

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/CS/SB 812

INTRODUCER: Regulated Industries Committee; Community Affairs Committee and Senator Ingoglia

SUBJECT: Expedited Approval of Residential Building Permits

DATE: February 6, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 812 requires counties that have 75,000 residents or more and municipalities that have 30,000 residents or more to create a process to expedite the issuance of building permits based on a preliminary plat and to issue the number or percentage of building permits requested by an applicant, under certain circumstances, by October 1, 2024. A local government must update its expedited building permit program with certain increased percentages by December 31, 2027.

The application to expedite the issuance of building permits or the local government's final approval may not alter or restrict the applicant from receiving the number of building permits requested, as long as the request for the permits does not exceed 50 percent of the homes in the subdivision or planned community or the number of building permits. The provisions in the bill requiring a local government to create a program to issue a certain percentage of permits pursuant to a preliminary plat do not apply to a municipality with 25 acres or less of contiguous land zoned for residential or agricultural purposes, or to Monroe County.

The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the preliminary plat before the final plat is approved by the local government. The bill also requires all local governments to create a master building permit process.

The bill provides that an applicant for a building permit may not obtain a temporary or final certificate of occupancy for each residential structure or building until the final plat is approved

by the governing body and recorded in the public records; this provision revises language in the bill as originally filed that the provision only applied to final certificates.

The bill allows an applicant to use a private provider to review a preliminary plat and to obtain a building permit for each residential building or structure.

The bill provides that vested rights may be formed in a preliminary plat, under certain circumstances.

To date, no analysis by the Department of Business and Professional Regulation or the Department of Commerce of the impact of the bill on their respective operations, revenue, and expenditures has been provided. *See* Section V, Fiscal Impact Statement.

The bill takes effect upon becoming law.

II. Present 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 eighth edition, which is referred to as the 2023 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

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 Jan. 18, 2024).

² *Id.*

³ *See* the Department of Business and Professional Regulation's Building Code Information System website at <https://floridabuilding.org/c/default.aspx> (last visited Jan. 26, 2024).

⁴ Section 553.72(1), F.S.

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, is a 19-member technical body consisting 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

Platting

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.⁷ 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 sub-division.⁸

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.⁹ 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.¹⁰

Before a plat is offered for recording with the clerk of the circuit court, 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.¹¹

Jurisdiction over plat approval is as follows:¹²

- 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

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 Jan. 18, 2024).

⁶ Section 553.73(7)(a), F.S.

⁷ Section 177.031(14), F.S.

⁸ 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 Jan. 18, 2024).

⁹ Section 177.011, F.S.

¹⁰ Section 177.081(1), F.S.

¹¹ Section 177.071(1) F.S.

¹² Section 177.071(1), F.S.

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:¹³

- 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.

Preliminary Plat Approval

Many local governments around the state have a process to approve a preliminary plat before approving a final plat. Generally, a preliminary plat is a technical, graphic representation of a proposed development, including plans for streets, utilities, drainage, easements, and lot lines, for a proposed subdivision. If a preliminary plat is required, it is generally a prerequisite for a

¹³ Section 177.091, F.S.

final plat approval and the submission of any property improvement plans or permit applications.¹⁴

Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.¹⁵

Based on a preliminary plat approval, some local governments allow a developer to commence construction before the plat is finalized. For example, the City of Jacksonville, Village of Royal Palm Beach, and the City of Tallahassee allow for a preliminary plat approval process.¹⁶

In Jacksonville, 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:¹⁷

- 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.
- A Certificate of Occupancy may not be issued until the final plat is approved by JEA and the Department and recorded in the current public records of Duval County, Florida.
- Approval of the preliminary plat and required supplemental material are valid for 12 months from the date of approval. If the final plat is not submitted to and approved during the 12-month period, the conditional approvals are null and void.¹⁸

Vested Rights in Property Based on a Plat

In general, vested rights¹⁹ form when a property owner or developer acquires real property rights that cannot be taken by governmental regulation.²⁰ Property owners or developers who do not

¹⁴ For examples, see City of Zephyrhills Code of Ordinances s. 11.03.02.01; Palm Beach County Code of Ordinances Art. 11., Ch. A.; Seminole County, SEMINOLE COUNTY PLANNING & DEVELOPMENT DIVISION, Subdivision Application, <https://www.seminolecountyfl.gov/core/fileparse.php/3307/urlt/SUBDIVISION-05-2023.ADA.pdf> (last visited Jan. 18, 2024).

¹⁵ 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 Jan. 18, 2024).

¹⁶ 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.

¹⁷ City of Jacksonville Code of Ordinances s. 654-139(d).

¹⁸ City of Jacksonville Code of Ordinances s. 654-109(b).

