

By the Council for Smarter Government and Representatives
Cantens and Arza

1 A bill to be entitled
2 An act relating to private provider plans
3 review and building code inspection services;
4 creating s. 553.791, F.S.; providing
5 alternative procedures for building plans
6 review and inspection; providing definitions;
7 authorizing use of a private provider to review
8 plans and make building code inspections under
9 certain circumstances; providing a limitation;
10 requiring notice to the local building
11 official; specifying notice information;
12 specifying requirements, duties, and
13 responsibilities of a private provider;
14 providing for a certificate of compliance;
15 providing duties of the local building
16 official; providing procedures for approval or
17 denial of a certificate of compliance or a
18 building permit; prohibiting local entities
19 from adopting or enforcing certain laws, rules,
20 procedures, or standards; requiring a private
21 provider to maintain certain insurance;
22 subjecting private providers to certain
23 disciplinary provisions; limiting use of a
24 private provider under certain circumstances;
25 requiring local building code enforcement
26 agencies to develop and maintain a process to
27 audit the performance of building code
28 inspection services; providing immunity from
29 liability; providing an effective date.

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31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 553.791, Florida Statutes, is
2 created to read:

3 553.791 Alternative plans review and inspection.--

4 (1) As used in this section, the term:

5 (a) "Applicable codes" means the Florida Building Code
6 and any local technical amendments to the Florida Building
7 Code but does not include the applicable minimum fire
8 prevention and firesafety codes adopted pursuant to chapter
9 633.

10 (b) "Building" means any construction, erection,
11 alteration, demolition, or improvement of, or addition to, any
12 structure for which permitting by a local enforcement agency
13 is required.

14 (c) "Building code inspection services" means those
15 services described in s. 468.603(6) and (7) involving the
16 review of building plans to determine compliance with
17 applicable codes and those inspections required by law of each
18 phase of construction for which permitting by a local
19 enforcement agency is required to determine compliance with
20 applicable codes.

21 (d) "Duly authorized representative" means an agent of
22 the private provider identified in the permit application who
23 reviews plans or performs inspections as provided by this
24 section and who is licensed as an engineer under chapter 471
25 or as an architect under chapter 481 or who holds a standard
26 certificate under part XII of chapter 468.

27 (e) "Local building official" means the individual
28 within the governing jurisdiction responsible for direct
29 regulatory administration or supervision of plans review,
30 enforcement, and inspection of any construction, erection,
31 alteration, demolition, or substantial improvement of, or

1 addition to, any structure for which permitting is required to
2 indicate compliance with applicable codes and includes any
3 duly authorized designee of such person.

4 (f) "Permit application" means a properly completed
5 and submitted application for:

6 1. The requested building or construction permit.

7 2. The plans reviewed by the private provider.

8 3. The affidavit from the private provider required
9 pursuant to subsection (5).

10 4. Any applicable fees.

11 5. Any documents required by the local building
12 official to determine that the fee owner has secured all other
13 government approvals required by law.

14 (g) "Private provider" means a person licensed as an
15 engineer under chapter 471 or as an architect under chapter
16 481 or a person who holds a standard certificate under part
17 XII of chapter 468.

18 (h) "Request for certificate of occupancy or
19 certificate of completion" means a properly completed and
20 executed application for:

21 1. A certificate of occupancy or certificate of
22 completion.

23 2. A certificate of compliance from the private
24 provider required pursuant to subsection (10).

25 3. Any applicable fees.

26 4. Any documents required by the local building
27 official to determine that the fee owner has secured all other
28 government approvals required by law.

29 (2) Notwithstanding any other provision of law, the
30 fee owner of a building may use a private provider to provide
31 building code inspection services with regard to such building

1 and may make payment directly to the private provider for the
2 provision of such services. All such services shall be the
3 subject of a written contract between the private provider, or
4 the private provider's firm, and the fee owner.

5 Notwithstanding any other provision of law, the fee owner may
6 elect to use a private provider to provide both plans review
7 and required building inspections or to use the local
8 enforcement agency for one or both of such purposes.

9 (3) A private provider and any duly authorized
10 representative may only perform building code inspection
11 services that are within the disciplines covered by that
12 person's licensure or certification under chapter 481, chapter
13 471, or chapter 468. A private provider may not provide
14 building code inspection services pursuant to this section
15 upon any building designed or constructed by the private
16 provider or the private provider's firm.

17 (4) A fee owner using a private provider to provide
18 building code inspection services shall notify the local
19 building official at the time of permit application on a form
20 to be adopted by the commission. This notice shall include the
21 following information:

22 (a) The services to be performed by the private
23 provider, whether plans review, required building inspections,
24 or both.

