

Bill No. SB 1774

Barcode 471450

CHAMBER ACTION

Senate

House

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The Committee on Community Affairs (Bennett) recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 5 between lines 2 & 3,

insert:

Section 5. Section 553.791, Florida Statutes, is amended to read:

553.791 Alternative plans review and inspection.--

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

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

(b) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure for which permitting by a local enforcement agency is required.

(c) "Building code inspection services" means those

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1 services described in s. 468.603(6) and (7) involving the  
 2 review of building plans to determine compliance with  
 3 applicable codes and those inspections required by law of each  
 4 phase of construction for which permitting by a local  
 5 enforcement agency is required to determine compliance with  
 6 applicable codes.

7 (d) "Duly authorized representative" means an agent of  
 8 the private provider identified in the permit application who  
 9 reviews plans or performs inspections as provided by this  
 10 section and who is licensed as an engineer under chapter 471  
 11 or as an architect under chapter 481 or who holds a standard  
 12 certificate under part XII of chapter 468.

13 (e) "Local building official" means the individual  
 14 within the governing jurisdiction responsible for direct  
 15 regulatory administration or supervision of plans review,  
 16 enforcement, and inspection of any construction, erection,  
 17 alteration, demolition, or substantial improvement of, or  
 18 addition to, any structure for which permitting is required to  
 19 indicate compliance with applicable codes and includes any  
 20 duly authorized designee of such person.

21 (f) "Permit application" means a properly completed  
 22 and submitted application for the requested building or  
 23 construction permit, including:

- 24 1. The plans reviewed by the private provider.
- 25 2. The affidavit from the private provider required
- 26 pursuant to subsection (5).
- 27 3. Any applicable fees.
- 28 4. Any documents required by the local building
- 29 official to determine that the fee owner has secured all other
- 30 government approvals required by law.

31 (g) "Private provider" means a person licensed as an

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1 engineer under chapter 471 or as an architect under chapter  
 2 481. For purposes of performing inspections under this section  
 3 for additions and alterations that are limited to 1,000 square  
 4 feet or less to residential buildings, the term "private  
 5 provider" also includes a person who holds a standard  
 6 certificate under part XII of chapter 468.

7 (h) "Request for certificate of occupancy or  
 8 certificate of completion" means a properly completed and  
 9 executed application for:

10 1. A certificate of occupancy or certificate of  
 11 completion.

12 2. A certificate of compliance from the private  
 13 provider required pursuant to subsection (10).

14 3. Any applicable fees.

15 4. Any documents required by the local building  
 16 official to determine that the fee owner has secured all other  
 17 government approvals required by law.

18 (2) Notwithstanding any other provision of law or  
 19 local government ordinance or local policy, the fee owner of a  
 20 building or structure, or the fee owner's contractor upon  
 21 written authorization from the fee owner, may choose to use a  
 22 private provider to provide building code inspection services  
 23 with regard to such building or structure and may make payment  
 24 directly to the private provider for the provision of such  
 25 services. All such services shall be the subject of a written  
 26 contract between the private provider, or the private  
 27 provider's firm, and the fee owner. The fee owner may elect to  
 28 use a private provider to provide plans review or required  
 29 building inspections, or both. However, if the fee owner or  
 30 the fee owner's contractor uses a private provider to provide  
 31 plans review, the local building official, in his or her

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1 discretion and pursuant to duly adopted policies of the local  
2 enforcement agency, may require the fee owner or the fee  
3 owner's contractor to use a private provider to also provide  
4 required building inspections.

5 (3) A private provider and any duly authorized  
6 representative may only perform building code inspection  
7 services that are within the disciplines covered by that  
8 person's licensure or certification under chapter 468, chapter  
9 471, or chapter 481. A private provider may not provide  
10 building code inspection services pursuant to this section  
11 upon any building designed or constructed by the private  
12 provider or the private provider's firm.

13 (4) A fee owner or the fee owner's contractor using a  
14 private provider to provide building code inspection services  
15 shall notify the local building official at the time of permit  
16 application, or no less than 7 business days prior to the  
17 first scheduled inspection by the local building official or  
18 building code enforcement agency for a private provider  
19 performing required inspections of construction under this  
20 section, on a form to be adopted by the commission. This  
21 notice shall include the following information:

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

24 (b) The name, firm, address, telephone number, and  
25 facsimile number of each private provider who is performing or  
26 will perform such services, his or her professional license or  
27 certification number, qualification statements or resumes,  
28 and, if required by the local building official, a certificate  
29 of insurance demonstrating that professional liability  
30 insurance coverage is in place for the private provider's  
31 firm, the private provider, and any duly authorized

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1 representative in the amounts required by this section.

