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HB 567, Engrossed 1

2005 Legislature

1 A bill to be entitled

2 An act relating to alternative plans review and inspection;
3 amending s. 553.791, F.S.; clarifying a definition;
4 expanding authorization to use private providers to provide
5 building code inspection services; including fee owner
6 contractors within such authorization; revising notice
7 requirements for using private providers; revising
8 procedures for issuing permits; providing requirements for
9 representatives of private providers; providing for waiver
10 of certain inspection records requirements under certain
11 circumstances; requiring issuance of stop-work orders to be
12 pursuant to law; providing for establishment of a
13 registration system for private providers and authorized
14 representatives of private providers for licensure
15 compliance purposes; preserving authority to issue
16 emergency stop-work orders; revising insurance requirements
17 for private providers; providing a definition; authorizing
18 performance audits by local building code enforcement
19 agencies of private providers; specifying conditions for
20 proceeding with building work; amending s. 468.621, F.S.;
21 revising a ground for taking certain disciplinary actions;
22 providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (f) of subsection (1), subsections
27 (2) and (4), paragraph (a) of subsection (6), and subsections

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28 (7), (9), (11), (12), (14), (15), and (17) of section 553.791,
 29 Florida Statutes, are amended to read:

30 553.791 Alternative plans review and inspection.--

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

32 (f) "Permit application" means a properly completed and
 33 submitted application for+

34 ~~+~~ the requested building or construction permit,
 35 including:-

36 ~~1.2-~~ The plans reviewed by the private provider.

37 ~~2.3-~~ The affidavit from the private provider required
 38 pursuant to subsection (5).

39 ~~3.4-~~ Any applicable fees.

40 ~~4.5-~~ Any documents required by the local building official
 41 to determine that the fee owner has secured all other government
 42 approvals required by law.

43 (2) Notwithstanding any other provision of law or local
 44 government ordinance or local policy, the fee owner of a
 45 building or structure, or the fee owner's contractor upon
 46 written authorization from the fee owner, may choose to use a
 47 private provider to provide building code inspection services
 48 with regard to such building or structure and may make payment
 49 directly to the private provider for the provision of such
 50 services. All such services shall be the subject of a written
 51 contract between the private provider, or the private provider's
 52 firm, and the fee owner. The fee owner may elect to use a
 53 private provider to provide ~~either~~ plans review or required
 54 building inspections, or both. However, if the fee owner or the
 55 fee owner's contractor uses a private provider to provide plans

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56 review, the local building official, in his or her discretion
57 and pursuant to duly adopted policies of the local enforcement
58 agency, may require the fee owner or the fee owner's contractor
59 ~~who desires~~ to use a private provider ~~to use the private~~
60 ~~provider~~ to also provide ~~both plans review and~~ required building
61 inspections ~~inspection services~~.

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

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

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

81 (c) An acknowledgment from the fee owner in substantially
82 the following form:

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

106
107 If the fee owner or the fee owner's contractor makes any changes
108 to the listed private providers or the services to be provided
109 by those private providers, the fee owner or the fee owner's
110 contractor shall, within 1 business day after any change, update
111 the notice to reflect such changes. In addition, the fee owner

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112 | or the fee owner's contractor shall post at the project site,
113 | prior to the commencement of construction and updated within 1
114 | business day after any change, on a form to be adopted by the
115 | commission, the name, firm, address, telephone number, and
116 | facsimile number of each private provider who is performing or
117 | will perform building code inspection services, the type of
118 | service being performed, and similar information for the primary
119 | contact of the private provider on the project.

120 | (6) (a) No more than ~~Within~~ 30 business days after receipt
121 | of a permit application and the affidavit from the private
122 | provider required pursuant to subsection (5), the local building
123 | official shall issue the requested permit or provide a written
124 | notice to the permit applicant identifying the specific plan
125 | features that do not comply with the applicable codes, as well
126 | as the specific code chapters and sections. If the local
127 | building official does not provide a written notice of the plan
128 | deficiencies within the prescribed 30-day period, the permit
129 | application shall be deemed approved as a matter of law, and the
130 | permit shall be issued by the local building official on the
131 | next business day.

132 | (7) A private provider performing required inspections
133 | under this section shall inspect each phase of construction as
134 | required by the applicable codes. The private provider shall be
135 | permitted to send a duly authorized representative to the
136 | building site to perform the required inspections, provided all
137 | required reports and certifications are prepared by and bear the
138 | signature of the private provider. The duly authorized
139 | representative must be an employee of the private provider

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140 entitled to receive unemployment compensation benefits under
141 chapter 443. The contractor's contractual or legal obligations
142 are not relieved by any action of the private provider.

