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**DATE:** February 27, 2002

**HOUSE OF REPRESENTATIVES  
COUNCIL FOR SMARTER GOVERNMENT  
ANALYSIS**

**BILL #:** CS/HB 1307  
**RELATING TO:** Building Plans Review & Inspection  
**SPONSOR(S):** Council for Smarter Government and Representative Cantens  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
- (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
- (3)
- (4)
- (5)

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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill authorizes a property owner to use a private provider to review plans and make building code inspections as an alternative to such activities being performed by a local building official. The bill specifies requirements, duties, and responsibilities of a private provider, and provides procedures for application and issuance of a building permit, certificate of compliance, or certificate of occupancy. The bill provides duties of the local building official, and provides procedures for approval or denial of a certificate of compliance or a building permit. The bill prohibits local entities from adopting or enforcing laws, rules, procedures, or standards more stringent than those specified in the bill. The bill also requires a private provider to maintain liability insurance, and subjects private providers to applicable disciplinary provisions. The bill provides that a private provider, and any duly authorized representative, may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification, and prohibits a private provider from providing building code inspection services or plans review upon any building designed or constructed by the private provider or the private provider's firm. Finally, the bill requires local building code enforcement agencies to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

This bill increases the workload of the Florida Building Commission by requiring it to develop forms and to hear appeals relating to decisions of local building officials and local boards of appeal. The use of private providers to perform plans review and inspections should reduce the workload of some local building departments. The bill creates a new responsibility for local building departments by requiring each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction. Voluntary contracts between building owners and private providers will involve cost for the fee owner, but may avoid delays in obtaining permits and certificates of occupancy that entail costs for the fee owner.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input type="checkbox"/> *          |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

Less Government: This bill authorizes a property owner to use a private provider to review plans and make building code inspections as an alternative to such activities being performed by a local building official. By doing so, the bill supports the principle of “less government.” On the other hand, the bill places an additional responsibility on local governments by requiring each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

B. PRESENT SITUATION:

**Background**

Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity; mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, and exit systems; safe materials; energy efficiency; and accessibility by persons with physical disabilities. Under Florida’s building code system, counties and municipalities have primary responsibility for the enforcement of the current minimum building codes and, effective March 1, 2002, the Florida Building Code.

Building Codes

Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity; mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, and exit systems; safe materials; energy efficiency; and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promotes innovation and new technology, and helps ensure economic viability through the availability of safe and affordable buildings and structures.

The reform of Florida's building codes system has been an issue within the construction industry for many years. It was not until Florida endured back-to-back natural disasters - Hurricane Andrew in August 1992, the “Storm of the Century” in March 1993, Tropical Storms Alberto and Beryl in the Summer of 1994, and Hurricanes Erin and Opal during the 1995 Hurricane Season - that the building code system’s effectiveness took on statewide significance for the construction industry and all of the stakeholders in the building codes system, including local governments, the banking and real estate industries, the insurance industry, labor unions, state agencies, manufacturers, and Florida’s citizens. While it was fortunate that these storms set no records with respect to loss of life,

they (particularly Andrew) did break all records for insured losses. This was a direct cause of Florida's insurance crisis in the 1990's, which essentially affected every homeowner in the state.

In 1996, Governor Lawton Chiles established a Building Codes Study Commission to evaluate Florida's building codes system and develop recommendations to reform and improve it. The Governor appointed 28 members to the study commission, representing diverse stakeholders in the system, including building officials, local government officials, banking and real estate interests, the disabled, the design and construction industries, building owners, state agencies, and the general public. In 1998, the study commission issued its findings and proposed a building codes system.

The 1998 Legislature considered the findings and recommendations of the study commission and enacted major legislation reflecting a majority of its proposals. Chapter 98-287, L.O.F., implemented many of the study commission's recommendations, to include the development of a statewide unified building code.

On February 14, 2000 the Florida Building Commission adopted the Florida Building Code (Code) as an administrative rule and submitted it, together with proposed conforming amendments to the Florida Statutes, to the 2000 Legislature for consideration. The Commission also adopted the South Florida Building Code for application in Miami-Dade and Broward Counties.

In response, the Legislature directed the commission to incorporate specific changes to the adopted Code, and directed the Commission to recommend a statewide product approval system to the Legislature by February 2001. [Chapter 2000-141, L.O.F.]