2 (c) An acknowledgment from the fee owner in  
3 substantially the following form:

4

5 I have elected to use one or more private  
6 providers to provide building code plans review  
7 and/or inspection services on the building or  
8 structure that is the subject of the enclosed  
9 permit application, as authorized by s.

10 553.791, Florida Statutes. I understand that  
11 the local building official may not review the  
12 plans submitted or perform the required  
13 building inspections to determine compliance  
14 with the applicable codes, except to the extent  
15 specified in said law. Instead, plans review  
16 and/or required building inspections will be  
17 performed by licensed or certified personnel  
18 identified in the application. The law requires  
19 minimum insurance requirements for such  
20 personnel, but I understand that I may require  
21 more insurance to protect my interests. By  
22 executing this form, I acknowledge that I have  
23 made inquiry regarding the competence of the  
24 licensed or certified personnel and the level  
25 of their insurance and am satisfied that my  
26 interests are adequately protected. I agree to  
27 indemnify, defend, and hold harmless the local  
28 government, the local building official, and  
29 their building code enforcement personnel from  
30 any and all claims arising from my use of these  
31 licensed or certified personnel to perform

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1 building code inspection services with respect  
 2 to the building or structure that is the  
 3 subject of the enclosed permit application.

4  
 5 If the fee owner or the fee owner's contractor makes any  
 6 changes to the listed private providers or the services to be  
 7 provided by those private providers, the fee owner or the fee  
 8 owner's contractor shall, within 1 business day after any  
 9 change, update the notice to reflect such changes. In  
 10 addition, the fee owner or the fee owner's contractor shall  
 11 post at the project site, prior to the commencement of  
 12 construction and updated within 1 business day after any  
 13 change, on a form to be adopted by the commission, the name,  
 14 firm, address, telephone number, and facsimile number of each  
 15 private provider who is performing or will perform building  
 16 code inspection services, the type of service being performed,  
 17 and similar information for the primary contact of the private  
 18 provider on the project.

19 (5) Once construction has commenced and the local  
 20 building official is unable to provide inspection services in  
 21 a timely manner, the fee owner or the fee owner's contractor  
 22 may elect to use a private provider to provide inspection  
 23 services by notifying the local building official of their  
 24 intention no less than 7 business days prior to the next  
 25 scheduled inspection using the notice provided for in  
 26 paragraphs (a)-(c) of subsection (4).

27  
 28 ~~(6)(5)~~ A private provider performing plans review  
 29 under this section shall review construction plans to  
 30 determine compliance with the applicable codes. Upon  
 31 determining that the plans reviewed comply with the applicable

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1 codes, the private provider shall prepare an affidavit or  
2 affidavits on a form adopted by the commission certifying,  
3 under oath, that the following is true and correct to the best  
4 of the private provider's knowledge and belief:

5 (a) The plans were reviewed by the affiant, who is  
6 duly authorized to perform plans review pursuant to this  
7 section and holds the appropriate license or certificate.

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

9 ~~(7)(6)~~(a) No more than 30 business days after receipt  
10 of a permit application and the affidavit from the private  
11 provider required pursuant to subsection (5), the local  
12 building official shall issue the requested permit or provide  
13 a written notice to the permit applicant identifying the  
14 specific plan features that do not comply with the applicable  
15 codes, as well as the specific code chapters and sections. If  
16 the local building official does not provide a written notice  
17 of the plan deficiencies within the prescribed 30-day period,  
18 the permit application shall be deemed approved as a matter of  
19 law, and the permit shall be issued by the local building  
20 official on the next business day.

21 (b) If the local building official provides a written  
22 notice of plan deficiencies to the permit applicant within the  
23 prescribed 30-day period, the 30-day period shall be tolled  
24 pending resolution of the matter. To resolve the plan  
25 deficiencies, the permit applicant may elect to dispute the  
26 deficiencies pursuant to subsection (12) or to submit  
27 revisions to correct the deficiencies.

28 (c) If the permit applicant submits revisions, the  
29 local building official has the remainder of the tolled 30-day  
30 period plus 5 business days to issue the requested permit or  
31 to provide a second written notice to the permit applicant

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1 stating which of the previously identified plan features  
 2 remain in noncompliance with the applicable codes, with  
 3 specific reference to the relevant code chapters and sections.  
 4 If the local building official does not provide the second  
 5 written notice within the prescribed time period, the permit  
 6 shall be issued by the local building official on the next  
 7 business day.

8 (d) If the local building official provides a second  
 9 written notice of plan deficiencies to the permit applicant  
 10 within the prescribed time period, the permit applicant may  
 11 elect to dispute the deficiencies pursuant to subsection (12)  
 12 or to submit additional revisions to correct the deficiencies.  
 13 For all revisions submitted after the first revision, the  
 14 local building official has an additional 5 business days to  
 15 issue the requested permit or to provide a written notice to  
 16 the permit applicant stating which of the previously  
 17 identified plan features remain in noncompliance with the  
 18 applicable codes, with specific reference to the relevant code  
 19 chapters and sections.

