

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 671 Residential Building Permits

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Esposito and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 4 N, As CS	Larkin	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Code (Building Code) must be applied and enforced uniformly and consistently across the state. Current law requires local governments to enforce the Building Code and issue building permits.

The bill:

- Requires local jurisdictions to reduce their permit fee by 75% when the property owner or contractor retains a private provider for plans review or building inspection services.
- Shortens timeframes for the submittal, process, and review of applications for a building permit.
- Specifies when a permit application is deemed complete and sufficient.
- Provides that a local government can request additional information from an applicant twice unless the applicant agrees otherwise.
- Provides that a local government can request additional information once for certain residential dwelling building permits.
- Requires local jurisdictions provide an opportunity for an in-person or virtual meeting before a second request for additional information may be made.
- Specifies that certain permit requirements apply to single-family residential units and single-family residential dwellings.
- Requires that local governments follow certain prescribed timeframes unless a local ordinance is more stringent.
- Creates a voluntary freeboard minimum and voluntary freeboard maximum for all new residential construction and substantial improvements to existing residential construction.
- Authorizes local governments to adopt by ordinance a maximum voluntary freeboard that exceeds the 4 feet maximum voluntary freeboard for all new residential construction and substantial improvements to existing residential construction.
- Allows a developer to build 50 percent of residential units after preliminary plat approval, under certain circumstances.

The bill may have an indeterminate fiscal impact on state and local government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

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

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study's commission recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.² The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.³

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

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,⁵ the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.⁶

DBPR Surcharges

Current law requires all local governments to assess and collect a 1% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.⁷

Current law also requires all local governments to assess and collect a separate 1.5% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Mar. 23, 2023).

² *Id.*

³ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Mar. 21, 2023).

⁴ See s. 553.72(1), F.S.

⁵ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Mar. 23, 2023).

⁶ S. 553.73(7)(a), F.S.

⁷ S. 553.721, F.S.

divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.⁸

Local government building departments are permitted to retain 10% of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.⁹

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. Delays in the completion of a construction project may:¹⁰

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:¹¹

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue; and
- Encourage economic development by having an efficient permit system.

Building Permit Application Review

Time-Period to Review

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:¹²

- accessory structure;
- alarm permit;
- nonresidential buildings less than 25,000 square feet;
- electric;
- irrigation permit;
- landscaping;

⁸ S. 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. s. 489.1401(2), F.S.

⁹ Ss. 468.631, and 553.721, F.S.

¹⁰ City of Austin Development Services Department, *A Program for Expedited Permitting*, http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf (last visited March 23, 2023); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).

¹¹ *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) <https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf> (last visited March 23, 2023).

¹² S. 553.792(2), F.S.

- mechanical;
- plumbing;
- residential units other than a single-family unit;
- multifamily residential not exceeding 50 units;
- roofing;
- signs;
- site-plan approvals and subdivision plats not requiring public hearings or public notice; and
- lot grading and site alteration associated with the permit application.

When a local government receives an application for one of the above building permits, it must:¹³

- Inform the applicant within **10 days** of receiving the application, what information, if any, is needed to complete the application.
 - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within **45 days** of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;
 - If additional information is needed the local government must specify what additional information is necessary.
 - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
- Approve, approve with conditions, or deny the application within **120 days** following receipt of the completed application.
 - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

These time-periods do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.¹⁴

If a local government fails to meet the time-periods above without an agreement for an extension of time, a local government is required to reduce a permit fee for any building permit application, including for single-family residential dwellings, by 10% of the original permit fee for each business day that a local government fails to meet the current statutory time-period for reviewing a building permit application or a time-period established by the local government.

*Local Government's Requests for Additional Information*¹⁵

A local government may only make three requests for additional information from an applicant applying for the following types of building permits:

- Accessory structure.
- Alarm permit.
- Nonresidential buildings less than 25,000 square feet.
- Electric.
- Irrigation permit.
- Landscaping.
- Mechanical.
- Plumbing.
- Residential units other than a single-family unit.
- Multifamily residential not exceeding 50 units.
- Roofing.

¹³ S. 553.792(1), F.S.

¹⁴ S. 553.792(1)(a), F.S.

¹⁵ S. 553.792(1)(b), F.S.

- Signs.
- Site-plan approvals and subdivision plats not requiring public hearings or public notice.
- Lot grading and site alteration associated with the permit application.