In the 2001 session, the Legislature delayed implementation of the Florida Building Code from July 1, 2001, to January 1, 2002. In addition, it adopted recommendations of the Commission providing for a state product approval system and other issues relating to the Code. [Chapter 2001-186, L.O.F.]

In the 2001 special session "C", the Legislature enacted ch. 01-372, L.O.F., to delay the effective date of the Code to March 1, 2002.

#### Plans Review and Building Inspections

Chapter 553, F.S., grants local governments (or a specified local board or agency), unless otherwise specified, the authority and responsibility to provide for plans review and building inspections. (Sections 553.71(2) and 553.73(1)(e), F.S.) Section 553.79(2), F.S., prohibits enforcing agencies from issuing building permits "until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code."

In some cases, non-public professionals may conduct building inspections. Section 553.79(5), F.S., requires the use of private "special inspectors" to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. "Special inspector" is defined in s. 553.71(9), F.S., as a licensed architect or registered engineer who is certified under chapter 471 or chapter 481 to conduct inspections of threshold buildings. Threshold buildings are defined in s. 553.71(7), F.S., as "any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."

In addition, local governments may exempt "industrial construction" from local review of plans and inspections on sites where design, construction, and fire-safety are supervised by appropriate design and inspection professionals, and which contain adequate in-house fire departments and rescue squads, provided that building owners certify that applicable codes and standards have been met and that they supply appropriate approved drawings to local building and fire-safety inspectors. [s. 553.79(2), F.S.]

Section 104.5.2 of the Florida Building Code authorizes local governments to issue building permits based upon plan review by a registered architect or engineer. In such situations, the building official must require that the architect or engineer supervise the construction, provide copies of inspection reports as inspections are performed, and upon completion make and file with the building official a written affidavit that the work has been done in conformity to the reviewed plans and with the structural provisions of the technical codes. The building official must ensure that any person conducting plans review is qualified as a plans examiner under part XII of chapter 468, F.S., and that any person conducting inspections is qualified as a building inspector under Part III of chapter 468, F.S. [see s. 109(5) of ch. 2000-141, L.O.F.]

Not all construction subject to the Code is subject to the local plans review and building inspection. Section 553.77(5), F.S., specifically authorizes the Commission to provide by rule for plans review and approval of prototype buildings owned by public and private entities to be replicated throughout the state. The review and approval of plans for prototype buildings may be performed by a public or private entity with oversight by the commission. However, the construction or erection of such prototype buildings is subject to local permitting and inspections. Section 553.79(3), F.S., exempts the construction of manufactured homes, as defined by federal law, from local government plans review and building inspection.

Finally, s. 553.77(1)(o), F.S., grants the Commission the authority to develop recommendations for local governments to use when pursuing partial or full privatization of building department functions.

### **Building Code Officials, Plans Reviewers, and Inspectors**

Part XII of chapter 468, Florida Statutes, provides for the regulation of building code administrators and inspectors by the Board of Building Code Administrators and Inspectors within the Department of Business and Professional Regulation (DBPR). The statute provides for various types and levels of mandatory certification of building code administrators and inspection personnel. The program is funded by license fees and one-half of 1% surcharge on every building permit (local governments retain up to 10% of the surcharge, then the DBPR-projected funding needs of the board are subtracted, and the remainder goes to the Construction Industries Recovery Fund, established under part I of ch. 489, F.S.).

A building code administrator supervises enforcement of building code regulation, including plans review, enforcement, and inspection. A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner reviews plans submitted for building permits to determine compliance with construction codes.

There are several categories of inspector and plans examiner certificates, relating to the scope of the activities the licensee may perform (e.g., building inspector, commercial or residential electrical inspector, mechanical inspector, building plans examiner, plumbing plans examiner, etc.). Part XII sets forth the requirements for licensure for the various types and categories of certificate holders, including credentials from specified private organizations or specified experience (or a combination of education and experience) and an examination.

Section 468.607, F.S., provides that no person may be employed by a state agency or local government to perform the duties of building code administrator, plans examiner, or inspector after October 1, 1993, without possessing a proper valid certificate issued in accordance with the provisions of part XII of chapter 468, F.S.

### **Engineers and Architects**

Engineers are licensed and regulated by the Board of Professional Engineers, under the DBPR, pursuant to ch. 471, F.S. Engineers perform consultation, planning, and design of engineering systems. Ch. 471, F. S., provides for testing, licensure, and discipline of engineers.

