

By Senator Constantine

9-1200-02

1 A bill to be entitled
2 An act relating to building plan code
3 compliance review; creating s. 553.791, F.S.;
4 providing an alternative method of building
5 plan code review and building inspections;
6 providing for building owners to use private
7 providers for building code inspection
8 services; prescribing standards for such
9 private providers; prescribing powers and
10 duties of private providers and local building
11 officials; providing an appeals process;
12 prohibiting certain local rules and standards;
13 providing for exemptions from alternative
14 review and inspections; providing an effective
15 date.

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

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

21 553.791 Alternative plans review and inspection.--

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

23 (a) "Applicable codes" means the Florida Building Code
24 and any local technical amendments to the Florida Building
25 Code but does not include the applicable minimum fire
26 prevention and fire safety codes adopted pursuant to chapter
27 633.

28 (b) "Request for certificate of occupancy or
29 certificate of completion" means a properly completed and
30 executed application for a certificate of occupancy or
31 certificate of completion, the certificate of compliance from

1 the private provider required pursuant to subsection (10), any
2 applicable fees, and those documents required by the local
3 building official to determine that the fee owner has secured
4 all other government approvals required by law.

5 (c) "Building" means any construction, erection,
6 alteration, demolition, addition to, or substantial
7 improvement of any structure for which permitting by a local
8 law enforcement agency is required.

9 (d) "Building code inspection services" means those
10 services described in s. 468.603(6) and (7) involving the
11 review of building plans to determine compliance with
12 applicable codes and those inspections required by law of each
13 phase of construction for which permitting by a local
14 enforcement agency is required to determine compliance with
15 applicable codes.

16 (e) "Duly authorized representative" means an agent of
17 the provider identified in the permit application who reviews
18 plans or performs inspections as provided by this section and
19 who holds a license under chapter 481 or chapter 471 or a
20 certificate under part XII of chapter 468.

21 (f) "Local building official" means the individual
22 within the governing jurisdiction responsible for direct
23 regulatory administration or supervision of plan review,
24 enforcement and inspection of any construction, erection,
25 alteration, demolition, addition to, or substantial
26 improvement of any structure for which permitting is required
27 to indicate compliance with applicable codes and includes any
28 duly authorized designee of such person.

29 (g) "Permit application" means a properly completed
30 and submitted application for the requested building or
31 construction permit, the plans reviewed by the private

1 provider, the affidavit from the private provider required
2 pursuant to subsection (5), any applicable fees, and those
3 documents required by the local building official to determine
4 that the fee owner has secured all other government approvals
5 required by law.

6 (h) "Private provider" means a person who holds a
7 license under chapter 481 or chapter 471 or a standard
8 certificate under part XII of chapter 468.

9 (2) Notwithstanding any other provision of law, the
10 fee owner of a building may use a private provider to provide
11 building code inspection services with regard to such building
12 and may make payment directly to the private provider for the
13 provision of these services. All such services shall be the
14 subject of a written contract between the private provider, or
15 the provider's firm, and the fee owner. Notwithstanding any
16 other provision of law, the fee owner may elect to use a
17 private provider to provide both plans review and required
18 building inspections or to use the local enforcement agency
19 for one or both of these purposes.

20 (3) A private provider may not provide building code
21 inspection services or plan review pursuant to this section
22 upon any building designed or constructed by the private
23 provider or the provider's firm.

24 (4) A fee owner using a private provider to provide
25 building code inspection services shall notify the local
26 building official at the time of permit application on a form
27 to be adopted by the commission. This notice shall include the
28 following information:

29 (a) The services to be performed by a private
30 provider, whether plans review, required building inspections,
31 or both;

1 (b) The name, firm, address, telephone number, and
2 facsimile number of each private provider who is performing or
3 will perform such services, their professional license or
4 certification number, qualification statements or resumes,
5 and, if required by the local building official, a certificate
6 of insurance demonstrating that professional liability
7 insurance coverage is in place for the provider's firm, the
8 provider, and any duly authorized representative, in the
9 amounts required by this section; and

10 (c) An acknowledgment from the fee owner in
11 substantially the following form:

12
13 I have elected to use one or more private
14 provider to provide building code plan review
15 and/or inspection services on the building that
16 is the subject of the enclosed permit
17 application, as authorized by section 553.791,
18 Florida Statutes. I understand that the local
19 building official may not review the plans
20 submitted or perform the required building
21 inspections to determine compliance with the
22 applicable codes, except to the extent
23 specified in such law. Instead, plans review or
24 required building inspections will be performed
25 by licensed or certified personnel identified
26 in the application. The law requires minimum
27 insurance requirements for such personnel, but
28 I understand that I may require more insurance
29 to protect my interests. By executing this
30 form, I acknowledge that I have made inquiry
31 regarding the competence of the licensed or

1 certified personnel and the level of their
2 insurance and am satisfied that my interests
3 are adequately protected. I agree to indemnify,
4 defend, and hold harmless the local government
5 and the local building official for any and all
6 claims arising from my use of these licensed or
7 certified personnel to perform building code
8 inspection services with respect to the
9 building that is the subject of the enclosed
10 permit application.