However, an applicant may agree in writing to waive the limitation that local governments may only make three requests for additional information for such permits.

If a local government makes a request for additional information from an applicant for one the above building permits, and the applicant provides the information within **30 days** of receiving the request, the local government must¹⁶:

- Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies **within 15 days** of receiving the information from the applicant, if the request is the local government's **first request**.
- Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies **within 10 days** of receiving the information from the applicant, if the request is the local government's **second request**.
- Deem the application complete and approve the application, approve the application with conditions, or deny the application **within 10 days** of receiving the information from the applicant, if the request is the local government's **third request**.

Prior to making a third request for information the local government must offer to meet with the permit applicant to attempt to resolve outstanding issues.

If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, shall proceed to process the application for approval, approval with conditions, or denial.

If a local government fails to meet these deadlines it must reduce the building permit fee by 10% for each **business day** that it fails to meet the deadline. However, these time limitations do not apply when a law, agency rule, or local ordinance specifies different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.

Time-Period to Review Single-Family Residential Dwelling Building Permit Applications

If any government entity with authority to enforce the Building Code receives an application for a building permit for a single-family residential dwelling, it must issue the permit within **30 business days** of receiving the application, unless the application fails to satisfy the Building Code or the enforcing agency's laws or ordinances, or unusual circumstances require a longer time-period for processing the application.¹⁷ If the local enforcing agency does not issue a building permit for a single-family residential dwelling within **30 business days** after receiving the permit application, it must reduce the building permit fee by 10% for each **business day** that it fails to meet the deadline. Each 10% reduction is based on the original amount of the building permit fee. However, the enforcing agency does not have to reduce the building permit fee if it provides notice to the applicant, by e-mail or United States Postal Service, within **30 business days** after receiving the permit application, that specifically states the reasons the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances. In addition, the written notice must also include that the applicant has **10 business days** after receiving the written notice to submit revisions to correct the permit application and that failure to correct the application within **10 business days** will result in a denial of the application.¹⁸

¹⁶ *Id.*

¹⁷ S. 553.79(16), F.S.

¹⁸ S. 553.79(16)(a)-(b), F.S.

After receiving the written notice, the applicant has **10 business days** to correct the specifications written by the local enforcing agency and submit revisions to correct the permit application. If the applicant submits the revisions within 10 business days, the local enforcing agency has **10 business days** after receiving such revisions to approve or deny the building permit unless the applicant agrees to a longer permit in writing.¹⁹

A government entity does not have to reduce the fee for a single-family residential dwelling building permit, if:²⁰

- it provides written notice to the applicant, by email or USPS mail within **30 business days** of receiving the application; and
- The written notice specifically states how the application fails to satisfy the Building Code or the government entity's laws or ordinances, and that the applicant has **10 business days** after receiving the notice to remedy the deficiencies in their application or it will be denied.

An applicant for a single-family residential dwelling building permit has **10 business days** to address the reasons specified in the government entity's notice. If the applicant submits revisions to the government entity within **10 business days** of receiving the notice, the government entity must approve or deny the permit within **10 business days** of receiving the applicant's revisions.

If a government entity fails to approve or deny the single-family residential dwelling building permit within **10 business days** of receiving the applicant's revisions, it must:²¹

- reduce the permit fee by 20% of the original permit fee for the first business day that it fails to meet the deadline; and
- an additional 10% of the original permit fee for each business day that it fails to meet the deadline, for up to five business days.

A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within **15 business days** after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.²²

If any permit fees are refunded because a local government fails to meet an established deadline for reviewing a building permit application, the Department of Business and Professional Regulation (DBPR) surcharges for funding the Commission, the Florida Building Code Administrators and Inspectors Board (BCAIB), and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit fees after the refund.²³

Private Providers Alternative Plans Review

In 2002, section 553.791, F.S., was created to allow property owners and contractors to hire licensed building code officials, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers and their duly authorized representatives are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's or representative's license.

¹⁹ S. 553.79(16)(c), F.S.

²⁰ S. 553.79(16)(b), F.S.

²¹ S. 553.79(16)(c), F.S.

²² S. 553.79(16)(e), F.S.

²³ S. 553.79(16)(d), F.S.