Architects are licensed and regulated by the Board of Architecture and Interior Design, under the DBPR, pursuant to part I of ch. 41, F.S. Architecture is performing services in connection with the design and construction of a structure having the principal purpose of human habitation or use. Regulatory provisions include testing, licensure and discipline of architects.

Prior to 1998, architects and engineers were often asked to perform plans review or building inspection duties by local jurisdictions who were experiencing a temporary shortage of inspectors or plan reviewers. It was a common practice to perform these duties by contract without being forced to obtain licensure as a building inspector.

Currently, ss. 471.045 and 481.222, F.S., enacted in 1998, allow engineers and architects to perform building inspection duties, upon the request of a local government department or state agency, without having to obtain licensure as a building inspector. The licensed professionals' respective board, not the Board of Building Code Administrators and Inspectors, retains disciplinary authority. Plans review may not be performed for projects conducted by the engineer or architect or an associated firm. There is no similar authority for these professionals to perform such functions without additional licensure unless affiliated with a government client.

### **Building Construction Permitting and Inspection Task Force**

Section 41 of ch. 2001-186, Laws of Florida, created the Building Construction Permitting and Inspection Task Force to recommend a procedure by which the public could elect to engage an engineer or architect to perform plans review and inspection for the construction, alteration, repair, or improvement of real property, and the appropriate role of the local building official in such an alternative plans review and inspection procedure and in the resulting issuance of a building permit and certificate of occupancy. The section provided for the task force to be composed of 11 members, appointed as follows:

- Four members appointed by the Building Officials Association of Florida;
- One member appointed by the Associated General Contractors of Florida;
- One member appointed by the Florida Home Builders Association;
- One member appointed by the Florida Engineering Society;
- One member appointed by the Florida Association of the American Institute of Architects;
- Two members appointed by the Florida Building Commission, one member to be a building official or inspector, and one to be a contractor, architect, or engineer;

- One member appointed by the Florida Insurance Council.

The section required the task force to meet at least four times prior to January 1, 2002, and directed it to examine the various processes used by local building officials throughout the state in conducting plans review for the construction, alteration, repair, or improvement of real property, and approving building permit applications, as well as those processes used by local building officials in conducting required inspections for construction, alteration, repair, or improvement of real property, and issuing certificates of occupancy. The task was required to make recommendations on the following:

- A procedure by which the public could elect to engage an engineer or architect to perform plans review and inspection for the construction, alteration, repair, or improvement of real property; and
- The appropriate role of the local building official in such an alternative plans review and inspection procedure and in the resulting issuance of a building permit and certificate of occupancy.

The section directed the task force to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by January 1, 2002, a report presenting the task force's recommendations and findings.

The task force presented its report on December 28, 2001. Excerpts from the report regarding conclusions and recommendations are presented below:

### Findings

In a certain number of jurisdictions, unreasonable delays caused by local building departments in building construction permitting and inspection result in a financial loss for owners and contractors, and lead to temporary unemployment of construction workers. However, the role of the building official is one of ensuring code compliance that is critical for public safety, and must be protected in any alternative process developed now or in the future.

Information presented to the task force revealed that Florida Law, the Standard Building Code, and the soon to be implemented Florida Building Code, already allow for the use of private plan reviewers and inspectors. While many local building departments contract with private providers of these services, either on a consistent basis or during times of excessive construction activity, many others fail to contract with such providers, even in situations where unreasonable delays are common. The failure to increase building code enforcement staff or engage a private plan review and inspection service by certain jurisdictions has caused excessive delays for owners desiring to reasonably move ahead with construction of new buildings. The problem lies in the fact that the use of the private provider is a decision made at the discretion of the local jurisdictions, not the owner of the construction project.

Further information presented by task force members showed that many complaints of slow service by a local building department are a result of circumstances beyond the control of the building official. In many jurisdictions, building departments operate a "one stop" permitting process. While the permit applicant need only submit the required documents to the building department, the department must then distribute those documents to numerous other departments or agencies for review and approval that is required before a building plan review may even be started. A delay from any one of these other external agency's reviewers impedes the process, even though the building department may complete its part of the review in a timely

manner. Delays in permitting may also be caused by incomplete applications, incomplete or incorrect plans, and other reasons beyond the control of the building official.

Delays in the inspection process can also be caused by various factors. Overburdened building inspectors may have more scheduled inspections than they can complete, sometimes 30 to 40 inspections per day. On the other hand, many delays are the result of incomplete or improper work, weather, or other factors.