20 ~~(8)(7)~~ A private provider performing required  
 21 inspections under this section shall inspect each phase of  
 22 construction as required by the applicable codes. The private  
 23 provider shall be permitted to send a duly authorized  
 24 representative to the building site to perform the required  
 25 inspections, provided all required reports and certifications  
 26 are prepared by and bear the signature of the private  
 27 provider. The duly authorized representative must be an  
 28 employee of the private provider entitled to receive  
 29 unemployment compensation benefits under chapter 443. The  
 30 contractor's contractual or legal obligations are not relieved  
 31 by any action of the private provider.



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1           ~~(9)(8)~~ A private provider performing required  
2 inspections under this section shall provide notice to the  
3 local building official of the date and approximate time of  
4 any such inspection no later than the prior business day by 2  
5 p.m. local time or by any later time permitted by the local  
6 building official in that jurisdiction. The local building  
7 official may visit the building site as often as necessary to  
8 verify that the private provider is performing all required  
9 inspections.

10           ~~(10)(9)~~ Upon completing the required inspections at  
11 each applicable phase of construction, the private provider  
12 shall record such inspections on a form acceptable to the  
13 local building official. These inspection records shall  
14 reflect those inspections required by the applicable codes of  
15 each phase of construction for which permitting by a local  
16 enforcement agency is required. The private provider, before  
17 leaving the project site, shall post each completed inspection  
18 record, indicating pass or fail, at the site and provide the  
19 record to the local building official within 2 business days.  
20 The local building official may waive the requirement to  
21 provide a record of each inspection within 2 business days if  
22 the record is posted at the project site and all such  
23 inspection records are submitted with the certificate of  
24 compliance. Records of all required and completed inspections  
25 shall be maintained at the building site at all times and made  
26 available for review by the local building official. The  
27 private provider shall report to the local enforcement agency  
28 any condition that poses an immediate threat to public safety  
29 and welfare.

30           ~~(11)(10)~~ Upon completion of all required inspections,  
31 the private provider shall prepare a certificate of

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1 compliance, on a form acceptable to the local building  
 2 official, summarizing the inspections performed and including  
 3 a written representation, under oath, that the stated  
 4 inspections have been performed and that, to the best of the  
 5 private provider's knowledge and belief, the building  
 6 construction inspected complies with the approved plans and  
 7 applicable codes. The statement required of the private  
 8 provider shall be substantially in the following form:

9

10           To the best of my knowledge and belief, the  
 11           building components and site improvements  
 12           outlined herein and inspected under my  
 13           authority have been completed in conformance  
 14           with the approved plans and the applicable  
 15           codes.

16

17           ~~(11)~~ (12) No more than 2 business days after receipt  
 18 of a request for a certificate of occupancy or certificate of  
 19 completion and the applicant's presentation of a certificate  
 20 of compliance and approval of all other government approvals  
 21 required by law, the local building official shall issue the  
 22 certificate of occupancy or certificate of completion or  
 23 provide a notice to the applicant identifying the specific  
 24 deficiencies, as well as the specific code chapters and  
 25 sections. If the local building official does not provide  
 26 notice of the deficiencies within the prescribed 2-day period,  
 27 the request for a certificate of occupancy or certificate of  
 28 completion shall be deemed granted and the certificate of  
 29 occupancy or certificate of completion shall be issued by the  
 30 local building official on the next business day. To resolve  
 31 any identified deficiencies, the applicant may elect to

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1 | dispute the deficiencies pursuant to subsection (12) or to  
2 | submit a corrected request for a certificate of occupancy or  
3 | certificate of completion.

4 |       ~~(13)~~(12) If the local building official determines  
5 | that the building construction or plans do not comply with the  
6 | applicable codes, the official may deny the permit or request  
7 | for a certificate of occupancy or certificate of completion,  
8 | as appropriate, or may issue a stop-work order for the project  
9 | or any portion thereof as provided by law, if the official  
10 | determines that such noncompliance poses a threat to public  
11 | safety and welfare, subject to the following:

12 |       (a) The local building official shall be available to  
13 | meet with the private provider within 2 business days to  
14 | resolve any dispute after issuing a stop-work order or  
15 | providing notice to the applicant denying a permit or request  
16 | for a certificate of occupancy or certificate of completion.

17 |       (b) If the local building official and private  
18 | provider are unable to resolve the dispute, the matter shall  
19 | be referred to the local enforcement agency's board of  
20 | appeals, if one exists, which shall consider the matter at its  
21 | next scheduled meeting or sooner. Any decisions by the local  
22 | enforcement agency's board of appeals, or local building  
23 | official if there is no board of appeals, may be appealed to  
24 | the commission as provided by this chapter.

