

CHAMBER ACTION

1 The Local Government Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to alternative plans review and
7 inspection; amending s. 553.791, F.S.; clarifying a
8 definition; expanding authorization to use private
9 providers to provide building code inspection services;
10 including fee owner contractors within such authorization;
11 deleting a provision authorizing a local building official
12 to require a fee owner to use a private provider for
13 certain purposes under certain circumstances; revising
14 notice requirements for using private providers; revising
15 procedures for issuing permits; providing requirements for
16 representatives of private providers; providing for waiver
17 of certain inspection records requirements under certain
18 circumstances; requiring issuance of stop-work orders to
19 be pursuant to law; providing for establishment of a
20 registration system for private providers and authorized
21 representatives of private providers for licensure
22 compliance purposes; preserving authority to issue
23 emergency stop-work orders; revising insurance

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24 requirements for private providers; providing a
 25 definition; authorizing performance audits by local
 26 building code enforcement agencies of private providers;
 27 specifying conditions for proceeding with building work;
 28 amending s. 468.621, F.S.; revising a ground for taking
 29 certain disciplinary actions and providing an additional
 30 ground; providing an effective date.

31

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

33

34 Section 1. Paragraph (f) of subsection (1), subsections
 35 (2) and (4), paragraph (a) of subsection (6), and subsections
 36 (7), (9), (11), (12), (14), (15), and (17) of section 553.791,
 37 Florida Statutes, are amended to read:

38 553.791 Alternative plans review and inspection.--

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

40 (f) "Permit application" means a properly completed and
 41 submitted application for:

42 ~~1.~~ the requested building or construction permit,
 43 including:

44 ~~1.2.~~ The plans reviewed by the private provider.

45 ~~2.3.~~ The affidavit from the private provider required
 46 pursuant to subsection (5).

47 ~~3.4.~~ Any applicable fees.

48 ~~4.5.~~ Any documents required by the local building official
 49 to determine that the fee owner has secured all other government
 50 approvals required by law.

51 (2) Notwithstanding any other provision of law or local
 52 government ordinance or local policy, the fee owner of a
 53 building or structure, or the fee owner's contractor upon
 54 written authorization from the fee owner, may choose to use a
 55 private provider to provide building code inspection services
 56 with regard to such building or structure and may make payment
 57 directly to the private provider for the provision of such
 58 services. All such services shall be the subject of a written
 59 contract between the private provider, or the private provider's
 60 firm, and the fee owner. The fee owner may elect to use a
 61 private provider to provide ~~either~~ plans review or required
 62 building inspections, ~~or both. The local building official, in~~
 63 ~~his or her discretion and pursuant to duly adopted policies of~~
 64 ~~the local enforcement agency, may require the fee owner who~~
 65 ~~desires to use a private provider to use the private provider to~~
 66 ~~provide both plans review and required building inspection~~
 67 ~~services.~~

68 (4) A fee owner or the fee owner's contractor using a
 69 private provider to provide building code inspection services
 70 shall notify the local building official at the time of permit
 71 application, or no less than 7 business days prior to the first
 72 scheduled inspection by the local building official or building
 73 code enforcement agency for a private provider performing
 74 required inspections of construction under this section, on a
 75 form to be adopted by the commission. This notice shall include
 76 the following information:

77 (a) The services to be performed by the private provider.

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78 | (b) The name, firm, address, telephone number, and
 79 | facsimile number of each private provider who is performing or
 80 | will perform such services, his or her professional license or
 81 | certification number, qualification statements or resumes, and,
 82 | if required by the local building official, a certificate of
 83 | insurance demonstrating that professional liability insurance
 84 | coverage is in place for the private provider's firm, the
 85 | private provider, and any duly authorized representative in the
 86 | amounts required by this section.

87 | (c) An acknowledgment from the fee owner in substantially
 88 | the following form:

89 |
 90 | I have elected to use one or more private providers to provide
 91 | building code plans review and/or inspection services on the
 92 | building or structure that is the subject of the enclosed permit
 93 | application, as authorized by s. 553.791, Florida Statutes. I
 94 | understand that the local building official may not review the
 95 | plans submitted or perform the required building inspections to
 96 | determine compliance with the applicable codes, except to the
 97 | extent specified in said law. Instead, plans review and/or
 98 | required building inspections will be performed by licensed or
 99 | certified personnel identified in the application. The law
 100 | requires minimum insurance requirements for such personnel, but
 101 | I understand that I may require more insurance to protect my
 102 | interests. By executing this form, I acknowledge that I have
 103 | made inquiry regarding the competence of the licensed or
 104 | certified personnel and the level of their insurance and am
 105 | satisfied that my interests are adequately protected. I agree to

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106 indemnify, defend, and hold harmless the local government, the
 107 local building official, and their building code enforcement
 108 personnel from any and all claims arising from my use of these
 109 licensed or certified personnel to perform building code
 110 inspection services with respect to the building or structure
 111 that is the subject of the enclosed permit application.