“Private provider” means a person licensed as a building official, engineer, or as an architect. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.²⁴

“Duly authorized representative” means an employee of a private provider identified in a permit application who reviews plans or performs inspections, and is licensed as an engineer, architect, building official, inspector, or plans examiner. The term does not include a person with a provisional license by the BCAIB.²⁵

If an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department and reduce the building permit fees accordingly.²⁶

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider but may charge a reasonable administrative fee which is based on the cost that is actually incurred by the local government, including the labor cost of the personnel providing the service, or the cost attributable to the local government for the clerical and supervisory assistance required, or both.²⁷

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.²⁸ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides homeowners, business owners, and renters in flood-prone areas the ability to purchase flood insurance protection from the federal government.²⁹ The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards. Participation in the NFIP is voluntary.³⁰ Within participating communities, the federal government makes flood insurance available throughout the community.³¹ To join, a community must:

- Complete an application;
- Adopt a resolution of intent to participate and cooperate with FEMA; and
- Adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.³²

In coordination with participating communities, FEMA develops flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community’s flood risk and floodplain.³³ While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the map into its local regulations in order for the map to be effective.³⁴ An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).³⁵ The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a 1-in-100 year flood or greater frequency. This means that properties in the SFHA have a risk of 1 percent or greater risk of flooding every year³⁶ (and at least a 26 percent chance

²⁴ S. 553.791(1)(n) and (3), F.S.

²⁵ S. 553.791(1)(f) and (8), F.S.

²⁶ “Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services.” S. 553.791(2)(b), F.S.

²⁷ S. 553.791(2)(b), F.S.

²⁸ FEMA, *50 Years of the NFIP*, available at https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf.

²⁹ Benefits.gov, National Flood Insurance Program (NFIP), available at <https://www.benefits.gov/benefit/435> (last visited March 29, 2023)

³⁰ FEMA, *Participation in the NFIP*, <https://www.fema.gov/glossary/participation-nfip#:~:text=Participation%20in%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,of%20intent%20to%20participate%20and%20cooperate%20with%20FEMA%3B> (last visited Mar. 29, 2023).

³¹ *Id.*

³² *Id.*

³³ See Congressional Research Service, *Introduction to the National Flood Insurance Program*, 3 (2023), <https://crsreports.congress.gov/product/pdf/R/R44593>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

of flooding over the course of a 30-year mortgage).³⁷ In a community that participates in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage.³⁸

Key conditions of the NFIP minimum floodplain management standards include, among things, that communities:

- Require permits for development in the SFHA;
- Require elevation of the lowest floor of all new residential buildings in the SFHA to or above the base flood elevation;
- Restrict development in floodways to prevent increasing the risk of flooding; and
- Require certain construction materials and methods that minimize future flood damage.³⁹

Base Flood Elevation

A base flood is a flood that has a one percent chance of occurring during any given year.⁴⁰

The base flood elevation (BFE) is how high floodwater is likely to rise during a one-percent-annual-chance flood event (base flood).⁴¹ BFEs are measured from a reference point called North American Vertical Datum of 1988 (NAVD88)⁴², which is approximately equal to sea level, and vary widely across geographies.⁴³ The BFE represents the minimum elevation of construction allowed by the NFIP.⁴⁴ The relationship between the BFE and a structure's elevation determines the flood insurance premium.⁴⁵

³⁷ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

³⁸ Congressional Research Service, *Introduction to the National Flood Insurance Program* at 10. Such lenders include federal agency lenders, such as the Department of Veterans Affairs, government-sponsored enterprises Fannie Mae, Freddie Mac, and federally regulated lending institutions, such as banks covered by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency. *Id.*

³⁹ Congressional Research Service, *Introduction to the National Flood Insurance Program*, 6 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

