

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2078

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Constantine

SUBJECT: Building Plan Code Compliance Review

DATE: February 26, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

This CS prescribes an alternative method for the use of private professionals to perform building code inspection services, and prescribes requirements for private professionals, duties of local officials, and procedures for review and appeal of private code inspection services. This CS also requires the Florida Building Commission to develop building code provisions to facilitate rehabilitation & use of existing structures and narrows the definition of non-residential farm buildings, which are exempt from the requirements of the Florida Building Code.

This bill amends section 604.50 of the Florida Statutes.

This bill creates section 553.791 of the Florida Statutes, and a new unspecified section of Florida Law.

II. Present Situation:

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 with the following characteristics:

- A single, statewide building code that would govern all technical requirements for Florida's public and private buildings and take into account appropriate local variations such as the following: climatic conditions, soil types, termites, weather-related events, and risks associated with coastal development;
- Local enforcement of the statewide building code, with updates and amendments accomplished by a newly constituted state-level entity;
- State review of decisions of local officials or boards of appeal, and state authority to issue binding interpretations to ensure statewide consistency;
- Strengthened enforcement and compliance to ensure accountability through expanded education and training of all participants involved in building construction, clear and precise definition of roles and responsibilities, and discipline; and
- A strong product evaluation and approval process which is responsible, streamlined, and affordable, and which promotes innovation and new technology.

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 and the renaming of the Board of Building Codes and Standards as the Florida Building Commission (commission).

On February 14, 2000, the commission adopted the Florida Building 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 Florida Building 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 Florida Building 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 Florida Building 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.]

Sections 104.3.2 and 104.5.2 of the Florida Building Code authorizes local governments the option 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.]

In August, 2001, Miami-Dade County adopted a formal process for issuing permits based on private plans review and inspections, certified by registered architects and engineers. This option

is available in the unincorporated area of the county and in municipalities choosing to participate. The certifying architect or engineer must be registered with the county, must maintain an active state license, and must have “professional errors and omissions” insurance coverage of not less than \$1 million per occurrence for residential construction, and \$2 million per occurrence for commercial construction.

Not all construction subject to the Florida Building Code is subject to the local plans review and building inspection. Section 553.77(5), F.S., specifically authorizes the Florida Building Commission (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 Florida Building Commission the authority to develop recommendations for local governments to use when pursuing partial or full privatization of building department functions.

Building Construction Permitting and Inspection Task Force

Section 41 of ch. 2001-186, L.O.F., 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. The task force was also charged to assess 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 task force was composed of 11 members, appointed as follows:

- The Building Officials Association of Florida appointed four members;
- The Associated General Contractors of Florida appointed one member;
- The Florida Home Builders Association appointed one member;
- The Florida Engineering Society appointed one member;
- The Florida Association of the American Institute of Architects appointed one member;
- The Florida Building Commission appointed two members, one was a building official and one an engineer; and
- The Florida Insurance Council appointed one member.

The task force met five times with meetings held in Winter Park, Fort Lauderdale, Jacksonville, and Fort Myers, and via conference call. The task force found that 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. While the Florida Building Code allows for the use of private plan reviewers and inspectors, authority to allow use of such private plan reviewers and inspectors is made at the discretion of the local jurisdictions. To address this

problem, the task force recommended the statutes be amended to allow the owner of a construction project, without specific local government authorization, to use private providers for plan review and inspection services. The substance of the task force's recommendations is contained in the bill as filed.

III. Effect of Proposed Changes:

Section 1 creates an unspecified section of Florida Law to require the Florida Building Commission to develop building code provisions to facilitate rehabilitation and use of existing structures. The commission must identify legislative changes required to implement the provisions and report to the Legislature the activities undertaken in response to this charge before January 1, 2003.

Section 2 amends s. 604.50, F.S., to narrow the definition of non-residential farm buildings, which are exempt from the requirements of the Florida Building Code. Under this provision, a non-residential farm building means any building or support structure used by a farm operation which is not used as a residential dwelling and is located on land classified as agricultural land under s. 193.461, F.S., the statutory provision which governs the classification of agricultural land for ad valorem tax purposes. Current law provides that a non-residential farm building means any building or structure located on a farm that is not used as a residential dwelling.

Section 3 creates s. 553.791, F.S., to establish a procedure by which the public could choose to hire an engineer or architect to perform plans review and building inspection services for structures for which building permits are required.

Section 553.791(1), F.S., provides definitions for the following terms:

- "Applicable codes" means the Florida Building Code and any local technical amendments to the Florida Building Code, but does not include the applicable minimum fire prevention and fire safety codes adopted pursuant to chapter 633.
- "Request for certificate of occupancy or certificate of completion" means a properly completed and executed application for a certificate of occupancy or certificate of completion, the certificate of compliance from the private provider required pursuant to this act, any applicable fees, and those documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.
- "Building" means any construction, erection, alteration, demolition, addition to, or substantial improvement of any structure for which permitting by a local law enforcement agency is required.
- "Building code inspection services" means those services described in s. 468.603(6) and (7) involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.
- "Duly authorized representative" means an agent of the provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481, or

who holds a standard certificate under part XII of chapter 468 (building code administrators and inspectors).

- "Local building official" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plan review, enforcement and inspection of any construction, erection, alteration, demolition, addition to, or substantial improvement of any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.
- "Permit application" means a properly completed and submitted application for the requested building or construction permit, the plans reviewed by the private provider, the affidavit from the private provider required pursuant to this act, any applicable fees, and those documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.
- "Private provider" means a person licensed as an engineer under chapter 471, or as an architect under chapter 481, or a person who holds a standard certificate under part XII of chapter 468 (building code administrators and inspectors).

