(F), 1730.22.2, 1730.23(J), 1730.23.1, 1730.34.1, and
12 1730.34.2 are hereby enacted to read as follows:

13 §1730.22. Louisiana State Uniform Construction Code Council; membership;
14 function of council; meeting requirements; immunity; supervising council
15 member

16 * * *

17 F.(1) The chairman of the council shall designate a member of the council
18 who is a Louisiana-licensed professional engineer or architect or an active or retired
19 certified building official to act as the supervising council member for the
20 investigation of complaints and adjudication of violations of the provisions of this

1 Part, and any rules promulgated thereunder, or the state uniform construction code
2 pursuant to R.S. 40:1730.34.1 and 1730.34.2.

3 (2) The member appointed by the chairman shall serve as supervising
4 council member for a period of one year.

5 (3) The member appointed to act as the supervising council member may
6 recuse himself in the event of a real or perceived conflict of interest. If the
7 supervising council member recuses himself from the investigation of a complaint
8 or from participating in the adjudication of a violation, the chairman shall appoint
9 a council member to act as the supervising council member for the investigation of
10 the complaint or the adjudication of the violation.

11 * * *

12 §1730.22.2. Building Code Enforcement Officer Subcommittee; membership;
13 terms; vacancies; quorum; function

14 A. There is hereby established within the Louisiana State Uniform
15 Construction Code Council, the Building Code Enforcement Officer Subcommittee,
16 consisting of the following members:

17 (1) The chairman of the Louisiana State Uniform Construction Code
18 Council.

19 (2) Three building officials appointed by the chairman of the council from
20 a list of names submitted by the Building Officials Association of Louisiana.

21 (3) One member appointed by the chairman of the council from a list of
22 names submitted by the Louisiana Municipal Association and the Louisiana Police
23 Jury Association.

24 B.(1) The members appointed pursuant to Paragraphs (A)(2) and (A)(3) of
25 this Section shall serve two-year terms.

26 (2) The members of the subcommittee shall elect a chairman to serve a term
27 of one year and who may be reelected for subsequent terms.

1 (3) Vacancies shall be filled in the manner of the original appointment. An
 2 appointment to fill a vacancy that occurs prior to the expiration of a term shall be for
 3 the remainder of the unexpired term.

4 (4) Any member of the subcommittee may be removed for cause and his
 5 appointment rescinded by two-thirds vote of the Louisiana State Uniform
 6 Construction Code Council.

7 (5) Three members shall constitute a quorum of the subcommittee.

8 (6) Each member of the subcommittee shall serve without compensation.

9 C.(1) The primary function of the Building Code Enforcement Officer
 10 Subcommittee is to conduct the resolution of complaints against building code
 11 enforcement officers and certified third-party providers including informal
 12 settlement conferences and formal adjudication of alleged violations pursuant to R.S.
 13 40:1730.34.2.

14 (2) Any member of the subcommittee may recuse himself in the event of a
 15 real or perceived conflict of interest.

16 §1730.23. Enforcement of building codes by municipalities and parishes

17 * * *

18 J. Local jurisdictions subject to Act No. 12 of the 2005 First Extraordinary
 19 Session of the Louisiana Legislature shall provide notice of the right to file an appeal
 20 with the board of appeals established pursuant to R.S. 40:1730.23.1 and the right to
 21 file a complaint with the Louisiana State Uniform Construction Code Council
 22 pursuant to R.S. 40:1730.34.1.

23 §1730.23.1. Appeals; board of appeals required; membership; procedure;
 24 jurisdiction; purpose

25 A.(1) Local jurisdictions subject to Act No. 12 of the 2005 First
 26 Extraordinary Session of the Louisiana Legislature shall establish a board of appeals
 27 to hear and decide appeals of orders, decisions, or determinations made by the
 28 building official relative to the application and interpretation of the state uniform
 29 construction code provided for in this Part.

1 (2) The board of appeals shall consist of members who are qualified by
2 experience and training to render decisions on matters pertaining to building design
3 and construction. The members shall be appointed by the local governing authority
4 and shall hold office at its pleasure.

5 (3) The board shall adopt rules of procedure for conducting its business, and
6 shall render all decisions and findings in writing to the appellant and the building
7 official.

8 B.(1) The board shall only hear and decide requests for appeals which are
9 based on any of the following claims:

10 (a) The true intent of the state uniform construction code provided for in this
11 Part or any rule promulgated thereunder has been incorrectly interpreted.

12 (b) The provisions of the state uniform construction code do not fully apply.

13 (c) An equally good or better form of construction is proposed.

14 (2) The board shall have no authority to waive any requirement of the state
15 uniform construction code.