⁴⁰ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

⁴¹ *Id.*

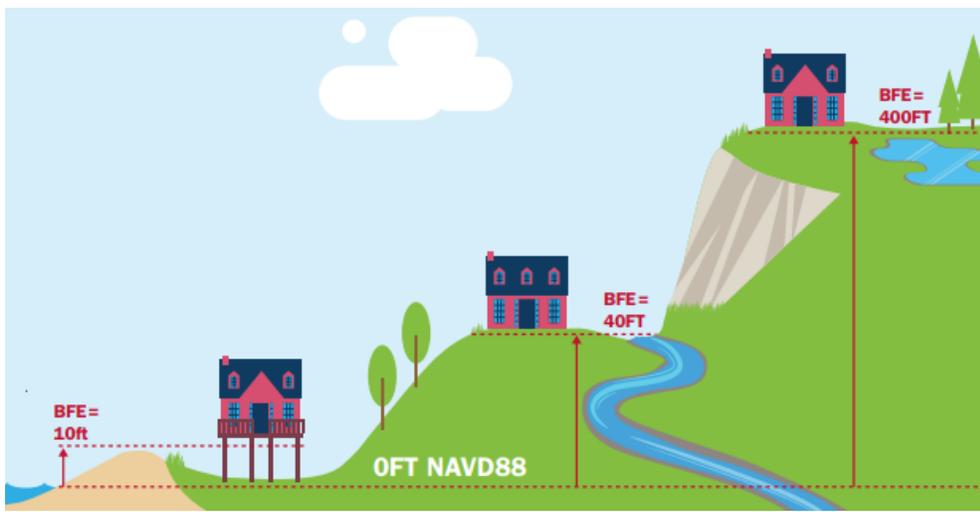
⁴² "A 'geodetic reference system' is used to precisely describe the location of a specific point on the Earth and is composed of latitude, longitude, and elevation. Its basis is composed of a geoid and a reference ellipsoid — two mathematical representations of the Earth's surface — along with base points to which the latitude, longitude and elevation of all other points in the system are referenced. These base points are known as 'datums'. The latitude-longitude base point is known as a horizontal datum, and the elevation base point is known as a vertical datum. Vertical datums are used to establish the elevation of monitoring locations, reference points and natural features such as lake levels and floodplains, as well as for bridges and levies.

The currently accepted vertical datum is the **North American Vertical Datum of 1988 (NAVD88)**, which was formally adopted in 1992. It consists of a leveling network that applies to the entire North American continent and which is affixed to a single origin point in Quebec, Canada." Coastal & Heartland National Estuary Partnership, University of South Florida Water Institute, *NAVD88 Datum*, Coastal & Heartland National Estuary Partnership Water Atlas, https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm_navd88 (last visited March 29, 2023).

⁴³ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

⁴⁴ See FEMA, *Residential Buildings with Basements*, <https://www.fema.gov/floodplain-management/manage-risk/residential-buildings-basements#:~:text=Since%201971%2C%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,Zones%20only%29%20to%20the%20Base%20Flood%20Elevation%20%28BFE%29> (last visited Mar. 29, 2023).

⁴⁵ Pinellas County, *Construction in a Floodplain*, Sept. 13, 2022, <https://pinellas.gov/construction-in-a-floodplain/> (last visited March 29, 2023).



Base Flood Elevation⁴⁶

Freeboard

Freeboard, usually expressed in feet above flood level, is an additional amount of height above the BFE used as a factor of safety in determining the level at which a structure's lowest floor must be elevated or flood-proofed to be in accordance with state or community floodplain management regulations.⁴⁷ Freeboard helps to compensate for many unknown factors that could contribute to flooding and additional freeboard results in significantly lower flood insurance rates due to lower flood risk.⁴⁸ Freeboard is not required by NFIP eligibility standards, but FEMA encourages communities to adopt at least one foot of freeboard.⁴⁹

The Building Code requires all buildings located in a flood hazard area to be built an additional one foot higher than the BFE.⁵⁰ However, many Florida communities adopt requirements for additional elevation above the minimum in the Building Code, ranging from two to five feet above the BFE.

Local freeboard requirements are incorporated via technical amendments to the Building Code.⁵¹ Florida Statutes specifically authorizes counties and municipalities to adopt administrative or technical amendment to the Building Code relating to flood resistance in order to implement the NFIP or other incentives.⁵² **Flood-related local amendments to the Building Code that require a design flood elevation above the BFE are not subject to sunset upon adoption of the newest edition of the Building Code.**⁵³

Various local governments throughout the state have adopted ordinances to incorporate additional freeboard requirements. For example, in Wilton Manors, all new construction and substantial improvement of buildings in the flood areas subject to the Florida Building Code shall be elevated to or above the highest of the following:⁵⁴

- 6 feet above the North American Vertical Datum.
- The minimum freeboard requirement. Building elevations may exceed the minimum freeboard requirement up to the maximum freeboard without such height counting against the maximum height for construction in the applicable zoning district.
 - Freeboard, minimum equals 2 feet above the BFE.
 - Freeboard, maximum equals 4 feet above the BFE.

⁴⁶ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

⁴⁷ FEMA, *Freeboard*, <https://www.fema.gov/glossary/freeboard> (last visited Mar. 29, 2023).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ S. R322.2.1. of 2020 Florida Building Code, Residential: 7th Edition (Building Code).