¹⁹ Florida courts have used the concepts of vested rights and equitable estoppel interchangeably in deciding fault in property rights cases. Equitable estoppel, in this instance, means focusing on whether it would be inequitable or fair to allow a local government to deny prior conduct or position on building or development decisions. Robert M. Rhodes and Cathy M. Sellers, *Equitable Estoppel and Vested Rights in Land Use*, *The Florida Bar*, II Florida Environmental and Land Use Law 8, (1994).

²⁰ *Id.*; Heeter, *Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes*, *Urb.L. Ann.* 63, 64-65 (1971).

have vested rights will be subject to subsequently enacted land regulations, while subsequently enacted land regulations do not apply to the property owners or developers who are determined to have vested rights.²¹

Florida common law provides that vested rights in a property may be established if a property owner or developer has:²²

- In good faith reliance,
- Upon some act or omission of government,
- Made such a substantial change in position or has incurred such extensive obligations and expenses,
- That it would make it highly inequitable to interfere with the acquired right.

Recordation of a final plat with the clerk of the circuit court alone is not sufficient to establish vested rights²³ in the land development regulations in existence at that time.²⁴ Instead, the property owner or developer must take meaningful steps towards development of the property, such as applying for development permits or expending certain monies,²⁵ to constitute a substantial change in position or be considered extensive obligations and expenses towards development of the property in reliance on some action by the local government.²⁶

Additionally, a property owner or developer may obtain vested rights in both a local government-approved preliminary plat and a final plat, as long as expenditures or a substantial change have been made by the property owner or developer based on such preliminary plat or plat.²⁷

Private Providers

In 2002, s. 553.791, F.S., was enacted 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 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 license.²⁸

When a property owner or a contractor elects to use a private provider, he or she must notify the building official, on a form adopted by the Florida Building Commission, at the time of the permit application or no less than two business days before the first or next scheduled

²¹ *Monroe County v. Ambrose*, 866 So.2d 707, 712 (Fla. 3d DCA 2003); Kristin Melton, de la Parte & Gilbert P.A., *When are Rights Vested in a Platted Development?*, 2016, <https://www.dgfirm.com/email/2016summer/article2.html#:~:text=Florida%20common%20law%20provides%20that,it%20would%20make%20it%20highly> (last visited Jan. 18, 2024).

²² *Monroe County*, 866 So.2d at 710.

²³ *Id.*

²⁴ Melton, *supra*, at 42.

²⁵ *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).

²⁶ *Id.*; Melton, *supra*, at 42.

²⁷ *The Florida Companies v. Orange County*, 411 So.2d 1008, 1011 (Fla. 5th DCA 1982)

²⁸ Section 553.791(1)(n) and (3), F.S.

inspection.²⁹ A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider is authorized to review the plans.³⁰

A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.³¹

III. Effect of Proposed Changes:

The bill requires the governing body of certain municipalities and counties to create:

- A two-step application process for the adoption of a preliminary plat and for a final plat in order to expedite the issuance of building permits related to such plats. The application must allow an applicant to identify the percentage of planned homes, that the governing body must issue for the residential subdivision or planned community indicated in the preliminary plat. The governing body must maximize its administrative processes to expedite the review and approval of applications, plats, and plans.
- A master building permit process consistent with existing master building permit application requirements for applicants seeking multiple building permits for residential subdivisions or planned communities.
 - The bill provides that a master building permit issued pursuant to this requirement is valid for three consecutive years after its issuance or until the adoption of a new Building Code, whichever is earlier. After a new Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for three consecutive years.

The bill requires the governing body to issue the number or percentage of building permits requested by an applicant, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

- The governing body has approved a preliminary plat for each residential subdivision or planned community.
- The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.
- The applicant holds a valid performance bond for up to 130 percent of the necessary utilities, roads, and stormwater improvements that have not been completed upon submission of the application. For purposes of master planned communities,³² a valid performance bond is required on a phase-by-phase basis.

²⁹ Section 553.791(4)-(5), F.S.

³⁰ Section 553.791(6), F.S.

³¹ Section 553.791(9) and (18), F.S.

³² “Planned unit development” or “master planned community” means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. S. 163.3202(5)(b), F.S.

By October 1, 2024, the bill requires a governing body of a county that has 75,000 residents or more and a governing body of a municipality that has 30,000 residents or more to create a program to expedite the process for issuing building permits for residential subdivisions or planned communities before a final plat is recorded with the clerk of the circuit court.

Such expedited process must include an application for an applicant to identify the percentage of planned homes, or the number of building permits, that the governing body must issue for the residential subdivision or planned community, not to exceed 50 percent of the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community. The application to expedite the issuance of building permits or the local government's final approval may not alter or restrict the applicant, as long as the request for the permits does not exceed 50 percent of the homes in the subdivision or planned community or the number of building permits. These provisions do not apply to with 25 acres or less of contiguous land zoned for residential or agricultural purposes, or to Monroe County.