### Conclusion

Based on these facts, the Building Construction Permitting and Inspection Task Force concludes that one remedy to eliminate some delays is a procedure, mandated by the Florida Legislature, that would allow the use of private providers for plan review and inspection services. This procedure should allow the owner of a construction project an alternative method of acquiring these services, but still maintain the authority of the building official to protect the public interest. However, it must be understood that delays will still occur due to processes and agencies not under the direct control of the Building Department/Official.

### Recommendations

The Building Construction Permitting and Inspection Task Force recommends that the following procedure be adopted by statute. Additionally, it is recommended that a long-term study be conducted to arrive at an organizational structure that will facilitate permitting by concentrating all appropriate functions under the permitting agency.

#### *Plan Review / Building Permit Issuance*

Allow a construction project owner, at his/her discretion, to engage a private provider of plan review services. The private provider, and any designated representative, should be licensed as an engineer under Florida Statutes, Chapter 471 - Engineering, licensed as an architect under Florida Statutes, Chapter 481: Part I - Architecture, Interior Design, and Landscape Architecture, or licensed pursuant to Florida Statutes, Chapter 468: Part XII - Building Code Administrators and Inspectors.

Upon submittal of a completed building permit application, and affidavit from the private provider, the building department should issue the building permit within 30 business days. The building official will have the option to review the plans within the 30 business day period, and approve or reject the plans if needed due to identified code violations. Upon resubmittal of the plans, 5 days should be added to the days remaining from the initial 30-day period. Should the time expire, the building permit should be issued the next business day.

#### *Required Inspections*

Allow a construction project owner, at his/her discretion, to engage a private provider of construction inspection services. The private provider, and any designated representative, should be licensed as an engineer under Florida Statutes, Chapter 471 - Engineering, licensed as an architect under Florida Statutes, Chapter 481 - Architecture, Interior Design, and Landscape Architecture, or licensed pursuant to Florida Statutes, Chapter 468: Part XII - Building Code Administrators and Inspectors.

For quality assurance purposes, the private provider should notify the local building official of any scheduled inspection required by the applicable building code on the business day prior to the scheduled inspection. This notification should occur prior to the cut-off time designated by

the local building department for scheduling inspections. The building department should be able to send a building inspector to participate in the inspection, but should not be able to delay the inspection if an inspector is not available.

Upon conclusion of each required inspection, the private provider should post the results of the inspection at the project site immediately, and must report the results of the inspection to the local building department within two business days. Records of each completed required inspection should be maintained at the project site at all times.

Upon completion of all required inspections, the private provider should submit a certificate of compliance to the local building department.

Upon receipt of a completed application for a certificate of occupancy, the building department should have two business days to issue the certificate, or provide written notice detailing deficiencies.

#### *Building Official Authority and Responsibility*

The Building Official should be able to deny a building permit or certificate of occupancy if the Building Official determines that the plans or construction do not comply with applicable building codes.

The Building Official should be able to visit the project site as often as necessary to verify that all required inspections are being conducted. Further, the Building Official should be able to issue a stop-work order on any project, or portion thereof, deemed to be an immediate threat to public safety.

The local jurisdiction and all its employees should be held harmless for any and all claims that arise from the direct or indirect role of the private provider in performing plan review and inspection services.

The Building Official should develop and maintain a quality assurance process to audit construction projects in which private providers are utilized for plan review and inspection services.

#### *Dispute Resolution*

In order to resolve or discuss noted code violations, the Building Official should meet with the private provider within two business days after providing written notice rejecting a building permit or certificate of occupancy application, or issuing a stop work order.

In the event the dispute cannot be resolved, the permit holder should be able to appeal the decision of the Building Official to the local Board of Appeals. The local Board of Appeals should address the appeal at their next scheduled meeting. The permit holder should be able to appeal any decision of a local Board of Appeals to the Florida Building Commission. The Florida Building Commission should address the appeal at their next scheduled meeting. In jurisdictions with no Board of Appeals, the permit holder should be able to appeal the decision of the Building Official to the Florida Building Commission, and the Florida Building Commission should address the appeal at their next scheduled meeting.



### *Insurance Requirements*

Private providers should carry professional and comprehensive general liability with minimum policy limits of one million dollars per occurrence, from an "A" rated carrier, with minimum tail coverage of five years.