⁵¹ Wilton Manors, FL. Ordinance No. 2020-004 s. 2, 5-26-20, City of Miami Beach Ordinance Code s. 54-35.

⁵² S. 553.73 (5) F.S.

⁵³ *Id.*

⁵⁴ Wilton Manors Ordinance No. 2020-005 s. 9-55(1).

Winton Manors also establishes a minimum elevation for those properties that are outside of the flood hazard area.⁵⁵

The City of Miami Beach has enacted an ordinance that requires all new construction and substantial improvements to meet the minimum freeboard requirement, and may exceed the 1-foot minimum freeboard requirement up to the 5 feet maximum freeboard **without** such height counting against the maximum height for construction in the applicable zoning district.⁵⁶

In addition, in 2014, the City of Key West, by referendum, approved additional freeboard. The referendum allows existing buildings below established flood levels to be able to exceed the height restriction when moving to flood level and adding 4 feet of freeboard. New construction may also voluntarily elevate above the minimum required level, and exceed the building height restriction by up to 3 additional feet.⁵⁷

Plats

In Florida law, “plat” means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable state requirements and of any local ordinances.⁵⁸ Generally, platting is required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. These smaller areas become the residential lots, streets and parks of a new residential subdivision.⁵⁹

State law establishes consistent minimum requirements for the establishment of plats, and local governing bodies have the power to regulate and control the platting of lands.⁶⁰ Prior to approval by the appropriate governing body, the plat must be reviewed for conformity with state and local law and sealed by a professional surveyor and mapper who is either employed by or under contract to the local governing body.⁶¹

Before a plat is offered for recording, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation. Jurisdiction over plat approval is as follows:⁶²

- When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.
- When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.
- When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

Every plat of a subdivision offered for recording must have certain information, including providing:⁶³

⁵⁵ “The finished floor of all new buildings located outside of the flood hazard area shall at a minimum be at or above the highest adjacent grade plus six (6) inches.” Winton Manors Ordinance Code 2020-005 s. 9-55(2).

⁵⁶ City of Miami Beach Ordinance Code, s. 54-35

⁵⁷ City of Key West, *Building Height Exception*, <https://www.cityofkeywest-fl.gov/162/Building-Height-Exception> (last visited March 29, 2023).

⁵⁸ S. 177.031(14), F.S.

⁵⁹ Harry W. Carls, Florida Condo & HOA Law Blog, May 17, 2018, *Why is a Plat so Important?*,

<https://www.floridacondohoalawblog.com/2018/05/17/why-is-a-plat-so-important/> (last visited Mar. 30, 2023).

⁶⁰ S. 177.011, F.S.

⁶¹ S. 177.081(1), F.S.

⁶² S. 177.071(1), F.S.

⁶³ S. 177.091, F.S.

- The name of the plat in bold legible letters, and the name of the subdivision, professional surveyor and mapper or legal entity, and street and mailing address on each sheet.
- The section, township, and range immediately under the name of the plat on each sheet included, along with the name of the city, town, village, county, and state in which the land being platted is situated.
- The dedications and approvals by the surveyor and mapper and local governing body, and the circuit court clerk's certificate and the professional surveyor and mapper's seal and statement.
- All section lines and quarter section lines occurring within the subdivision. If the description is by metes and bounds, all information called for, such as the point of commencement, course bearings and distances, and the point of beginning. If the platted lands are in a land grant or are not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses.
- Location, width, and names of all streets, waterways, or other rights-of-way.
- Location and width of proposed easements and existing easements identified in the title opinion or property information report must be shown on the plat or in the notes or legend, and their intended use.
- All lots numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.
- Sufficient survey data to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat.
- Designated park and recreation parcels.
- All interior excepted parcels clearly indicated and labeled "Not a part of this plat."
- The purpose of all areas dedicated clearly indicated or stated on the plat.
- That all platted utility easements must provide that such easements are also easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services interferes with the facilities and services of an electric, telephone, gas, or other public utility.