16 C. Through the appeals process established pursuant to Subsection A of this
17 Section, each local jurisdiction shall provide every person who appeals an order,
18 decision, or determination made by a building official with notice of the appeal
19 hearing and the opportunity to present arguments or evidence in support of his
20 position before a board of appeals composed of unbiased members who are qualified
21 by experience and training to render decisions on matters pertaining to building
22 design and construction.

23 * * *

24 §1730.34.1. Complaints; investigation

25 A. Any person who believes there is a violation by any building code
26 enforcement officer or certified third-party provider of any provision of this Part, and
27 any rules promulgated thereunder, or the state uniform construction code may file
28 a complaint with the Louisiana State Uniform Construction Code Council.

1 B. An initial complaint may be made by any person or by the council on its
2 own initiative. The council shall not accept an anonymous complaint. The initial
3 complaint shall be made in the form of a sworn affidavit and at a minimum include
4 the following information:

5 (1) The name and contact information of the complainant.

6 (2) The name of the building code enforcement officer or certified
7 third-party provider against whom the complaint is filed.

8 (3) A brief summary of the facts constituting the alleged violation including
9 the time and place of the alleged violation.

10 C.(1) No later than five business days after the receipt of a complaint, the
11 council shall provide a copy of the complaint to the Building Code Enforcement
12 Officer Subcommittee and shall provide notice to the building code enforcement
13 officer or certified third-party provider that a complaint has been filed with the
14 council and a preliminary investigation will be conducted to determine whether there
15 is probable cause to justify further investigation. The notice shall include a summary
16 of the nature of the allegations contained in the complaint and the identity of the
17 complainant.

18 (2) The supervising council member, as appointed pursuant to R.S.
19 40:1730.22, with the assistance of council staff, shall conduct a preliminary
20 investigation of a complaint no later than forty-five days after receipt of the
21 complaint.

22 (3) At the conclusion of the preliminary investigation, the supervising
23 council member, with the assistance of council staff, shall determine whether there
24 is probable cause to justify further investigation. If the supervising council member
25 finds that a complaint alleges misconduct which is not regulated under the
26 jurisdiction of the council or there is a lack of probable cause to justify further
27 investigation, the supervising council member shall dismiss the complaint and
28 immediately provide notice to the Building Code Enforcement Officer
29 Subcommittee. The Building Code Enforcement Officer Subcommittee shall notify

1 both the complainant and building code enforcement officer or certified third-party
2 provider of the dismissal and the reasons therefor within five business days of the
3 dismissal. However, the information contained in the complaint may be referred to
4 another government agency for investigation if the supervising council member
5 believes that another state or federal agency may have jurisdiction over the alleged
6 conduct in the complaint.

7 (4) If the supervising council member determines the complaint on its face
8 demonstrates an allegation of misconduct, the supervising council member shall
9 initiate a formal investigation and immediately provide notice to the Building Code
10 Enforcement Officer Subcommittee. The Building Code Enforcement Officer
11 Subcommittee shall notify the complainant and the building code enforcement
12 officer or certified third-party provider no later than five business days after the date
13 the formal investigation is initiated that the preliminary investigation has resulted in
14 the initiation of a formal investigation.

15 §1730.34.2. Complaint resolution; informal settlement conference; formal
16 adjudication

17 A. After sufficient information and evidence has been gathered by the
18 supervising council member through the formal investigation process, a
19 determination by the supervising council member shall be made as to whether the
20 information and evidence gathered indicates that a violation of the provisions of this
21 Part, and any rules promulgated thereunder, or the state uniform construction code
22 has occurred.

23 B. If the information and evidence gathered indicate that a violation of this
24 Part or the state uniform construction code has occurred, the supervising council
25 member shall do either of the following:

26 (1) Refer the complaint for an informal settlement conference between
27 representatives of the Building Code Enforcement Officer Subcommittee and the
28 building code enforcement officer or certified third-party provider against whom the
29 complaint is filed. This meeting shall be scheduled no later than one hundred eighty

1 days after the complaint has been filed, unless good cause is shown for scheduling
2 the meeting after that date.

3 (2) File a formal written administrative complaint with the Building Code
4 Enforcement Officer Subcommittee to initiate a formal adjudication proceeding.

5 C.(1) If the information and evidence gathered is insufficient to support the
6 allegation that a violation of this Part or the state uniform construction code has
7 occurred, the supervising council member shall recommend to the Building Code
8 Enforcement Officer Subcommittee that the investigation be closed and the
9 complaint be dismissed.

10 (2) If a complaint is dismissed by the Building Code Enforcement Officer
11 Subcommittee, the subcommittee shall notify the complainant and building code
12 enforcement officer or certified third-party provider of the dismissal and the reasons
13 therefor no later than five business days after the dismissal.