By December 31, 2027, the bill requires such governing bodies to update its expedited process to contain an application that allows an applicant to request an increased percentage of up to 75 percent of building permits for planned homes that the local governing body must issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 75 percent of the residential subdivision or planned community.

These provisions do not apply to:

- A municipality with 25 acres or less of land zoned for residential or agricultural purposes; or
- Monroe County.

If a governing body had a program in place before July 1, 2023, to expedite the building permit process, the bill requires such governing body to only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

The bill allows an applicant to use a private provider to review a preliminary plat and to obtain a building permit for each residential building or structure.

The bill allows a governing body to work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in an application.

The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill provides that an applicant for a building permit may not obtain a temporary or final certificate of occupancy for each residential structure or building until the final plat is approved by the governing body and recorded in the public records.

The bill requires an applicant to indemnify and hold harmless the governing body and its agents and employees from damages accruing and directly related to the issuance of a building permit for a residential building or structure located in the residential subdivision or planned community before the approval and recording of the final plat by the governing body. This includes damage resulting from fire, flood, construction defects, and bodily injury. However, such indemnification does not extend to governmental action that infringe on the applicant's vested rights.

An applicant has a vested right in a preliminary plat that has been approved with conditions by a governing entity, if all of the following conditions are met:

- The applicant relies in good faith on the approved preliminary plat, and
- The applicant incurs obligations and expenses, commences construction of the residential subdivision or planned community, and is continuing in good faith with the development of the property.

Upon the establishment of an applicant's vested rights a governing body may not make substantive changes to the preliminary plat without the applicant's written consent.

The bill provides the following definitions:

- "Applicant" means a homebuilder or developer that files an application with the local governing body to identify the percentage of planned homes, or the number of building permits, that the local governing body must issue for the residential subdivision or planned community.
- "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.
- "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains required land boundary information.
- "Local building official" has the same meaning as in s. 553.791(1), F.S.
- "Plans" means any building plans, construction plans, engineering plans, or site plans, or their functional equivalent, submitted by an applicant for a building permit.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The streamlined platting processes in the bill may expedite some single family residential development across the state.

C. Government Sector Impact:

This bill could impact local governments to the extent they may have to hire more employees to meet the prescribed timeframes.

To date, no analysis by the Department of Business and Professional Regulation or the Department of Commerce of the impact of the bill on their respective operations, revenue, and expenditures has been provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The sponsor amended the bill to provide that requirement to create a program to expedite the process for issuing building permits for residential subdivisions or planned communities before a final plat is recorded with the clerk of the circuit court does not apply to a municipality with 25 acres or less of contiguous land zoned for residential development or agricultural purposes. (*See* s. 177.073(2)(a)3. in the bill). A similar provision exempting municipalities with 25 acres or less of land zoned for residential development or agricultural purposes was not amended to include the term “contiguous.” (*See* s. 177.073(2)(c)3. in the bill).

VIII. Statutes Affected:

This bill substantially amends section 177.073 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on February 5, 2024:

The CS provides:

- The application to expedite the issuance of building permits or the local government's final approval may not alter or restrict the applicant from receiving the number of building permits requested, as long as the request for the permits does not exceed 50 percent of the homes in the subdivision or planned community or the number of building permits;
- That the requirement for an expedited permitting process that must be established by December 31, 2024 does not apply to a municipality with 25 acres or less of contiguous land zoned for residential development or agricultural purposes, and for the process established by December 31, 2027, a municipality with 25 acres or less of land zoned for residential development or agricultural purposes; and
- That an applicant for a building permit may not obtain a temporary or final certificate of occupancy for each residential structure or building until the final plat is approved by the governing body and recorded in the public records; this provision revises language in the bill providing that the provision only applied to final certificates.

CS by Community Affairs on January 22, 2024:

The committee substitute makes the following changes:

- Revises the vested rights provisions by removing certain requirements by a local governing body. Also the CS clarifies that an applicant must commence construction and continue to develop the property in good faith in order to obtain vested rights.
- Requires the governing body to obtain written consent of the applicant before it may make substantive changes to the preliminary plat upon establishment of an applicant's vested rights.
Requires the applicant to indemnify and hold harmless local governing body from certain liability related to the improvement of property. However, such indemnification does not extend to governmental action that infringe on vested rights.
- Changes dates relating to when a governing body must allow an applicant to obtain certain percentages of permits.
- Exempts Monroe County from the provisions which require the governing body to issue a certain percentage of permits pursuant to a preliminary plat.
- Provides that a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier, instead of later.
- Requires an applicant for permits pursuant to a preliminary plat to provide a copy of the approved plat to gas utilities.
- Removes provisions requiring reporting to the Department of Business and Professional Regulation and the Department of Commerce.
- Clarifies language and corrects grammatical errors.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