112
 113 If the fee owner or the fee owner's contractor makes any changes
 114 to the listed private providers or the services to be provided
 115 by those private providers, the fee owner or the fee owner's
 116 contractor shall, within 1 business day after any change, update
 117 the notice to reflect such changes. In addition, the fee owner
 118 or the fee owner's contractor shall post at the project site,
 119 prior to the commencement of construction and updated within 1
 120 business day after any change, on a form to be adopted by the
 121 commission, the name, firm, address, telephone number, and
 122 facsimile number of each private provider who is performing or
 123 will perform building code inspection services, the type of
 124 service being performed, and similar information for the primary
 125 contact of the private provider on the project.

126 (6)(a) No more than ~~Within~~ 30 business days after receipt
 127 of a permit application and the affidavit from the private
 128 provider required pursuant to subsection (5), the local building
 129 official shall issue the requested permit or provide a written
 130 notice to the permit applicant identifying the specific plan
 131 features that do not comply with the applicable codes, as well
 132 as the specific code chapters and sections. If the local
 133 building official does not provide a written notice of the plan

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134 deficiencies within the prescribed 30-day period, the permit
 135 application shall be deemed approved as a matter of law, and the
 136 permit shall be issued by the local building official on the
 137 next business day.

138 (7) A private provider performing required inspections
 139 under this section shall inspect each phase of construction as
 140 required by the applicable codes. The private provider shall be
 141 permitted to send a duly authorized representative to the
 142 building site to perform the required inspections, provided all
 143 required reports and certifications are prepared by and bear the
 144 signature of the private provider. The duly authorized
 145 representative must be an employee of the private provider
 146 entitled to receive unemployment compensation benefits under
 147 chapter 443. The contractor's contractual or legal obligations
 148 are not relieved by any action of the private provider.

149 (9) Upon completing the required inspections at each
 150 applicable phase of construction, the private provider shall
 151 record such inspections on a form acceptable to the local
 152 building official. These inspection records shall reflect those
 153 inspections required by the applicable codes of each phase of
 154 construction for which permitting by a local enforcement agency
 155 is required. The private provider, before leaving the project
 156 site, shall post each completed inspection record, indicating
 157 pass or fail, at the site and provide the record to the local
 158 building official within 2 business days. The local building
 159 official may waive the requirement to provide a record of each
 160 inspection within 2 business days if the record is posted at the
 161 project site and all such inspection records are submitted with

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162 | the certificate of compliance. Records of all required and
163 | completed inspections shall be maintained at the building site
164 | at all times and made available for review by the local building
165 | official. The private provider shall report to the local
166 | enforcement agency any condition that poses an immediate threat
167 | to public safety and welfare.

168 | (11) No more than ~~within~~ 2 business days after receipt of
169 | a request for a certificate of occupancy or certificate of
170 | completion and the applicant's presentation of a certificate of
171 | compliance and approval of all other government approvals
172 | required by law, the local building official shall issue the
173 | certificate of occupancy or certificate of completion or provide
174 | a notice to the applicant identifying the specific deficiencies,
175 | as well as the specific code chapters and sections. If the local
176 | building official does not provide notice of the deficiencies
177 | within the prescribed 2-day period, the request for a
178 | certificate of occupancy or certificate of completion shall be
179 | deemed granted and the certificate of occupancy or certificate
180 | of completion shall be issued by the local building official on
181 | the next business day. To resolve any identified deficiencies,
182 | the applicant may elect to dispute the deficiencies pursuant to
183 | subsection (12) or to submit a corrected request for a
184 | certificate of occupancy or certificate of completion.