143 (9) Upon completing the required inspections at each
144 applicable phase of construction, the private provider shall
145 record such inspections on a form acceptable to the local
146 building official. These inspection records shall reflect those
147 inspections required by the applicable codes of each phase of
148 construction for which permitting by a local enforcement agency
149 is required. The private provider, before leaving the project
150 site, shall post each completed inspection record, indicating
151 pass or fail, at the site and provide the record to the local
152 building official within 2 business days. The local building
153 official may waive the requirement to provide a record of each
154 inspection within 2 business days if the record is posted at the
155 project site and all such inspection records are submitted with
156 the certificate of compliance. Records of all required and
157 completed inspections shall be maintained at the building site
158 at all times and made available for review by the local building
159 official. The private provider shall report to the local
160 enforcement agency any condition that poses an immediate threat
161 to public safety and welfare.

162 (11) No more than ~~within~~ 2 business days after receipt of
163 a request for a certificate of occupancy or certificate of
164 completion and the applicant's presentation of a certificate of
165 compliance and approval of all other government approvals
166 required by law, the local building official shall issue the
167 certificate of occupancy or certificate of completion or provide

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168 a notice to the applicant identifying the specific deficiencies,
169 as well as the specific code chapters and sections. If the local
170 building official does not provide notice of the deficiencies
171 within the prescribed 2-day period, the request for a
172 certificate of occupancy or certificate of completion shall be
173 deemed granted and the certificate of occupancy or certificate
174 of completion shall be issued by the local building official on
175 the next business day. To resolve any identified deficiencies,
176 the applicant may elect to dispute the deficiencies pursuant to
177 subsection (12) or to submit a corrected request for a
178 certificate of occupancy or certificate of completion.

179 (12) If the local building official determines that the
180 building construction or plans do not comply with the applicable
181 codes, the official may deny the permit or request for a
182 certificate of occupancy or certificate of completion, as
183 appropriate, or may issue a stop-work order for the project or
184 any portion thereof as provided by law, if the official
185 determines that such noncompliance poses a threat to public
186 safety and welfare, subject to the following:

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

192 (b) If the local building official and private provider
193 are unable to resolve the dispute, the matter shall be referred
194 to the local enforcement agency's board of appeals, if one
195 exists, which shall consider the matter at its next scheduled

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196 meeting or sooner. Any decisions by the local enforcement
 197 agency's board of appeals, or local building official if there
 198 is no board of appeals, may be appealed to the commission as
 199 provided by this chapter pursuant to s. 553.77(1)(h).

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

209 (14) (a) No local enforcement agency, local building
 210 official, or local government may adopt or enforce any laws,
 211 rules, procedures, policies, qualifications, or standards more
 212 stringent than those prescribed by this section.

213 (b) A local enforcement agency, local building official,
 214 or local government may establish, for private providers and
 215 duly authorized representatives working within that
 216 jurisdiction, a system of registration to verify compliance with
 217 the licensure requirements of paragraph (1)(g) and the insurance
 218 requirements of subsection (15).

219 (c) Nothing in this section limits the authority of the
 220 local building official to issue a stop-work order for a
 221 building project or any portion of such order, as provided by
 222 law, if the official determines that a condition on the building

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223 site constitutes an immediate threat to public safety and
 224 welfare.

225 (15) A private provider may perform building code
 226 inspection services on a building project under this section
 227 only if the private provider maintains insurance for
 228 professional and ~~comprehensive general~~ liability covering with
 229 ~~minimum policy limits of \$1 million per occurrence relating to~~
 230 all services performed as a private provider. Such insurance
 231 shall have minimum policy limits of \$1 million per occurrence
 232 and \$2 million in the aggregate for any project with a
 233 construction cost of \$5 million or less and \$2 million per
 234 occurrence and \$4 million in the aggregate for any project with
 235 a construction cost of over \$5 million. Nothing in this section
 236 limits the ability of a fee owner to require additional
 237 insurance or higher policy limits. For these purposes, the term
 238 "construction cost" means the total cost of building
 239 construction as stated in the building permit application. If
 240 the private provider chooses to secure claims-made coverage to
 241 fulfill this requirement, the private provider must also
 242 maintain, including tail coverage for a minimum of 5 years
 243 subsequent to the performance of building code inspection
 244 services. The insurance required under this subsection shall be
 245 written only by insurers authorized to do business in this state
 246 with a minimum A.M. Best's rating of A. Before providing
 247 building code inspection services within a local building
 248 official's jurisdiction, a private provider must provide to the
 249 local building official a certificate of insurance evidencing
 250 that the coverages required under this subsection are in force.

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

260 Section 2. Paragraph (i) of subsection (1) of section
 261 468.621, Florida Statutes, is amended to read:

262 468.621 Disciplinary proceedings.--

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

265 (i) Failing to lawfully execute the duties and
 266 responsibilities specified in this part and ss. 553.73, 553.781,
 267 ~~and~~ 553.79, and 553.791.

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