11
12 The fee owner must, within 24 hours, update the notice if the
13 fee owner makes any changes to the listed private provider or
14 the services to be provided by those providers.

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

23 (a) The plans were reviewed by the affiant, who is
24 duly authorized to perform plans review pursuant to this
25 section and holds the appropriate license or certificate; and

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

27 (6)(a) Upon receipt of a permit application, the local
28 building official has 30 business days after receipt either to
29 issue the requested permit or to provide a written notice to
30 the permit applicant identifying the specific plan features
31 that do not comply with the applicable codes, as well as the

1 specific code chapters and sections. If the local building
2 official does not provide a written notice of the plan
3 deficiencies within the prescribed 30-day period, the permit
4 application shall be deemed approved as a matter of law and
5 the permit shall be issued by the local building official on
6 the next business day.

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

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

25 (d) If the local building official provides a second
26 written notice of plan deficiencies to the permit applicant
27 within the prescribed time period, the permit applicant may
28 elect either to dispute the deficiencies pursuant to
29 subsection (12) or to submit additional revisions to correct
30 the deficiencies. For all revisions submitted after the first
31 revision, the local building official has an additional 5

1 business days either to issue the requested permit or to
2 provide a written notice to the permit applicant stating which
3 of the previously identified plan features remain in
4 noncompliance with the applicable codes, with specific
5 reference to the relevant code chapters and sections.

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

15 (8) A private provider performing required inspections
16 under this section shall provide notice to the local building
17 official of the date and approximate time of any such
18 inspection no later than the business day before the scheduled
19 inspection. The local building official may visit the building
20 site as often as necessary to verify that the private provider
21 is performing all required inspections.

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

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

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

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

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25 (11) Upon receipt of a request for certificate of
26 occupancy or certificate of completion and upon presentation
27 of certificate of compliance and approval of all other
28 governmental approvals required by law, the local building
29 official has 2 business days after receipt either to issue the
30 certificate of occupancy or completion or to provide a notice
31 to the applicant identifying the specific deficiencies, as

1 well as the specific code chapters and sections. If the local
2 building official does not provide notice of the deficiencies
3 within the prescribed 2-day period, the request for
4 certificate of occupancy or completion shall be deemed granted
5 and the certificate of occupancy or certificate of completion
6 shall be issued by the local building official on the next
7 business day. To resolve any identified deficiencies, the
8 applicant may elect either to dispute the deficiencies
9 pursuant to subsection (12) or to submit a corrected request
10 for certificate of occupancy or 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 building official may deny the permit or
14 request for a certificate of occupancy or completion, as
15 appropriate, or may issue a stop-work order for the project,
16 or any portion thereof, if it 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 after
21 issuing a stop-work order or providing notice to the applicant
22 denying a permit or request for certificate of occupancy or
23 completion to resolve any dispute.

24 (b) If the local building official and private
25 provider are unable to resolve the dispute, the matter must be
26 referred to the local enforcement agency's board of appeals,
27 if one exists, which must consider the matter at its next
28 scheduled meeting or sooner. Any decision 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 to
2 the contrary, any decision regarding the issuance of a
3 building permit, certificate of occupancy, or certificate of
4 completion may be reviewed by the local enforcement agency's
5 board of appeals, if one exists. Any decision by the local
6 enforcement agency's board of appeals, or local building
7 official if there is no board of appeals, may be appealed
8 pursuant to s. 553.77(1)(h) to the commission, which must
9 consider the matter at its 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 a 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 law,
19 rule, procedure, or standard that is 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, and including tail coverage for a
27 minimum of 5 years subsequent to the performance of building
28 code inspection services.

29 (16) When performing building code inspection
30 services, an inspector 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. Any complaint
3 processing, investigation, and discipline that arise out of a
4 private provider's performance of building code inspection
5 services shall be conducted by the applicable professional
6 board.

7 (17) The fee owner of a building located within the
8 jurisdiction of a local enforcement agency that the commission
9 certifies as exempt from this section may not elect to use a
10 private provider to provide building code inspection services
11 with regard to such building. The commission may certify a
12 local enforcement agency as exempt from this section if the
13 local enforcement agency demonstrates that it routinely
14 performs building code inspection services within the time
15 frames established in this section and that a majority of the
16 following local entities consent to the exemption:

17 (a) The local chapter of the Associated General
18 Contractors;

19 (b) The local chapter of the Florida Chapter of the
20 American Institute of Architects; and

21 (c) The local chapter of the Florida Home Builders
22 Association.

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

26 (18) Each local building code enforcement agency shall
27 develop and maintain a quality-assurance process to audit
28 construction projects in which privatized plan reviews and
29 inspections were used. These audits will track performance of
30 building code inspection services by private providers

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1 operating within the local jurisdiction to conduct such
2 services within their jurisdiction.

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