185 | (12) If the local building official determines that the
186 | building construction or plans do not comply with the applicable
187 | codes, the official may deny the permit or request for a
188 | certificate of occupancy or certificate of completion, as
189 | appropriate, or may issue a stop-work order for the project or

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190 any portion thereof as provided by law, if the official
191 determines that such noncompliance poses a threat to public
192 safety and welfare, subject to the following:

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

198 (b) If the local building official and private provider
199 are unable to resolve the dispute, the matter shall be referred
200 to the local enforcement agency's board of appeals, if one
201 exists, which shall consider the matter at its next scheduled
202 meeting or sooner. Any decisions by the local enforcement
203 agency's board of appeals, or local building official if there
204 is no board of appeals, may be appealed to the commission as
205 provided by this chapter ~~pursuant to s. 553.77(1)(h)~~.

206 (c) Notwithstanding any provision of this section, any
207 decisions regarding the issuance of a building permit,
208 certificate of occupancy, or certificate of completion may be
209 reviewed by the local enforcement agency's board of appeals, if
210 one exists. Any decision by the local enforcement agency's board
211 of appeals, or local building official if there is no board of
212 appeals, may be appealed to the commission as provided by this
213 chapter ~~pursuant to s. 553.77(1)(h)~~, which shall consider the
214 matter at the commission's next scheduled meeting.

215 (14)(a) No local enforcement agency, local building
216 official, or local government may adopt or enforce any laws,

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217 | rules, procedures, policies, qualifications, or standards more
218 | stringent than those prescribed by this section.

219 | (b) A local enforcement agency, local building official,
220 | or local government may establish, for private providers and
221 | duly authorized representatives working within that
222 | jurisdiction, a system of registration to verify compliance with
223 | the licensure requirements of paragraph (1)(g) and the insurance
224 | requirements of subsection (15).

225 | (c) Nothing in this section limits the authority of the
226 | local building official to issue a stop-work order for a
227 | building project or any portion of such order, as provided by
228 | law, if the official determines that a condition on the building
229 | site constitutes an immediate threat to public safety and
230 | welfare.

231 | (15) A private provider may perform building code
232 | inspection services on a building project under this section
233 | only if the private provider maintains insurance for
234 | professional and ~~comprehensive general~~ liability covering with
235 | ~~minimum policy limits of \$1 million per occurrence relating to~~
236 | all services performed as a private provider. Such insurance
237 | shall have minimum policy limits of \$1 million per occurrence
238 | and \$2 million in the aggregate for any project with a
239 | construction cost of \$5 million or less, \$2 million per
240 | occurrence and \$4 million in the aggregate for any project with
241 | a construction cost of over \$5 million but less than \$50
242 | million, and \$5 million per occurrence and \$5 million in the
243 | aggregate for any project with a construction cost of \$50
244 | million or more. For these purposes, the term "construction

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245 cost" means the total cost of building construction as stated in
 246 the building permit application. If the private provider chooses
 247 to secure claims-made coverage to fulfill this requirement, the
 248 private provider must also maintain, including tail coverage for
 249 a minimum of 5 years subsequent to the performance of building
 250 code inspection services. The insurance required under this
 251 subsection shall be written only by insurers authorized to do
 252 business in this state with a minimum A.M. Best's rating of A.
 253 Before providing building code inspection services within a
 254 local building official's jurisdiction, a private provider must
 255 provide to the local building official a certificate of
 256 insurance evidencing that the coverages required under this
 257 subsection are in force.

258 (17) Each local building code enforcement agency may shall
 259 develop and maintain a process to audit the performance of
 260 building code inspection services by private providers operating
 261 within the local jurisdiction. Work on a building or structure
 262 may proceed after inspection and approval by a private provider
 263 if the provider has given notice of the inspection pursuant to
 264 subsection (8) and, subsequent to such inspection and approval,
 265 the work may not be delayed for completion of an inspection
 266 audit by the local building code enforcement agency.

267 Section 2. Paragraph (i) of subsection (1) of section
 268 468.621, Florida Statutes, is amended, and paragraph (j) is
 269 added to said subsection, to read:

270 468.621 Disciplinary proceedings.--

271 (1) The following acts constitute grounds for which the
 272 disciplinary actions in subsection (2) may be taken:

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273 (i) Failing to lawfully execute the duties and
274 responsibilities specified in this part and ss. 553.73, 553.781,
275 ~~and 553.79,~~ and 553.791.

276 (j) Imposing construction requirements that vary from
277 those established in the Florida Building Code, lawful
278 amendments to the Florida Building Code, or binding
279 interpretations of the Florida Building Code.

280 Section 3. This act shall take effect October 1, 2005.