25 (b) The name, firm, address, telephone number, and
26 facsimile number of each private provider who is performing or
27 will perform such services, his or her professional license or
28 certification number, qualification statements or resumes,
29 and, if required by the local building official, a certificate
30 of insurance demonstrating that professional liability
31 insurance coverage is in place for the private provider's

1 firm, the private provider, and any duly authorized
2 representative in the amounts required by this section.

3 (c) An acknowledgment from the fee owner in
4 substantially the following form:

5
6 I have elected to use one or more private
7 providers to provide building code plans review
8 and/or inspection services on the building that
9 is the subject of the enclosed permit
10 application, as authorized by s. 553.791,
11 Florida Statutes. I understand that the local
12 building official may not review the plans
13 submitted or perform the required building
14 inspections to determine compliance with the
15 applicable codes, except to the extent
16 specified in said law. Instead, plans review
17 and/or required building inspections will be
18 performed by licensed or certified personnel
19 identified in the application. The law
20 requires minimum insurance requirements for
21 such personnel, but I understand that I may
22 require more insurance to protect my interests.
23 By executing this form, I acknowledge that I
24 have made inquiry regarding the competence of
25 the licensed or certified personnel and the
26 level of their insurance and am satisfied that
27 my interests are adequately protected. I agree
28 to indemnify, defend, and hold harmless the
29 local government, the local building official,
30 and their building code enforcement personnel
31 from any and all claims arising from my use of

1 these licensed or certified personnel to
2 perform building code inspection services with
3 respect to the building that is the subject of
4 the enclosed permit application.

5
6 If the fee owner makes any changes to the listed private
7 providers or the services to be provided by those private
8 providers, the fee owner shall, within 1 business day after
9 any change, update the notice to reflect such changes.

10 (5) A private provider performing plans review under
11 this section shall review construction plans to determine
12 compliance with the applicable codes. Upon determining that
13 the plans reviewed comply with the applicable codes, the
14 private provider shall prepare an affidavit or affidavits on a
15 form adopted by the commission certifying, under oath, that
16 the following is true and correct to the best of the private
17 provider's knowledge and belief:

18 (a) The plans were reviewed by the affiant, who is
19 duly authorized to perform plans review pursuant to this
20 section and holds the appropriate license or certificate.

21 (b) The plans comply with the applicable codes.

22 (6)(a) Within 30 business days after receipt of a
23 permit application, the local building official shall issue
24 the requested permit or provide a written notice to the permit
25 applicant identifying the specific plan features that do not
26 comply with the applicable codes, as well as the specific code
27 chapters and sections. If the local building official does
28 not provide a written notice of the plan deficiencies within
29 the prescribed 30-day period, the permit application shall be
30 deemed approved as a matter of law and the permit shall be
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1 issued by the local building official on the next business
2 day.

3 (b) If the local building official provides a written
4 notice of plan deficiencies to the permit applicant within the
5 prescribed 30-day period, the 30-day period shall be tolled
6 pending resolution of the matter. To resolve the plan
7 deficiencies, the permit applicant may elect to dispute the
8 deficiencies pursuant to subsection (12) or to submit
9 revisions to correct the deficiencies.

10 (c) If the permit applicant submits revisions, the
11 local building official has the remainder of the tolled 30-day
12 period plus 5 business days to issue the requested permit or
13 to provide a second written notice to the permit applicant
14 stating which of the previously identified plan features
15 remain in noncompliance with the applicable codes, with
16 specific reference to the relevant code chapters and sections.
17 If the local building official does not provide the second
18 written notice within the prescribed time period, the permit
19 shall be issued by the local building official on the next
20 business day.

21 (d) If the local building official provides a second
22 written notice of plan deficiencies to the permit applicant
23 within the prescribed time period, the permit applicant may
24 elect to dispute the deficiencies pursuant to subsection (12)
25 or to submit additional revisions to correct the deficiencies.
26 For all revisions submitted after the first revision, the
27 local building official has an additional 5 business days to
28 issue the requested permit or to provide a written notice to
29 the permit applicant stating which of the previously
30 identified plan features remain in noncompliance with the

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1 applicable codes, with specific reference to the relevant code
2 chapters and sections.

3 (7) A private provider performing required inspections
4 under this section shall inspect each phase of construction as
5 required by the applicable codes. The private provider shall
6 be permitted to send a duly authorized representative to the
7 building site to perform the required inspections, provided
8 all required reports and certifications are prepared by and
9 bear the signature and seal of the private provider. The
10 contractor's contractual or legal obligations are not relieved
11 by any action of the private provider.

