Introduction

The Governor’s Building Code Study Commission was comprised of 28 members appointed by the late Governor Lawton Chiles. The members of the Commission included representatives of local government, labor unions, state agencies, real estate and banking interests, code users such as building contractors and the general public—all major stakeholders in the existing building code system in Florida. The Commission was charged with “evaluating the present system and with consensus development of recommendations to reform and improve the Florida Building codes system if found necessary.” Report of the Governor’ Building Codes Study Commission, December 1997, p. 8.

Prior to formation of the Governor’s Building Code Study Commission a complex system had evolved for regulating construction in Florida. Although regulation of the built environment was historically left to local governments, certain contractors were licensed by the state but subject to local registration; while others were licensed and regulated exclusively by local government. Whether intentional or not, this bifurcated licensing scheme created barriers to conducting business from one jurisdiction to the next. Moreover, duplicate licensing and regulation contributed to lax discipline and enforcement, in part because of the lack of consistency from one jurisdiction to the next, but also because State licensed contractors were subject to local registration but not to local disciplinary measures and the state agency responsible for discipline of state licensed contractors, the Department of Business and Professional Regulation, had an overwhelming backlog of cases and a shortage of resources to deal with them.

The problems associated with inconsistent and multi-tiered licensing was compounded by the fact that five building codes were in use in Florida. These building codes were subject to local amendment and interpretation resulting in a system of construction regulation that varied from one local jurisdiction to the next. Superimposed on this morass of local regulation was yet another system of law and rule developed over the years at the state level. Various state
agencies had authority to regulate construction of certain structures or components of structures. In some cases, the state regulations directly conflicted with the local schema for regulating construction, administration and enforcement. It was not until the mid 1970's that the state adopted a minimum state building code, but this legislative prescription did nothing to relieve the confusion, nor the growing resentment among the stakeholders.

Against this backdrop, the Commission met for 16 months and engaged in numerous panel discussions, and debates and heard presentations from code users, local government officials, out-of-state experts, and trade association representatives. Input was sought from all key stakeholders. This case study is intended to assess the process used to bring the stakeholders together many of whom had poor relationships, to iron out the incredible confusion and ultimately reach consensus.

Nature of the dispute

The official reasons cited for formation of the Governor’s Building Code Study Commission were that there were too many codes, inadequate and inconsistent administration and enforcement of codes, weak and inadequate compliance, and a need for more education, training and discipline within all categories of code users. No doubt this was true, but the essential nature of this dispute was the division of power. The Commission’s job was to determine whether regulation of the built environment should be left in its current condition or modified. Historically, local governments have had primary control over regulating the built environment. By transferring regulatory control to state government or to a statewide body, local governments stood to lose power and revenue. By the same token, the regulated community stood to gain power if regulatory control were transferred to a single body or to the state because local government’s could no longer claim home rule authority and because of the administrative procedures required in state decision making which would give the regulated community more bargaining power.
**Dynamics of the case**

The main parties were 1) representatives of the construction industry (building contractors, tradespeople, and other code users such as architects), 2) local government officials (including building officials, fire officials, and elected officials), and 3) the public. The construction industry was well-represented on the Commission and otherwise with strong support from the homebuilders lobbying association and other private trade associations. Local government had only two representatives, one of whom was from Dade County and was torn between promoting Dade County’s interests and that of the other counties in the state. Although I have enumerated the public as a main party, the general public was not so much a part of the dispute or the process as it was the beneficiary of any changes recommended by the Commission.

If viewed as an entity “local governments” were in an awkward position because opposition to change was seen as protecting its turf over the interests of the public and giving in to change raised the frightening specter of giving up home rule authority in an area traditionally occupied by local jurisdictions. Another issue was that within rubric of “local government” there were competing interests and positions. Local government necessarily included elected officials, fire officials, building officials, and enforcement officials who sometimes clashed because they represented different “constituencies” and had varying spheres of influence in the building regulation scheme. While it is true that the various representatives of the construction industry may have had competing interests, overall the position of these stakeholders was consistent: they wanted a simplified system which would not cut into profits as it was perceived of the existing system of regulation and licensure. Realistically, the “handwriting was on the wall.” There had been movement toward major changes in the regulation of Florida’s built environment for the past several legislative sessions; the Governor’s Building Code Study Commission was by and large a political compromise.

Secondary parties included state agencies with regulatory authority over building construction, the banking and insurance industries, and materials manufacturers. State agencies
did not appear to be so preoccupied with turfsmanship, probably because state regulation of the built environment was not a revenue producing function and was not based on fundamental constitutional powers as in the case of local governments. The same was true of materials manufacturers, a streamlined construction regulation scheme would be beneficial to them but it was not anticipated that business would change fundamentally as a result of the Commission’s work. The banking and insurance industries had a financial stake in the outcome of any changes made to the system but, as with the materials manufacturers, there would be no loss of power associated with changes recommended by the Commission.

