

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 567 CS Alternative Plans Review and Inspection
SPONSOR(S): Galvano and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>16 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Local Government Council</u>	<u>6 Y, 0 N, w/CS</u>	<u>Smith</u>	<u>Hamby</u>
3) <u>Commerce Council</u>	<u>9 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Bohannon</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, a building code administrator supervises enforcement of building code regulation, including plans review, enforcement, and inspection. Current law provides for a local program for the overview of construction projects and compliance with building code standards. The program establishes a procedure by which an individual can choose to hire an engineer or architect to perform plans review and building inspection services for buildings for which building permits are required. It authorizes the owner (fee owner) of a building to use and pay a private provider (architect or engineer) to offer building code inspection services, subject to a written contract between these parties. The 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.

The bill provides that, notwithstanding any law or local ordinance or policy, a construction contractor, in addition to the owner of the property and upon written authorization from the owner, may choose a private provider to provide building plans review and inspection services. Structures, as well as buildings, are included in this authorization. The bill deletes a provision allowing a local building official to require a fee owner wishing to use a private provider to use such provider for both plans review and inspection services. The bill also provides additional conditions and notification requirements governing the use of private providers.

The bill eliminates the requirement that the private provider maintain comprehensive general liability insurance. It continues to require private providers to maintain professional liability insurance, ties coverage limits to the value of the buildings the provider is working on, and conforms claims-made coverage requirements to insurance currently available in the marketplace.

The bill authorizes local governments, at their option, to establish a registration system to ensure private providers comply with the licensure and insurance requirements.

The bill specifies that work on a building may proceed after the inspection and approval by a private provider if the provider has given appropriate notice of the inspection. It further specifies that subsequent to inspection and approval, the completion of work may not be held up or delayed due to the failure to complete an inspection audit by a local building code enforcement official.

The bill adds grounds for disciplinary actions for violating or failing to comply with a rule or order of the Florida Building Commission.

The bill is not anticipated to have a significant fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill states that local governments may, at their option, establish a registration system to ensure private providers comply with the licensure and insurance requirements of s. 553.791, F.S.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Part XII of ch. 468, F.S., 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). 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.

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 ch. 468, F.S.

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. Chapter 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. 481, 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.

Section 17 of ch. 2002-293, L.O.F, created 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. This section authorizes the fee owner of a building to use and pay a private provider (architect or engineer) 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.

A private provider is authorized to perform building code inspection services under this section only if the private provider maintains insurance for professional and comprehensive general liability. Minimum policy limits are specified in the amount of \$1 million per occurrence relating to 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.

In response to concerns relating to the use of private providers, the Florida Building Commission established a workgroup to evaluate the private provider program and make recommendations to the Legislature. The recommendations of the workgroup were included in the Building Commission's 2005 report to the Legislature.

Effect of proposed changes

The bill is a reflection of discussions and debate by the workgroup and the Commission, noted in the paragraph above. The bill amends s. 553.791, F.S., to provide that, notwithstanding any law or local ordinance or policy, a construction contractor, in addition to the owner of the property and upon written authorization from the owner, may choose a private provider to provide building plans review and inspection services. Structures, as well as buildings, are included in this authorization. The bill deletes a provision allowing a local building official to require a fee owner wishing to use a private provider to use such provider for both plans review and inspection services. The bill also provides additional conditions and notification requirements governing the use of private providers. Currently, the owner or contractor is required to notify the local building department about the use of a private provider at the time of application for a building permit. The bill allows the notification of the use of a private provider to take place for up to 7 business days prior to the first scheduled inspection of the project.

The bill states that local governments may, at their option, establish a registration system to ensure private providers comply with the licensure and insurance requirements. It further states that local building officials retain the authority to issue a stop-work order for a building project if the official determines that a condition on a building site constitutes an immediate threat to public safety and welfare.

The bill eliminates the requirement that the private provider maintain comprehensive general liability insurance with minimum policy limits of one million dollars per occurrence. It continues to require private providers to maintain professional liability insurance, ties coverage limits to the value of the buildings the provider is working on, and conforms claims-made coverage requirements to the insurance currently available in the marketplace:

<u>Per Occurrence/Aggregate</u>	<u>Construction Cost</u>
\$1 million/ \$2 million	\$5 million or less
\$2 million/ \$4 million	\$5 million or more

The bill specifies that the fee owner may require additional insurance or higher policy limits. The bill requires this coverage to be issued by a Florida-authorized insurer rated A or better by A.M. Best.

The bill specifies that work on a building may proceed after the inspection and approval by a private provider if the provider has given notice of the inspection. It further specifies that subsequent to inspection and approval, the completion of work may not be held up or delayed due to the failure to complete an inspection audit by a local building enforcement official.

The bill adds grounds for disciplinary actions for violating or failing to comply with a rule or order of the Florida Building Commission.

C. SECTION DIRECTORY:

Section 1. Amends s. 553.791, F.S., to address various provisions relating to the services of a private provider when offering local construction plans review and inspections.

Section 2. Amends s. 468.621, F.S., to add grounds for disciplinary proceedings.

Section 3. Provides for an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not expected to be significant, if any.

2. Expenditures:

Not expected to be significant, if any. See C., below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to implement several recommendations to improve the private provider program at the local level. The bill could reduce local government expenditures associated with plans review and inspections in instances where a building owner contracts with a private provider to perform such services.

Economic impact on the private sector would be reflected in the authority to conduct business as a private provider and for an owner of a building to negotiate inspector services. Benefits could be recognized in the timelines for services to be conducted and thus overall project savings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill states that local governments may, at their option, establish a registration system to ensure private providers comply with the licensure and insurance requirements. However, the bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted a strike-all amendment on March 16, 2005. The strike-all amendment:

- provides private providers are required to have minimum professional liability coverage limits tied to the value of the buildings the provider is working on and conforms claims-made insurance requirements to the insurance currently available in the marketplace, instead of tying these coverage limits to the type of building (residential or commercial);
- requires this coverage to be issued by a Florida-authorized insurer rated A or better by A.M. Best;
- deletes a provision in current law that could eliminate the ability to use a private provider for building inspections alone (current law allows the local building official to require an owner to use a private provider for both plans review and inspections); and
- adds grounds for disciplinary actions against building code administrators and inspectors who fail to implement alternative plans review and inspections pursuant to general law, or who impose construction requirements that vary from the Florida Building Code or lawful amendments to the Code, or binding interpretations of the Code.

The bill, as amended, was reported favorably with committee substitute.

On March 31, the Commerce Council adopted a Council Substitute. The CS:

Reduces the insurance requirements but retains coverage of \$4m in the aggregate.

Reinserts language to require the use of a private provider by local officials under certain circumstances.

Inserts a penalty for failure to comply with certain commission rules or orders.