### *Exemption Procedure*

Building departments with a history of timely plan review and inspection service should have a procedure whereby they may receive an exemption from the alternative process identified herein. This procedure should allow a building department to certify meeting the statutory time limits for plan review and inspection. The local chapters of two of the following entities should endorse this certification: the Florida Associated General Contractors, Florida Home Builders Association, and Florida Chapter of the American Institute of Architects.

The task force also submitted draft legislation to implement its recommendations.

## C. EFFECT OF PROPOSED CHANGES:

This bill authorizes a property owner to use a private provider to review plans and make building code inspections as an alternative to such activities being performed by a local building official. The bill specifies requirements, duties, and responsibilities of a private provider, and provides procedures for application and issuance of a building permit, certificate of compliance, or certificate of occupancy. The bill provides duties of the local building official, and provides procedures for approval or denial of a certificate of compliance or a building permit. The bill prohibits local entities from adopting or enforcing laws, rules, procedures, or standards more stringent than those specified in the bill. The bill also requires a private provider to maintain liability insurance, and subjects private providers to applicable disciplinary provisions. The bill provides that a private provider, and any duly authorized representative, may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification, and prohibits a private provider from providing building code inspection services or plans review upon any building designed or constructed by the private provider or the private provider's firm. Finally, the bill requires local building code enforcement agencies to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

## D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Section 553.791, F.S., is created to provide an alternative plans review and inspection process.

Subsection (1) defines the following terms: "Applicable codes," "Building," "Building code inspection services," "Duly authorized representative," "Local building official," "Permit application," "Private provider," and "Request for certificate of occupancy or certificate of completion"

Subsection (2) provides that notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. The subsection requires all such services to be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner. In addition, the subsection provides that notwithstanding any other provision of law, the fee owner may elect to use a private provider to provide both plans review and required building inspections or to use the local enforcement agency for one or both of such purposes.

Subsection (3) provides that a private provider, and any duly authorized representative, may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under chapters 481, 471, or 468, F.S. The subsection also prohibits a private provider from providing building code inspection services or plans review pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

Subsection (4) requires a fee owner using a private provider to provide building code inspection services to notify the local building official at the time of permit application on a form to be adopted by the Florida Building Commission. The subsection specifies the information that must be included on the form, including an acknowledgment statement from the fee owner. The subsection also requires that if the fee owner makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner must, within 1 business day after any change, update the notice to reflect such changes.

Subsection (5) requires a private provider performing plans review under this section to review construction plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider must prepare an affidavit or affidavits on a form adopted by the Florida Building Commission certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

- The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.
- The plans comply with the applicable codes.

Subsection (6) requires that within 30 business days after receipt of a permit application, the local building official issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit application will be deemed approved, as a matter of law and the permit must be issued by the local building official on the next business day. If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30-day period, the 30-day period will be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit revisions to correct the deficiencies. If the permit applicant submits revisions, the local building official has the remainder of the tolled 30-day period plus 5 business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit must be issued by the local building official on the next business day. If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

Subsection (7) requires a private provider performing required inspections under this section to inspect each phase of construction as required by the applicable codes. The private provider must be permitted to send a duly authorized representative to the building site to perform the required inspections, provided all required reports and certifications are prepared by and bear the signature and seal of the private provider. The subsection provides that the contractor's contractual or legal obligations are not relieved by any action of the private provider.

Subsection (8) requires a private provider performing required inspections under this section to provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2:00 p.m. local time, or by any later time permitted by the local building official in that jurisdiction. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections.

Subsection (9) provides that upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. These inspection records must reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, must post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. Records of all required and completed inspections must be maintained at the building site at all times and made available for review by the local building official. The private provider must report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

Subsection (10) requires upon completion of all required inspections the private provider to prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The subsection provides the form the statement required of the private provider must follow.

Subsection (11) provides that within 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official must issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion will be deemed granted and the certificate of occupancy or certificate of completion must be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit a corrected request for a certificate of occupancy or certificate of completion.

Subsection (12) provides that if the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof, if the official determines that such noncompliance poses a threat to public safety and welfare, subject to the following:

- The local building official must be available to meet with the private provider within 2 business days to resolve any dispute after issuing a stop-work order or providing notice to

the applicant denying a permit or request for a certificate of occupancy or certificate of completion.