Many local governments around the state have a process to approve a preliminary plat before approving a final plat. Generally, a preliminary plat approval is approval of the development plan, and a final plat approval includes a finalized development plan and a document confirming the parties who have a property interest.⁶⁴ For example, the City of Jacksonville, Village of Royal Palm Beach, and the City of Tallahassee allow for a preliminary plat approval process.⁶⁵

Also, based on a preliminary plat approval, some local governments allow a developer to commence construction before the plat is finalized. For example, the Planning and Development Department (Department) of the City of Jacksonville, upon request of an applicant, may allow up to 50 percent of the lots within a proposed subdivision to be developed, but not occupied, based on a preliminary plat approval so long as the developer or owner meets the following conditions for construction:⁶⁶

- Prior to Civil Plans submittal to the Department, the developer must submit the development proposal to Jacksonville Electric Authority (JEA) for review.
- Once JEA has granted preliminary approval, the Department will review the preliminary site plan, the preliminary and final engineering plans for the required improvements, and the sheet identifying the lots being requested for home construction prior to platting as approved by JEA. The Department reserves the right to deny authorization for development on a specific lot or lots to protect City interests.
- The developer or owner must provide a guarantee for required improvements and warranty of title.

⁶⁴ Advance Surveying & Engineering, *An In-Depth Look At Preliminary and Final Plats*, <https://www.advsur.com/2019/07/an-in-depth-look-at-preliminary-and-final-plats/> (last visited Mar. 30, 2023).

⁶⁵ City of Jacksonville Code of Ordinances s. 654-109, Village of Royal Palm Beach Code of Ordinances s. 22-22, City of Tallahassee Code of Ordinances s. 9-92.

⁶⁶ City of Jacksonville Code of Ordinances s. 654-139(d).

- A Certificate of Occupancy may not be issued until the plat is approved by JEA and the Department and recorded in the current public records of Duval County, Florida.

Effect of the Bill

Building Permit Application Review (Section 3)

The bill shortens timeframes for building applications. The bill provides that:

- after an applicant submits an application to the local government, the local government must provide written notice to the applicant within **3 calendar days** after receipt of the application advising the applicant what information is needed to make the application properly complete.
 - The bill shortens the local government's timeframe to respond to the application from 10 days to 3 calendar days.
- within **9 calendar days** after receipt of the completed application, the local government must provide a written notice to an applicant that the application is insufficient to be approved and additional information is needed.
 - The bill shortens the local government's timeframe to notify the applicant from 45 days to 9 calendar days.

The bill removes the requirement that the applicant must submit the requested information from the local government within 30 days.

The bill provides that the local government cannot request additional information from the applicant more than **two times** instead of **three times**, unless the applicant waives such limitation in writing.

The bill removes the **120-day period** which is tolled while the applicant responds to the local government request for additional information.

The bill provides if a local government requests additional information from an applicant and the applicant submits the requested additional information to the local government, the local government must, within **9 calendar days** (instead of **15 days**) after receiving such information:

- Determine if the application is properly completed;
- Approve the application; or
- Advise the applicant **in writing** of information, if any, that is needed to determine the sufficiency of the application.
 - The bill removes the local government's decision to deny the application until after the second request for additional information from the local government.

The bill provides that prior to making a **second request** for information the local government must offer to meet **in-person or virtually** with the permit applicant to attempt to resolve outstanding issues. The bill requires that the meeting occur **within 5 calendar days** after the applicant notifies the local government in writing that he or she wants an in-person or virtual meeting unless the applicant agrees to a longer time period in writing.

The bill provides that after the local government submits its **second request** and receives the information from the applicant, the local government must within **9 calendar days** (instead of **10 days**) determine whether the application is complete and:

- Approve the application;
- Approve the application with conditions; or
- Deny the application **and provide the applicant with sufficient reason for such detail.**

The bill provides that if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, shall proceed to process the application within **9 calendar days after the receipt of the request** and approve, approve with conditions, or deny the application **and provide the applicant with sufficient reason for such denial.**

The bill states that if the local government does not notify the applicant that the application is approved, approved with conditions, or denied within **9 days** after the local government receives the additional information from the second request, the application is deemed approved.

The bill removes the ability for a law, agency rule, or an ordinance to specify a different timeframe for the applicable building permit applications except when the timeframes set by local ordinance are stricter than the ones prescribed in the bill.