25 |       (c) Notwithstanding any provision of this section, any  
26 | decisions regarding the issuance of a building permit,  
27 | certificate of occupancy, or certificate of completion may be  
28 | reviewed by the local enforcement agency's board of appeals,  
29 | if one exists. Any decision by the local enforcement agency's  
30 | board of appeals, or local building official if there is no  
31 | board of appeals, may be appealed to the commission as

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1 provided by this chapter, which shall consider the matter at  
2 the commission's next scheduled meeting.

3       ~~(14)~~~~(13)~~ For the purposes of this section, any notice  
4 to be provided by the local building official shall be deemed  
5 to be provided to the person or entity when successfully  
6 transmitted to the facsimile number listed for that person or  
7 entity in the permit application or revised permit  
8 application, or, if no facsimile number is stated, when  
9 actually received by that person or entity.

10       ~~(15)~~~~(14)~~(a) No local enforcement agency, local  
11 building official, or local government may adopt or enforce  
12 any laws, rules, procedures, policies, qualifications, or  
13 standards more stringent than those prescribed by this  
14 section.

15       (b) A local enforcement agency, local building  
16 official, or local government may establish, for private  
17 providers and duly authorized representatives working within  
18 that jurisdiction, a system of registration to verify  
19 compliance with the licensure requirements of paragraph (1)(g)  
20 and the insurance requirements of subsection (15).

21       (c) Nothing in this section limits the authority of  
22 the local building official to issue a stop-work order for a  
23 building project or any portion of such order, as provided by  
24 law, if the official determines that a condition on the  
25 building site constitutes an immediate threat to public safety  
26 and welfare.

27       ~~(16)~~~~(15)~~ A private provider may perform building code  
28 inspection services on a building project under this section  
29 only if the private provider maintains insurance for  
30 professional liability covering all services performed as a  
31 private provider. Such insurance shall have minimum policy

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1 limits of \$1 million per occurrence and \$2 million in the  
2 aggregate for any project with a construction cost of \$5  
3 million or less and \$2 million per occurrence and \$4 million  
4 in the aggregate for any project with a construction cost of  
5 over \$5 million. Nothing in this section limits the ability of  
6 a fee owner to require additional insurance or higher policy  
7 limits. For these purposes, the term "construction cost" means  
8 the total cost of building construction as stated in the  
9 building permit application. If the private provider chooses  
10 to secure claims-made coverage to fulfill this requirement,  
11 the private provider must also maintain coverage for a minimum  
12 of 5 years subsequent to the performance of building code  
13 inspection services. The insurance required under this  
14 subsection shall be written only by insurers authorized to do  
15 business in this state with a minimum A.M. Best's rating of A.  
16 Before providing building code inspection services within a  
17 local building official's jurisdiction, a private provider  
18 must provide to the local building official a certificate of  
19 insurance evidencing that the coverages required under this  
20 subsection are in force.

21 ~~(17)(16)~~ When performing building code inspection  
22 services, a private provider is subject to the disciplinary  
23 guidelines of the applicable professional board with  
24 jurisdiction over his or her license or certification under  
25 chapter 468, chapter 471, or chapter 481. All private  
26 providers shall be subject to the disciplinary guidelines of  
27 s. 468.621(1)(c)-(h). Any complaint processing,  
28 investigation, and discipline that arise out of a private  
29 provider's performance of building code inspection services  
30 shall be conducted by the applicable professional board.

31 ~~(18)(17)~~ Each local building code enforcement agency

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1 may audit the performance of building code inspection services  
 2 by private providers operating within the local jurisdiction.  
 3 Work on a building or structure may proceed after inspection  
 4 and approval by a private provider if the provider has given  
 5 notice of the inspection pursuant to subsection (8) and,  
 6 subsequent to such inspection and approval, the work may not  
 7 be delayed for completion of an inspection audit by the local  
 8 building code enforcement agency.

9        (19)~~(18)~~ The local government, the local building  
 10 official, and their building code enforcement personnel shall  
 11 be immune from liability to any person or party for any action  
 12 or inaction by a fee owner of a building, or by a private  
 13 provider or its duly authorized representative, in connection  
 14 with building code inspection services as authorized in this  
 15 act.

16  
17 (Redesignate subsequent sections.)

18  
19

20 ===== T I T L E    A M E N D M E N T =====

21 And the title is amended as follows:

22            On page 1, line 18, after the semicolon

23  
24 insert:

25            amending s. 553.791, F.S.; providing for the  
 26            use of private providers of building code  
 27            inspection services following commencement of  
 28            construction;

29  
30  
31