- If the local building official and private provider are unable to resolve the dispute, the matter must be referred to the local enforcement agency's board of appeals, if one exists, which must consider the matter at its next scheduled meeting or sooner. Any decisions by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the Florida Building Commission pursuant to s. 553.77(1)(h), F.S.
- Notwithstanding any provision of this section, any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists. Any decision by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the Florida Building Commission pursuant s. 553.77(1)(h), F.S., which shall consider the matter at the Commission's next scheduled meeting.

Subsection (13) provides that for the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the facsimile number listed for that person or entity in the permit application or revised permit application, or, if no facsimile number is stated, when actually received by that person or entity.

Subsection (14) prohibits any local enforcement agency, local building official, or local government from adopting or enforcing any laws, rules, procedures, or standards more stringent than those prescribed by this section.

Subsection (15) provides that a private provider may perform building code inspection services under this section only if the private provider maintains insurance for professional and comprehensive general liability with minimum policy limits of \$1 million per occurrence relating to all services performed as a private provider, including tail coverage for a minimum of 5 years subsequent to the performance of building code inspection services.

Subsection (16) provides that when performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under ch. 468, F.S., ch. 471, F.S., or ch. 481, F.S. In addition, the subsection provides that all private providers are subject to the disciplinary guidelines of s. 468.621(1)(c)-(h), F.S. The subsection requires that any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services be conducted by the applicable professional board.

Subsection (17) requires each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

Subsection (18) provides that the local government, the local building official, and their building code personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.

**Section 2.** An effective date of October 1, 2002, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill requires the Florida Building Commission to develop several forms, and requires the Commission to hear appeals relating to decisions of local building officials and local boards of appeal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The use of private providers to perform plans review and inspections should reduce the workload of some local building departments. The bill creates a new responsibility for local building departments by requiring each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill gives the fee owner of a building the opportunity to contract with a private provider to perform plans review and inspection services. Such voluntary contracts will involve cost for the fee owner, but may avoid delays in obtaining permits and certificates of occupancy that entail costs for the fee owner.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The requirement for each local building code enforcement agency to develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction will require cities and counties to spend money in order to implement. As a result, the bill constitutes a mandate as defined in Article VII, Section 18(a) of the Florida Constitution:

No county or municipality shall be bound by any general law requiring such County or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund

such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature...

Article VII, Section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents.

The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms. However, under the bill's provisions local governments should experience a corresponding decrease in expenditures for plans reviews and inspections and the overall fiscal impact on counties and municipalities should be insignificant. As a result, the bill is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

The bill does not reduce the percentage of a state tax shared with counties and municipalities.

**V. COMMENTS:**

**A. CONSTITUTIONAL ISSUES:**

N/A

**B. RULE-MAKING AUTHORITY:**

N/A

**C. OTHER COMMENTS:**

None.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On February 26, 2002, the Council for Smarter Government adopted a strike-everything amendment to HB 1307, and passed the bill as a council substitute. CS/HB 1307 incorporates amendments 1 and 2 adopted by the Committee on Local Government & Veterans Affairs at its February 21, 2002, meeting. Amendment #1 corrected a bill drafting error that inadvertently included landscape architects and interior designers in the definition of "private provider." Amendment #2 corrected a bill drafting error that inadvertently included landscape architects and interior designers in the definition of "duly authorized representative." Additional differences between CS/HB 1307 and HB 1307 include:

- CS/HB 1307 includes language providing that a private provider, and any duly authorized representative, may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification.

- CS/HB 1307 adds language to the required acknowledgment statement from the fee owner providing that the fee owner agrees to indemnify, defend, and hold harmless not only the local government and the local building official, but also their building code enforcement personnel.
- CS/HB 1307 clarifies that notice of change in a private provider from the owner to the building official must be given within one business day instead of 24 hours.
- CS/HB 1307 revises the timing of the notice of scheduled inspections from the private provider to the local building official from one full business day to 2:00 p.m. on the prior business day, or at any later time permitted by the local building official.
- CS/HB 1307 revises language requiring a local government to develop and maintain an audit process to delete reference to a quality assurance process.
- CS/HB 1307 deletes language included in HB 1307 allowing a local government to be exempted from this act under specified conditions.
- CS/HB 1307 adds language providing that the local government, the local building official, and their building code personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.
- CS/HB 1307 has an effective date of October 1, 2002, rather than upon becoming a law.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Council Director:

Thomas L. Hamby, Jr.

Don Rubottom