12 (8) A private provider performing required inspections
13 under this section shall provide notice to the local building
14 official of the date and approximate time of any such
15 inspection no later than the prior business day by 2 p.m.
16 local time or by any later time permitted by the local
17 building official in that jurisdiction. The local building
18 official may visit the building site as often as necessary to
19 verify that the private provider is performing all required
20 inspections.

21 (9) Upon completing the required inspections at each
22 applicable phase of construction, the private provider shall
23 record such inspections on a form acceptable to the local
24 building official. These inspection records shall reflect
25 those inspections required by the applicable codes of each
26 phase of construction for which permitting by a local
27 enforcement agency is required. The private provider, before
28 leaving the project site, shall post each completed inspection
29 record, indicating pass or fail, at the site and provide the
30 record to the local building official within 2 business days.
31 Records of all required and completed inspections shall be

1 maintained at the building site at all times and made
2 available for review by the local building official. The
3 private provider shall report to the local enforcement agency
4 any condition that poses an immediate threat to public safety
5 and welfare.

6 (10) Upon completion of all required inspections, the
7 private provider shall prepare a certificate of compliance, on
8 a form acceptable to the local building official, summarizing
9 the inspections performed and including a written
10 representation, under oath, that the stated inspections have
11 been performed and that, to the best of the private provider's
12 knowledge and belief, the building construction inspected
13 complies with the approved plans and applicable codes. The
14 statement required of the private provider shall be
15 substantially in the following form:

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17 To the best of my knowledge and belief, the
18 building components and site improvements
19 outlined herein and inspected under my
20 authority have been completed in conformance
21 with the approved plans and the applicable
22 codes.

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24 (11) Within 2 business days after receipt of a request
25 for a certificate of occupancy or certificate of completion
26 and the applicant's presentation of a certificate of
27 compliance and approval of all other government approvals
28 required by law, the local building official shall issue the
29 certificate of occupancy or certificate of completion or
30 provide a notice to the applicant identifying the specific
31 deficiencies, as well as the specific code chapters and

1 sections. If the local building official does not provide
2 notice of the deficiencies within the prescribed 2-day period,
3 the request for a certificate of occupancy or certificate of
4 completion shall be deemed granted and the certificate of
5 occupancy or certificate of completion shall be issued by the
6 local building official on the next business day. To resolve
7 any identified deficiencies, the applicant may elect to
8 dispute the deficiencies pursuant to subsection (12) or to
9 submit a corrected request for a certificate of occupancy or
10 certificate of completion.

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

19 (a) The local building official shall be available to
20 meet with the private provider within 2 business days to
21 resolve any dispute after issuing a stop-work order or
22 providing notice to the applicant denying a permit or request
23 for a certificate of occupancy or certificate of completion.

24 (b) If the local building official and private
25 provider are unable to resolve the dispute, the matter shall
26 be referred to the local enforcement agency's board of
27 appeals, if one exists, which shall consider the matter at its
28 next scheduled meeting or sooner. Any decisions by the local
29 enforcement agency's board of appeals, or local building
30 official if there is no board of appeals, may be appealed to
31 the commission pursuant to s. 553.77(1)(h).

1 (c) Notwithstanding any provision of this section, any
2 decisions regarding the issuance of a building permit,
3 certificate of occupancy, or certificate of completion may be
4 reviewed by the local enforcement agency's board of appeals,
5 if one exists. Any decision by the local enforcement agency's
6 board of appeals, or local building official if there is no
7 board of appeals, may be appealed to the commission pursuant
8 to s. 553.77(1)(h), which shall consider the matter at the
9 commission's next scheduled meeting.

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

17 (14) No local enforcement agency, local building
18 official, or local government may adopt or enforce any laws,
19 rules, procedures, or standards more stringent than those
20 prescribed by this section.

21 (15) A private provider may perform building code
22 inspection services under this section only if the private
23 provider maintains insurance for professional and
24 comprehensive general liability with minimum policy limits of
25 \$1 million per occurrence relating to all services performed
26 as a private provider, including tail coverage for a minimum
27 of 5 years subsequent to the performance of building code
28 inspection services.

29 (16) When performing building code inspection
30 services, a private provider is subject to the disciplinary
31 guidelines of the applicable professional board with

1 jurisdiction over his or her license or certification under
2 chapter 468, chapter 471, or chapter 481. All private
3 providers shall be subject to the disciplinary guidelines of
4 s. 468.621(1)(c)-(h). Any complaint processing,
5 investigation, and discipline that arise out of a private
6 provider's performance of building code inspection services
7 shall be conducted by the applicable professional board.

8 (17) Each local building code enforcement agency shall
9 develop and maintain a process to audit the performance of
10 building code inspection services by private providers
11 operating within the local jurisdiction.

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

19 Section 2. This act shall take effect October 1, 2002.
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