Single-Family Residential Dwelling Building Permit Applications (Sections 1 and 3)

The bill removes a provision in Ch. 533, the Florida Building Code, which requires single-family residential dwelling permits to be issued within 30 days unless the application does not conform to the Florida Building Code or local laws or ordinances. However, the bill incorporates the time period to review single-family residential dwellings into the building permit application to local government section.⁶⁷

The bill provides the following timeframes for single family or two-family dwellings or townhomes located within a master plan community for which the permit for the master plan has been approved under the local government residential master building permit program⁶⁸:

- **1 calendar day** after a building permit application is submitted to the local government, the local government must provide the building permit applicant with what information is needed in order to deem the application complete and ready for processing. If the local government does not provide proper written notice of what information is needed for the application to be considered complete the building permit application is automatically deemed completed and approved.
- Within **5 calendar days** of receiving a completed building permit application the local government must determine if any additional information is needed to determine the sufficiency of a building permit application. The building permit applicant may submit the information or ask that the permit be processed without the additional information.
- A local government may only ask for additional information **once** unless the applicant waives such limitation in writing.
- If the local government requests additional information and the building permit applicant provides the additional information, the local government must act on the building permit application **within 5 calendar days** after receiving such information, unless the applicant waives this limitation in writing, determine that the application is complete and either approve, approve with conditions, or deny the application and provide the applicant with sufficient reason for such detail.
 - If the local government does not notify the building permit applicant that it has acted on the application **within 5 calendar days** the building permit application is deemed approved.

The bill provides that a building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within **9 calendar days** (instead of **15 business days**) after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

Private Providers Alternative Plans Review (Sections 2 and 3)

The bill provides that if an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by **75%** for not having to perform such services.

The bill provides that if an owner or contractor retains a private provider for purposes of review, the following time periods apply:

⁶⁷ See, s. 553.792, F.S.

⁶⁸ See, s. 553.794, F.S.

- Within **3 calendar days** of receiving a completed building permit application the local government must determine if any additional information is needed to determine the sufficiency of a building permit application. The building permit applicant may submit the information or ask that the permit be processed without the additional information.
- If the local government requests additional information and the building permit applicant provides the additional information, the local government must act on the building permit application **within 3 calendar days after receiving** such information, unless the applicant waives this limitation in writing, determine that the application is complete and either approve, approve with conditions, or deny the application and provide the applicant with sufficient reason for such detail.
- If the local government does not notify the building permit applicant that it has acted on the application within **3 calendar days** the building permit application is deemed approved.

Reduction of Building Permit Fees (Section 3)

The bill provides that if the local government does not meet the deadlines set forth in this bill, it must reduce the building permit fee by 10% for each **calendar day** (as opposed to “business day”) that it fails to meet the deadline, **unless the parties agree in writing to a reasonable extension of time**.

Building Permits; identification of Minimum Premium Policy (Section 5)

The bill provides conforming changes based on the provisions amended in this bill.

Freeboard (Section 4)

The bill provides that this section will be called “flood damage prevention”.

The bill includes the following findings:

- The state is vulnerable to the adverse effects of flooding resulting from the frequency and intensity of rainfall and an increase in storm surge and sea level rise. These adverse effects pose a significant risk to existing and future residential structures in the state.
- Public and private investments in our communities are important for economic growth, and protecting all structures from flooding is essential to maintaining resilient communities.
- The mitigation of property damage constitutes a valid and recognized objective of the Florida Building Code.
- It is important to develop a consistent, statewide approach to minimizing flooding in the state to mitigate property damage and encourage continued investment in our communities.
- Minimum voluntary freeboard requirements are critical to addressing the devastating effects of flooding, and delaying the adoption and implementation of such requirements constitutes a threat to the health, safety, and welfare of the state.

The bill defines “freeboard” as the additional height, usually expressed as a factor of safety in feet, above the base flood elevation in determining the level at which a structure’s lowest floor or the bottom of the lowest horizontal structural member must be elevated in accordance with floodplain management regulations and the Florida Building Code. If a base flood elevation is not determined for a structure that is not located in a special flood hazard area as designated by a Flood Insurance Rate Map issued by the Federal Emergency Management Agency, the term “freeboard” means the highest adjacent grade⁶⁹ at the foundation of a structure.

“Voluntary freeboard” means the additional height above the freeboard required by floodplain management regulations and the Florida Building Code. If freeboard is not required by floodplain

⁶⁹ “The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.” Federal Emergency Management Agency, *Highest Adjacent Grade*, <https://www.fema.gov/glossary/highest-adjacent-grade#:~:text=Highest%20Adjacent%20Grade.%20The%20highest%20natural%20elevation%20of,two%20feet%20if%20no%20depth%20number%20is%20specified> (last visited March 29, 2023).

management regulations and the Florida Building Code, the term “voluntary freeboard” means the additional height above the highest adjacent grade at the foundation of a structure.

