

CHAMBER ACTION

1 The Commerce 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 revising notice requirements for using private providers;
12 revising procedures for issuing permits; providing
13 requirements for representatives of private providers;
14 providing for waiver of certain inspection records
15 requirements under certain circumstances; requiring
16 issuance of stop-work orders to be pursuant to law;
17 providing for establishment of a registration system for
18 private providers and authorized representatives of
19 private providers for licensure compliance purposes;
20 preserving authority to issue emergency stop-work orders;
21 revising insurance requirements for private providers;
22 providing a definition; authorizing performance audits by
23 local building code enforcement agencies of private

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24 providers; specifying conditions for proceeding with
 25 building work; amending s. 468.621, F.S.; revising a
 26 ground for taking certain disciplinary actions and
 27 providing an additional ground; providing an effective
 28 date.

29

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

31

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

36 553.791 Alternative plans review and inspection.--

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

38 (f) "Permit application" means a properly completed and
 39 submitted application for:

40 ~~1-~~ the requested building or construction permit,
 41 including:-

42 ~~1.2-~~ The plans reviewed by the private provider.

43 ~~2.3-~~ The affidavit from the private provider required
 44 pursuant to subsection (5).

45 ~~3.4-~~ Any applicable fees.

46 ~~4.5-~~ Any documents required by the local building official
 47 to determine that the fee owner has secured all other government
 48 approvals required by law.

49 (2) Notwithstanding any other provision of law or local
 50 government ordinance or local policy, the fee owner of a
 51 building or structure, or the fee owner's contractor upon

52 | written authorization from the fee owner, may choose to use a
 53 | private provider to provide building code inspection services
 54 | with regard to such building or structure and may make payment
 55 | directly to the private provider for the provision of such
 56 | services. All such services shall be the subject of a written
 57 | contract between the private provider, or the private provider's
 58 | firm, and the fee owner. The fee owner may elect to use a
 59 | private provider to provide ~~either~~ plans review or required
 60 | building inspections, or both. However, if the fee owner or the
 61 | fee owner's contractor uses a private provider to provide plans
 62 | review, the local building official, in his or her discretion
 63 | and pursuant to duly adopted policies of the local enforcement
 64 | agency, may require the fee owner or the fee owner's contractor
 65 | ~~who desires~~ to use a private provider ~~to use the private~~
 66 | ~~provider to also provide both plans review and required building~~
 67 | inspections ~~inspection 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.
- 78 | (b) The name, firm, address, telephone number, and
- 79 | facsimile number of each private provider who is performing or

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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
106 | indemnify, defend, and hold harmless the local government, the
107 | local building official, and their building code enforcement

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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
 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
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
 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,
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 and \$2 million per
 240 occurrence and \$4 million in the aggregate for any project with
 241 a construction cost of over \$5 million. Nothing in this section
 242 limits the ability of a fee owner to require additional
 243 insurance or higher policy limits. For these purposes, the term
 244 "construction cost" means the total cost of building
 245 construction as stated in the building permit application. If
 246 the private provider chooses to secure claims-made coverage to

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

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

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

269 468.621 Disciplinary proceedings.--

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

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

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275 | (j) Violating or failing to comply with a valid rule or
276 | lawful order of the Florida Building Commission adopted pursuant
277 | to part IV of chapter 553.

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