

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 231
SPONSOR(S): Carroll
TIED BILLS:

Building Code Administrators and Inspectors
IDEN./SIM. BILLS: SB 726

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------|-------------------|------------------|
| 1) <u>Jobs & Entrepreneurship Council</u> | <u></u> | <u></u> | <u></u> |
| 2) <u>Committee on Business Regulation</u> | <u>8 Y, 0 N</u> | <u>Livingston</u> | <u>Liepshutz</u> |
| 3) <u></u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, F.S. This regulation is under the Florida Building Code Administrators and Inspectors Board (board) and administered by the Department of Business and Professional Regulation (DBPR).

A building code administrator supervises building code activities, 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.

The DBPR is required to investigate all legally sufficient complaints it receives as a part of the "general powers" of the DBPR, pursuant to chapter 455, F.S. Section 468.619, F.S., establishes the enforcement officials' bill of rights. This section provides controls relating to reasonable times and procedures for the DBPR when questioning building enforcement officials against whom a complaint has been filed and establishes time frames for keeping DBPR from having "open ended" investigations and prosecutions.

Current law requires the release of disciplinary documents under s. 455.225 (10), 10 days after probable cause has been found to exist by the probable cause panel of the board or by the DBPR.

The bill specifies that a disciplinary "complaint or record maintained by the [DBPR] or "any [disciplinary] proceeding held by the [DBPR]" relating to a building code administrator, plans examiner, or building inspector become a public record and shall be open and available to the public beginning 30 days after the date that legal sufficiency is determined.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/safeguard individual liberty - disciplinary allegations/documents maintained by the DBPR relating to a building code administrator, plans examiner, or building inspector become a public record beginning 30 days after the date that legal sufficiency is determined rather than 10 days after probable cause has been found to exist.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, F.S. This regulation is under the board and administered by the DBPR. The board consists of nine members, five of whom are licensees under the board. Applicants for licensure must pass an examination and meet certain experience requirements. Once licensed, individuals must comply with all regulatory provisions.

A building code administrator supervises building code activities, 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 468.619, F.S., establishes the enforcement officials' bill of rights. This section provides controls relating to reasonable times, places, and procedures for DBPR when questioning building enforcement officials against whom a complaint has been filed; and establishes time frames for keeping DBPR from having "open ended" investigations and prosecutions. Specific provisions include requiring DBPR to:

- 1) Inform the licensee of any complaint within 10 days;
- 2) Reach a preliminary conclusion about "where the case is going" after 60 days, and notify the enforcement official of the preliminary conclusion;
- 3) Complete its investigation and be prepared to send it to probable cause within six months of the receipt of the complaint; and
- 4) Allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to probable cause, and letting him or her submit explanatory or mitigating material to the panel for their consideration.

DBPR is required to investigate all legally sufficient complaints it receives pursuant to the provisions of section 455.225, F.S., which is a part of the "general powers" of the DBPR. The determination of legal sufficiency is made upon initial receipt of a complaint received from the public or other source. A complaint is legally sufficient when the allegation, if true, amounts to a licensure violation.

Subsection (10) of s. 455.225, F.S., provides in part

"The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt [from public disclosure] until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality..."

DBPR complaint, investigatory, and prosecutorial processes are as follows: first the complaint is received; it then must be forwarded to the proper office (complaints against regulated professionals are received by the Bureau of Consumer Services in Tallahassee), processed, and referred to a complaint

analyst for review. Next legal sufficiency is determined, if possible, from the description of the alleged violation. Sometimes, additional information, such as copies of documents, may be required. In some cases this can be done quickly, but in others it can take a much longer period of time and require the cooperation of sources outside the control of DBPR.

If legal sufficiency is determined, the case is sent to the investigative office in the area where the alleged violation occurred. This can take several days to get the complaint to the proper office and assigned to an investigator. The investigator must rely on the cooperation of others to conduct the investigation, and sometimes subpoenas must be issued to get information. As an investigation progresses, new leads and sources of information are revealed and must be pursued. Sometimes, especially in a technical area such as building code matters, experts must be retained.

Once an investigation of a legally sufficient complaint is completed, it is forwarded to the Office of General Counsel for review and presentation to the probable cause panel of the board. The panel, which consists of at least two board members, determines whether there is probable cause to support prosecution of the matter. The complaint, the investigation, and the panel's deliberations are confidential until ten days after probable cause is found by the panel. If probable cause is not found, the case remains confidential and may be closed or sent back for further investigation. This exemption does not apply to actions against unlicensed persons.

When probable cause is found, DBPR files an administrative complaint and pursues prosecution of the matter. Each prosecuted case eventually ends up before the board. The board is the agency head for purposes of taking final agency action in each case.

Appeals may be taken to the District Courts of Appeal pursuant to section 120.68, F.S. The rights of licensees are protected during the disciplinary process by chapter 120, F.S., and the uniform rules adopted by the Administration Commission pursuant thereto, DBPR disciplinary parameters under s. 455.225, F.S., and the Florida and United States Constitutions.

Effect of proposed changes

The bill specifies that disciplinary "documents" maintained by the DBPR relating to a building code administrator, plans examiner, or building inspector become a "public record" beginning 30 days after the date that legal sufficiency is determined.

The bill further specifies that a disciplinary "proceeding" conducted by the DBPR against a building code administrator, plans examiner, or building inspector shall be open and available to the public beginning 30 days after the date that legal sufficiency is determined. This requirement would require any disciplinary proceeding to be conducted as a public hearing after the 30 day timeframe.

C. SECTION DIRECTORY:

Section 1. Creates s. 468.6215, F.S., to provide a timeline for the release of information resulting from investigative/disciplinary actions.

Section 2. Provides that the bill takes effect on July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

NA

2. Other:

None.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes, "Other than Community Association Managers, this profession would be the only other profession under the Division of Professions that allows inspection of complaint records without a finding of probable cause." However, section 471.038, F.S., relating to engineering, includes an additional modified version of confidentiality for legally sufficient complaints and investigatory information if the investigation ceases to be active. This section provides in pertinent part:

(7) "...The exemptions set forth in s. 455.225, relating to complaints and information obtained pursuant to an investigation by the department, shall apply to such records created or obtained by the management corporation [Florida Engineers Management Corporation] only until an investigation ceases to be active..."

"...An investigation ceases to be active when the case is dismissed prior to a finding of probable cause and the board has not exercised its option to pursue the case or 10 days after the board makes a determination regarding probable cause. All information, records, and transcriptions regarding a complaint that has been determined to be legally sufficient to state a claim within the jurisdiction of the board become available to the public when the investigation ceases to be active, except information that is otherwise confidential or exempt..."

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 8, 2007, the Committee on Business Regulation adopted one strike-all amendment and passed the bill out of committee by unanimous vote. The amendment makes the records of a disciplinary complaint against a code enforcement official available to the public if the complaint has been found "legally sufficient" and the investigation of the complaint has ceased to be active. An investigation ceases to be active whenever the case is dismissed prior to a finding of probable cause and the board does not exercise its option to pursue the case or 10 days after the board makes a determination regarding probable cause.