Subsection (2) authorizes the fee owner of a building to use and pay a private provider to offer building code inspection services, subject to a written contract between these parties. The fee owner may use a private provider to offer both plans review and required building inspections or to use the local enforcement agency for one or both of these purposes.

Subsection (3) restricts private providers and any duly authorized representative from performing inspection services that are not within the disciplines covered by their licensure or certification, and restricts private providers from providing building code inspection services or plan review upon any building designed or constructed by the private provider or the provider's firm.

Subsection (4) requires a fee owner using a private provider to offer building code inspection services to notify the local building official at the time of permit application on a form to be adopted by the commission. This notice must include the following information:

- The services to be performed by a private provider, whether plans review, required building inspections, or both;
- The name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, their professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the provider's firm, the provider, and any duly authorized representative, in the amounts required by this act; and
- An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private provider to provide building code plan review and/or inspection services on the building that is the subject of the enclosed permit application, as authorized by section 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the

applicable codes, except to the extent specified in such law. Instead, plans review or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building that is the subject of the enclosed permit application.

The fee owner must, within one business day, update the notice if any changes are made to the listed private provider or the services to be provided by those providers.

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 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; and
- The plans comply with the applicable codes.

Subsection (6) establishes a timeline for permitting. Paragraph (6)(a) requires that upon receipt of a permit application, the local building official has 30 business days after receipt either to issue the requested permit or to 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 is deemed approved and the permit must be issued by the local building official on the next business day. Paragraph (6)(b) requires that if the local business official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30-day period, this 30-day period is tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may either dispute the deficiencies or submit revisions to correct the deficiencies.

Paragraph (6)(c) stipulates that if the permit applicant submits revisions, the local building official has the remainder of the tolled 30-day period, plus 5 business days, either 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.

Paragraph (6)(d) stipulates that 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 either dispute the deficiencies pursuant to subsection (12) or 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 either 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 inspections under this section to inspect each phase of construction as required by the applicable codes. The private provider is permitted to send a duly authorized representative to the building site to perform the required inspections, provided that all required reports and certifications are prepared by and bear the signature of the private provider. The contractor's contractual or statutory 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 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) stipulates that upon completing the required inspections at each applicable phase of construction, the private provider must record such inspections on a form acceptable to the local building official. These inspection records must reflect the 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 inspections completed to date 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 that upon completion of all required inspections, the private provider must 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 statement required of the private provider must be substantially in the following form:

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

Subsection (11) stipulates that upon receipt of a request for certificate of occupancy or certificate of completion and upon presentation of certificate of compliance and approval of all other

governmental approvals required by law, the local building official has 2 business days after receipt either to issue the certificate of occupancy or completion or to 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 certificate of occupancy or completion is 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 dispute the deficiencies pursuant to subsection (12) or submit a corrected request for certificate of occupancy or completion.

Subsection (12) requires that if the local building official determines that the building construction or plans do not comply with the applicable codes, the building official may deny the permit or request for a certificate of occupancy or completion, as appropriate, or may issue a stop-work order for the project, or any portion thereof, if it 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 after issuing a stop-work order or providing notice to the applicant denying a permit or request for certificate of occupancy or completion to resolve any dispute.
- 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 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 commission pursuant to s. 553.77(1)(h), F.S. (which governs appeals of local decisions to the Florida Building Commission).

Any decision 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 pursuant to s. 553.77(1)(h) to the commission, which must consider the matter at its next scheduled meeting.

Subsection (13) stipulates that any notice to be provided by the local building official is 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 a revised permit application or, if no facsimile number is stated, when actually received by that person or entity.

Subsection (14) prohibits a local enforcement agency, local building official, or local government from adopting or enforcing any law, rule, procedure, or standard that is more stringent than those prescribed by this act.

Subsection (15) authorizes a private provider to 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, and including tail coverage for a minimum of 5 years subsequent to the performance of building code inspection services.

Subsection (16) stipulates that when performing building code inspection services, an inspector is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under chapter 468 (building code administrators and inspectors), chapter 481 (architects, interior designers, or landscape architects), or chapter 471 (engineers). Any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services is to be conducted by the applicable professional board.

Subsection (17) states that the fee owner of a building located within the jurisdiction of a local enforcement agency that the commission certifies as exempt from this section may not use a private provider to provide building code inspection services with regard to such building. The Florida Building Commission may certify a local enforcement agency as exempt from this section if the local enforcement agency demonstrates that it routinely performs building code inspection services within the time frames established in this section and that a majority of the following local entities consent to the exemption:

- The local chapter of the Associated General Contractors;
- The local chapter of the Florida Chapter of the American Institute of Architects; and
- The local chapter of the Florida Home Builders Association.

A certification of exemption is valid for a period of 1 year and must be renewed annually.

Subsection (18) 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 (19) provides that:

The local government, the local building official, and their building code enforcement personnel are 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 section.

Section 2 provides that this act shall take effect October 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS provides that the fee owner of a building may use a private provider to offer plans review and building code inspection services in lieu of services provided by the local building department. Building owners will be responsible for both the cost of such services and for usual cost of obtaining building permits, to include the cost of plans review and building inspections.

This CS narrows the definition of non-residential farm buildings, which are exempt from the requirements of the Florida Building Code. Consequently, additional buildings are likely to be subject to the oversight of local building inspectors.

C. Government Sector Impact:

Local governments may see a reduction in demand for plans review and building code inspection services if builders chose to hire private providers to provide such services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.