All in all, the parties were well defined and by the time the Commission got down to work I think there was a willingness to work toward a solution. In fact, given the heated battles that took place in the legislature over similar issues, it appeared that this forum was the only mechanism that would produce satisfactory results, and more importantly, consensus.

Case history and process

The primary focus of this case study is the process used to reach consensus and the effect this had on certain stakeholders. For the most part the case study will not assess the substance of the Commission’s recommendations nor detail post-Governor’s Building Code Study Commission activities such as adoption of legislation to implement the Commission’s recommendations or the ongoing work that is taking place to formulate a statewide building code system.

A professional facilitator was used throughout the tenure of the Commission. While this has not been typical of gubernatorially appointed nor legislatively created commissions, Executive Order 96-234 specifically referenced the need to develop a consensus among the various stakeholders. See Appendix 1. Had a facilitator not been used, there is no doubt that the end product would not have been as substantively meaningful nor received such easy legislative approval.
The Commission divided its work into four phases: assessment, deliberation/initial recommendation, final recommendation/report, and legislative. Since the Commission was charged with determining whether the existing construction regulation system should be changed, a thorough assessment of what was currently in place and of what could be proffered as an alternative was critical to the formulation of any recommendation for change. In the second phase work groups were formed which included additional representation of local governments, fire officials, manufacturing interests, building code users.

The work groups developed initial sets of recommendations which the commission later used as a basis for development of its foundations and recommendations. By broadening the representation through the use of the work groups it was easier for the Commission to ultimately gain consensus on the final product. First of all, participation in the work groups gave representatives of the primary and secondary parties a voice and a vote which they could not exercise during the regular meetings of the Commission where only Commissioners or invited speakers could speak. Secondly, use of work groups divided a monumental task into digestible pieces for discussion and analysis. Without this division of labor it is not clear that discreet and detailed recommendations could have been formulated within the time frame allotted to the Commission for its work. Thirdly, participation in the work groups gave work group members a chance to break down barriers that existed between battling fronts (contractors versus building officials; government versus private) and to communicate needs not just positions. Finally, use of the work groups instilled a sense of pride in the final product that would not have been engendered had the 28 members of the Commission simply imposed a solution.

The stated reasons for formation of the Governor’s Building Code Study Commission were that in the aftermath of several natural disasters, including Hurricane Andrew and the unnamed storm in March 1993 statewide concern was growing with respect to the reduction in the availability of insurance; opportunity for continued, sustainable economic growth; and threats to local, state and federal government’s ability to respond to public safety concerns and adverse economic impacts from natural disasters. While these undoubtedly were the central issues, they
were not the essence of the “dispute.” As already stated, this was a conflict over power. The conflict, to the extent that an actual conflict existed, was based on strongly held values and on interests. For example, on one side the right to govern was at stake, in contrast to espoused values as to the freedom to participate in the capitalistic system. Interests such as the protection of the public health, safety and welfare were set in contrast to an interest in the continued profitability of the construction industry and economic well-being of the state. These were the issues, but the conflict was over state sovereignty, over local home rule governing authority, and over profitability and self-determination of the private sector.

Many issues were negotiable and many of the key interests of each party were not in directly conflicting but simply divergent. All parties wanted to protect the state from an economic perspective and a safety perspective---how to arrive at this outcome was the source of tension and dispute. Over the years antagonistic positions had been taken, even lawsuits had been filed, because of the power structure inherent to regulating an industry. Local governments had power but when they started losing court battles, the building industry was empowered. It is not clear that any other option for resolution existed.

Outcomes

As its final product, the Commission formulated five foundations which recommended fundamental and sweeping changes to the regulation of Florida’s built environment. See Appendix 2. In essence, the Commission recommended promulgation of a single statewide building code; state licensing of all contractors eliminating the need for local licensure and regulation with the exception of some specialty licenses that would remain in local control; state level discipline but local enforcement of the code; formation of a statewide board which would oversee adoption, amendments, and most interpretations of the statewide code and which would hear appeals. On the whole, there was consensus and all parties were at least marginally satisfied with the substantive outcomes. However, local government representatives saw the handwriting on the wall. There was momentum for change which was supported by the economic bread and
butter of this state: the construction industry. Thus, to a large extent the role of local government representatives in the process was relegated to damage control.