14 D.(1) Every formal investigation shall be completed no later than one
15 hundred eighty days after the supervising council member assigned the complaint
16 makes the determination to initiate a formal investigation, unless the Building Code
17 Enforcement Officer Subcommittee approves an extension of time based upon a
18 finding of good cause as to why the investigation could not be completed within that
19 time. Good cause shall include but not be limited to any of the following:

20 (a) The unavailability of pertinent documents that the supervising council
21 member has made all reasonable efforts to obtain.

22 (b) The necessity of additional investigation as determined by the
23 supervising council member or the Building Code Enforcement Officer
24 Subcommittee.

25 (c) Additional complaints pending investigation regarding the building code
26 enforcement officer or certified third-party provider.

27 (d) Other events beyond the control of the supervising council member or
28 the Building Code Enforcement Officer Subcommittee.

1 (2) The Building Code Enforcement Officer Subcommittee shall not dismiss
2 a complaint solely on the grounds that an investigation has not been completed or the
3 case has not been scheduled for hearing within one hundred eighty days.

4 (3) If an investigation has not been completed or the case has not been
5 scheduled for hearing within one hundred eighty days, the Building Code
6 Enforcement Officer Subcommittee shall notify the parties to the complaint as to
7 why these deadlines were not met. This notice is not required if the Building Code
8 Enforcement Officer Subcommittee makes an official finding that notice would
9 substantially jeopardize an investigation.

10 E. The Building Code Enforcement Officer Subcommittee shall promulgate
11 rules to provide for the investigation of complaints and adjudication of violations
12 pursuant to the provisions of R.S. 40:1730.34.1 and this Section. The rules shall
13 satisfy the minimum due process requirements of the constitution of this state and
14 the Constitution of the United States and shall include but not be limited to all of the
15 following:

16 (1) Notice of the hearing.

17 (2) Pleadings and other motions.

18 (3) Discovery.

19 (4) Subpoenas and subpoenas duces tecum.

20 (5) Representation by counsel of choice.

21 (6) Prehearing conferences.

22 (7) Procedure for conducting the hearing including examination of witnesses
23 and the placement of evidence into the record.

24 F.(1) The Building Code Enforcement Officer Subcommittee may issue
25 subpoenas or subpoenas duces tecum requiring the attendance and testimony under
26 oath of witnesses and the production of any evidence or documentation that relates
27 to any matter properly under investigation or in question before the Building Code
28 Enforcement Officer Subcommittee. A subpoena issued pursuant to this Subsection
29 may be served in any manner authorized by the Administrative Procedure Act or the

1 Code of Civil Procedure, including but not limited to by certified mail or by private
2 process server.

3 (2) The Building Code Enforcement Officer Subcommittee may obtain
4 sworn testimony taken before a certified court reporter from any individual who may
5 possess any information concerning the matter under investigation.

6 G.(1) The Building Code Enforcement Officer Subcommittee may impose
7 the following penalties:

8 (a) For a first offense, continuing education as required by the subcommittee.

9 (b) For a second offense, suspension of the registration of the building code
10 enforcement officer or certified third-party provider not to exceed one year.

11 (c) For a third or subsequent offense, suspension of the registration of the
12 building code enforcement officer or certified third-party provider for not less than
13 one year or permanent revocation of the registration.

14 (2) The Building Code Enforcement Officer Subcommittee shall provide
15 notice of any penalty imposed pursuant to this Subsection to the council and to the
16 building code enforcement officer or certified third-party provider no later than five
17 business days after the subcommittee makes the decision to impose the penalty. The
18 council shall also provide notice to the building code enforcement officer or certified
19 third-party provider of the right to appeal the decision pursuant to the Administrative
20 Procedure Act.

21 H.(1) The jurisdiction of the Building Code Enforcement Officer
22 Subcommittee pursuant to this Section shall be limited to the actions authorized in
23 Subsection G of this Section.

24 (2) Any disciplinary action taken by a local jurisdiction as a result of a
25 decision made by the Building Code Enforcement Officer Subcommittee pursuant
26 to this Section shall be made in accordance with the rules and regulations of the civil
27 service system applicable to the local jurisdiction.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 353 Original

2015 Regular Session

Ponti

Abstract: Provides for the review of actions taken by building code enforcement officers or certified third-party providers in the enforcement of the state uniform construction code.

Present law adopts the state uniform construction code, establishes the La. State Uniform Construction Code Council (council), and provides for the membership and duties of the council.

Proposed law retains present law and adds a requirement for the chairman of the council to designate a member of the council who is a La.-licensed professional engineer or architect or an active or retired certified building official to act as the supervising council member for the investigation of complaints and adjudication of violations of the provisions of proposed law. Further provides that the member shall serve as supervising council member for a period of one year and may recuse himself in the event of a real or perceived conflict of interest.