The bill provides that the maximum voluntary freeboard for all new residential construction and substantial improvements to existing residential construction is **4 feet**. Within a coastal high-hazard area, the maximum voluntary freeboard for all new residential construction and substantial improvements to existing residential construction is **9 feet**. The bill defines “coastal high-hazard area” as a special flood hazard area along the coast, as delineated by a Flood Insurance Rate Map issued by the Federal Emergency Management Agency, that has additional hazards due to wind and wave action.

The bill provides that for all new construction of a residential structure and “substantial improvements” to an existing residential structure, voluntary freeboard may not be used in the calculation of the “maximum allowable height” for the structure.

The bill defines:

- “Maximum allowable height” as the maximum height allowed for a structure in the applicable zoning district.
- “Substantial improvement” means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred.

The bill authorizes a local government to adopt by ordinance a maximum voluntary freeboard that exceeds the 4 feet maximum voluntary freeboard for all new residential construction and substantial improvements to existing residential construction. This does not apply to new residential construction and substantial improvements to existing residential construction within a coastal high-hazard area.

Plats (Section 3)

The bill requires, upon a request by an applicant, the local government to issue at least 50 percent of the building permits for the residential dwellings that are to be built in the applicant's residential community, but not occupied, if the developer or owner meets all of the following conditions:

- The project has an approved temporary plat or a preliminary plat approval that includes civil engineering plans approved by the local governing body.
- The applicant or developer provides to the local government a copy of the approved temporary plat or preliminary plat approval including the approved civil engineering plans for the electric, water, and wastewater utilities.
- The applicant or developer provides to the local government a performance bond or other form of guarantee for the satisfaction or completion of the contract for the necessary utilities, roads, and stormwater improvements that have not been completed by the time of issuance of the first building permit.
- The application for the building permit meets the requirements in the Building Code.

The bill provides that the applicant may not transfer ownership of a residential dwelling until a final plat is approved and recorded in the public records of the local government.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 3: Amends s. 553.792, F.S., relating to building permit application to local government.

Section 4: Creates s. 553.845, F.S., relating to flood damage prevention.

Section 5: Amends s. 440.103, F.S., relating to building permits; identification of minimum premium policy.

Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR states that surcharge collections pursuant to section 553.791, F.S., and section 468.631, F.S., could be impacted by the bill.⁷⁰

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

DBPR states that this bill may reduce the amount of permit fees that could be collected by local governments in certain circumstances.⁷¹

2. Expenditures:

This bill may impact local governments because they may have to hire more employees to meet the proscribed timeframes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DBPR states that the bill may reduce the cost of permit fees paid by the private sector to local governments based on the local governments failure to meet time requirements.⁷² On the other hand, the local jurisdiction may raise permit fees so that they can hire employees to meet the time requirements in the bill.

Building owners who incorporate voluntary freeboard may receive flood insurance discounts and reduce their exposure to flood events.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

⁷⁰ Department of Business & Professional Regulation, Agency Analysis of 2023 Senate Bill 682, p. 4 (February 14, 2023).

⁷¹ *Id.*, at 5.

⁷² *Id.*

The bill would require the Florida Building Commission to amend the Florida Building Code to reflect some of the bill's changes to building permit application processing requirements.⁷³

C. DRAFTING ISSUES OR OTHER COMMENTS:

The short title is insufficient. It is currently called "residential building permits", but the bill deals with all building permits.

These timeframes may be difficult for local governments to meet and permit fees may have to be raised in order to cover the costs of employees needed to meet such time frames.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Allows residential property owners to elevate their homes up to 4 feet and up to 9 feet in certain coastal areas.
- Provides definitions for coastal high hazard area, freedboard (elevation), maximum allowable height, substantial improvement, and voluntary elevation.
- Prohibits the voluntary elevation from being used for the calculation of the maximum required height.
- Provides local governments flexibility to enact an ordinance to enable residential property owners to elevate their properties.
- Requires local governments to approve building permit applications to build up to fifty percent of their planned homes if the preliminary plat has been approved and the developer meets the following conditions:
 - A copy of the preliminary plat has been provided to electric, water, and wastewater utilities.
 - A performance bond or other form of guarantee has been provided for utilities, roads, and stormwater improvements.
 - The application meets the requirements of the building code.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

⁷³ *Id.*, at 3; see also rule impacted, r. 61G20-1.001, F.A.C.