The substantive solution was not practical or cost effective for local governments. Licensure and registration of contractors and the fines collected as a result of disciplinary actions was a significant source of revenue for many local jurisdictions. Although a cost analysis was performed, in the legislative analysis costs were identified and undeterminable, which is shorthand for not wanting to say what the costs of a proposal really are. Additionally, the cost to implement the proposed construction regulation system, including the statewide board, a new code, education system and licensing and disciplinary system, was estimated in the millions of dollars. However, as mentioned, the momentum and political clout for change had peaked and costly or not regulation of Florida’s built environment was going to change.

The meetings of the Governor’s Building Code Study Commission were open to the public but the Governor and members of the legislature, other than those who were members of the Commission, were not present during the process. Given the broad representation of the affected parties on the Commission and on the work groups, it cannot be said that the stakeholders were not knowledgeable about the proposed changes. Had it not been for this broad coverage, the recommendations/legislation of the Commission probably would have faced some opposition during the 1998 Legislative Session. It can only be said that the Commission performed a monumental task in a timely and efficient manner. Moreover, the process, by use of formally facilitated discussion and sub groups such as the work groups resulted in a fair outcome. Although local government may have come up short in the end, it was not for a lack of opportunity to voice their concerns.
Conclusions

Use of facilitated discussion is probably the most effective procedure to resolve this type of conflict. There were multiple parties with vastly different interests and entrenched positions. Some of the parties had a lot of political clout and some simply had the power of being the regulator. The issues were extremely complex only because so many procedures and processes were under consideration. Because there was a time constraint, facilitation enabled the Commission to achieve its goals. In other legislatively created or gubernatorially appointed Commissions, a chairman is chosen, but no formal process employed to lead the group through its deliberations. As a result, many of these groups come up with great concepts but leave the details to be worked out later. This is disastrous in situations such as the one presented by the building construction system in Florida because the parties could not come to agreement on the details; facilitation made this happen. Everybody had a chance to voice his concerns but at the same time was forced to sit at the table with the other side and come up with consensual recommendations. It was an amazing and tremendous process.
Appendix

Five Foundations of the Governor’s Building Code Study Commission:

I. The building codes system is one of the major pressing affairs of the state. A strong effective building code and code process is essential to the overall welfare of the entire state. Accordingly, Florida should have one building code for use statewide which governs all administrative and technical requirements applicable to Florida’s public and private built environment. That building code should be called the Florida Building Code (“The Code”) and should become effective for use statewide.

II. The Code should be initially adopted and subsequently updated on a 3 year cycle, except as required for emergencies. Once adopted, The Code should become effective for use statewide without further, subsequent adoption by local jurisdictions. The initial adoption and subsequent updating of The Code shall be done by an independent Board that for administrative purposes is housed in the Department of Community Affairs, called the Florida Building Code Board (“The Board”). The (9 member) Board should include persons who are qualified by experience and training to provide a broad or specialized expertise on matters pertaining to building code enforcement, building material manufacturing, fire prevention, life safety, finance, property insurance and general business. The Board may make both Administrative and Technical Amendments to The Code and shall appoint Technical Advisory Committees (TAC) covering the various areas addressed in The Code. (The Board’s actions are subject to chapter 120.57)

III. The Code shall be administered, interpreted and enforced by local government Building and Fire Officials. Local government may amend certain defined portions of the Administrative Provisions of The Code on an annual basis, so long as such amendments improve or are more stringent than The Code. With the exception of emergencies, Technical Amendments to The Code may only be made by The Board. Decisions by municipal and county building and fire officials may be appealed to the local Board of Appeals and may be subsequently appealed to The Board. The Board shall have the power to render written binding interpretations, applied prospectively, of any provision of The Code, at any time, including upon the written request of any substantially affected party.

IV. Without knowledgeable and consistent compliance by users and strong enforcement by government, Florida will not have an effective overall building codes system. In addition to a strong code, a major cornerstone of an effective building code system is a clear delineation of each participant’s role and accountability for performance in that role. Reward and recognition balanced with strong, appropriate discipline are keys to success. There must be a formal process to obtain credentials, and the system must hold credentialed design, construction and enforcement professionals accountable for their performance in their respective roles. The system must require and provide opportunity for education and training necessary for each participant to fulfill their role completely. (Single tier licensing scheme for contractors with limited authority of local governments to issue only specialty licenses) (local government’s vested with authority to require correction of code violations and said code violations will be reported to DBPR).
V. One of the essential criteria for an effective building codes system is that the system promote innovation and new technology. A product evaluation and approval process is the cornerstone of fulfilling that criteria. Florida should have a responsible, but streamlined, cost-effective and affordable product evaluation and approval process. That process should have specific compliance criteria and strong steps to determine that a product or system is appropriately tested and complies with The Code. Quality control should be performed by independent agencies or testing laboratories which meet stated criteria and are periodically inspected. A listing, product evaluation system and quality assurance program must be an integral part of such a product evaluation process.