Proposed law establishes, within the La. State Uniform Construction Code Council, the Building Code Enforcement Officer Subcommittee (subcommittee), consisting of the following members:

- (1) The chairman of the La. State Uniform Construction Code Council (council).
- (2) Three building officials appointed by the chairman of the council from a list of names submitted by the Building Officials Association of La.
- (3) One member appointed by the chairman of the council from a list of names submitted by the La. Municipal Association and the La. Police Jury Association.

Proposed law provides for the terms of membership, the election of a chairman of the subcommittee, the filling of vacancies, the recusal of members, and the removal of members. Further establishes a quorum and prohibits compensation.

Proposed law provides that the primary function of the subcommittee is to conduct the resolution of complaints against building code enforcement officers and certified third-party providers including informal settlement conferences and formal adjudication of alleged violations.

Proposed law authorizes any person who believes there is a violation by any building code enforcement officer or certified third-party provider of any provision of the state uniform construction code to file a complaint with the council. Further requires the initial complaint to be made in the form of a sworn affidavit and prohibits the council from accepting an anonymous complaint.

Proposed law requires the supervising council member to conduct a preliminary investigation of a complaint no later than 45 days after receipt of the complaint to determine whether there is probable cause to justify further investigation. Further requires, if the supervising council member finds that a complaint alleges misconduct which is not regulated under the jurisdiction of the council or there is a lack of probable cause to justify further investigation, the complaint to be immediately dismissed by the supervising council member

and both the complainant and building code enforcement officer or certified third-party provider to be notified of the dismissal and the reasons therefor no later than five business days after the dismissal.

Proposed law requires the supervising council member, if he determines the complaint on its face demonstrates an allegation of misconduct, to initiate a formal investigation and immediately inform the subcommittee. Further requires the subcommittee to notify the complainant and the building code enforcement officer or certified third-party provider no later than five business days after the date the formal investigation is initiated that the preliminary investigation has resulted in the initiation of a formal investigation.

Proposed law requires the supervising council member, after sufficient information and evidence has been gathered through the formal investigation process, to make a determination as to whether the information and evidence gathered indicates that a violation of the state uniform construction code has occurred. Further requires, if the information and evidence gathered indicate that a violation has occurred, the supervising council member to do either of the following:

- (1) Refer the complaint for an informal settlement conference between representatives of the subcommittee and the building code enforcement officer or certified third-party provider against whom the complaint is filed to be held no later than 180 days after the complaint has been filed, unless good cause is shown for scheduling the meeting after that date.
- (2) File a formal written administrative complaint with the subcommittee to initiate a formal adjudication proceeding.

Proposed law requires, if the information and evidence gathered is insufficient to support the allegation that a violation has occurred, the supervising council member to recommend to the subcommittee that the investigation be closed and the complaint be dismissed.

Proposed law requires every formal investigation to be completed no later than 180 days after the supervising council member assigned the complaint makes the determination to initiate a formal investigation, unless the subcommittee approves an extension of time based upon a finding of good cause as to why the investigation could not be completed within that time.

Proposed law provides for the formal adjudication of alleged violations including authorization for the subcommittee to issue subpoenas or subpoenas duces tecum requiring the attendance and testimony under oath of witnesses and the production of any evidence or documentation that relates to any matter properly under investigation or in question before the subcommittee.

Proposed law authorizes the subcommittee to impose the following penalties:

- (1) For a first offense, continuing education as required by the subcommittee.
- (2) For a second offense, suspension of the registration of the building code enforcement officer or certified third-party provider not to exceed one year.
- (3) For a third or subsequent offense, suspension of the registration of the building code enforcement officer or certified third-party provider for not less than one year or permanent revocation of the registration.

Proposed law requires the subcommittee to provide notice of any penalty imposed and the right to appeal the decision to the building code enforcement officer or certified third-party provider no later than five business days after the subcommittee makes the decision to impose the penalty.

Proposed law requires any disciplinary action taken by a local jurisdiction as a result of a decision made by the subcommittee to be made in accordance with the rules and regulations of the civil service system applicable to the local jurisdiction.

Proposed law requires local jurisdictions subject to present law (Act No. 12 of the 2005 First E.S. of the La. Legislature) to establish a board of appeals comprised of members who are qualified by experience and training to render decisions on matters pertaining to building design and construction to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of the state uniform construction code.

Proposed law limits the jurisdiction of the board to requests for appeals which are based on any of the following claims:

- (1) The true intent of the state uniform construction code has been incorrectly interpreted.
- (2) The provisions of the state uniform construction code do not fully apply.
- (3) An equally good or better form of construction is proposed.

(Adds R.S. 40:1730.22(F), 1730.22.2, 1730.23(J), 1730.23.1, 1730.34.1, and 1730.34.2)