

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: CS/SB 580

INTRODUCER: Community Affairs Committee and Senator Oelrich

SUBJECT: Residential Building Permits

DATE: April 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.	Oxamendi	Imhof	RI	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute (CS) prohibits a local enforcement agency, and any local building code administrator, inspector, or other official or entity from requiring the inspection of any portion of a building, structure, or real property that is not directly related to the activity for which a permit is sought as a condition for issuance of a one- or two-family residential building permit.

The CS provides that this act does not apply to a building permit that is sought for substantial improvements, a change in occupancy, conversions from residential to nonresidential or mixed use, and historic buildings. The CS further states that this act does not prohibit a local enforcement agency, or any local building code administrator, inspector, or other official or entity from engaging in certain specified acts.

The provisions of this act shall expire upon being adopted into the Florida Building Code.

This CS substantially amends section 553.79 of the Florida Statutes.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act, located in part IV of ch. 553, F.S., is “to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code,” known as the Florida Building Code.¹ Section 553.72, F.S., defines the Florida Building Code (code) as a “single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state” which establishes minimum standards that shall be enforced by authorized state and local government enforcement agencies. The code consists of seven volumes, which include: Building, Residential, Mechanical, Plumbing, Fuel Gas, Existing Building, and Test Protocols for High-Velocity Hurricane Zones.

Florida Building Commission

The Florida Building Commission (commission) is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.² The commission is responsible for adopting and enforcing the code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.³ The commission is required to update the code triennially based upon the “code development cycle of the national model building codes,”⁴ Pursuant to s. 553.73, F.S., the commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the code.⁵

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the code to enter into agreements with other governmental units in order to delegate their code enforcement powers and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

Building Permits

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity from constructing, erecting, altering, modifying, repairing, or demolishing any building within this state without first obtaining a permit from the appropriate enforcing agency.⁶ An enforcing agency may not issue a permit for these activities until the local building code administrator or inspector has reviewed the plans and specifications required by the code to ensure compliance with the code and until a certified firesafety inspector ensures compliance with the Florida Fire Prevention Code.

¹ Section 553.72(1), F.S.

² See s. 553.74(1)(a)-(w), F.S.

³ Sections 553.73 and 553.74, F.S.

⁴ Florida Building Commission, *Report to the 2009 Legislature*, at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).

⁵ See also ss. 553.76, 553.775, and 553.73(7), F.S., respectively.

⁶ Section 553.79(1), F.S.

Existing Building Permits.—The Existing Buildings Volume of the code provides construction requirements for the repair, alteration, change of occupancy, addition, and relocation of existing buildings.⁷ According to the DCA, the following situations are examples of construction activities that may require the inspection of an existing building or structure prior to issuing a permit for the proposed improvement:

- Change of occupancy. A permit may be necessary to substantiate the proposed improvements and insure that the existing building systems are sufficient to accommodate the new occupancy classification.
- Repair to damaged buildings. A full inspection of a damaged building may be necessary before issuing a permit for improvement to ensure that the proposed improvements will eliminate any existing dangerous conditions.
- Addition or modification. A permit may be necessary to determine whether the proposed addition/modification would impact the existing building or structure, and whether the addition creates or extends any nonconformity in the existing building to which the addition is being made in regards to accessibility, structural strength, fire safety, means of egress, or the capacity of mechanical, plumbing, or electrical systems.

Local Code Enforcement.—According to the DCA, it is commonplace for local governments to adopt the International Property Maintenance Code through a local ordinance in order to establish minimum maintenance requirements for existing buildings, and to provide authority to inspect such existing buildings or structures for property maintenance, code violation, and unsafe structures.⁸

Florida Fire Prevention Code.—The Florida Fire Prevention Code has been adopted by the State Fire Marshal and is enforced locally by the local fire officials. The Florida Fire Prevention Code is updated every three years and contains all firesafety regulations relating to the construction and modification of building structures.⁹ The State Fire Marshal is required to notify local fire departments no later than 180 days prior to the triennial adoption of the Florida Fire Prevention Code in order to consider whether local amendments should be implemented. The Florida Fire Prevention Code also applies to existing buildings, to the extent that the local fire official determines that a threat to firesafety or property exists.

Classification of Residential Buildings

Chapter 3 of the code classifies the term “residential building” to include single-family dwellings, two-family dwellings, multi-family dwellings, transient residential buildings, adult care facilities, and childcare facilities.¹⁰

⁷ Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 3 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

⁸ *Id.* at 4.

⁹ Section 633.0215(1), F.S.

¹⁰ Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 2 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

Pursuant to s. 310 of the Florida Building Code, Residential Group R includes the use of a building or structure, or a portion thereof, for sleeping purposes. Residential Group R is broken down into four groups labeled R-1 through R-4, which are based on the residential occupancy of the structure.¹¹ The residential group occupancy classifications are as follows:

- Group R-1 are residential occupancies containing sleeping units where the occupants are primarily transient in nature. R-1 occupancies include transient boarding houses, hotels and motels.
- Group R-2 are residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature. R-2 occupancies include apartment houses, non-transient boarding houses, convents, dormitories, fraternities/sororities, non-transient hotels and motels, monasteries, and vacation timeshare properties.
- Group R-3 are residential occupancies where the occupants are primarily permanent in nature and are not classified as Group R-1, R-2, R-4 or Institutional Group I. R-3 occupancies include buildings that do not contain more than two dwelling units, adult and child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours, and congregate living facilities with 16 or fewer persons.
- Group R-4 are residential occupancies that include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.¹²

Substantial improvements to a building is defined in s. 161.54(12), F.S. Among other things, the definition provides that substantial improvements mean:

any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either:

- (a) Before the improvement or repair is started; or
- (b) If the structure has been damaged and is being restored, before the damage occurred.¹³

Section 553.507(2)(a), F.S., provides an exemption from the provisions of the “Florida Americans With Disabilities Accessibility Implementation Act”¹⁴ for when “the building, structure, or facility is being converted from residential to nonresidential or mixed use, as defined by local law.”

III. Effect of Proposed Changes:

This CS creates subsection (17) of s. 552.79, F.S., to prohibit a local enforcement agency, local building code administrator, inspector, and other officials and entities from requiring the inspection of any portion of a building, structure, or real property that is not directly related to

¹¹ *Id.*

¹² *Id.* at 2-3.

¹³ This definition is also cross-referenced in s. 399.15(1)(b), F.S.

¹⁴ *See* ss. 553.501-553.513, F.S.

the construction, erection, alteration, modification, repair, or demolition for which a permit is sought, as a condition for issuance of a one- or two-family residential building permit.

The CS does not apply to a building permit that is sought for:

- A substantial improvement, as defined in s. 161.54 F.S., or the code.
- A change of occupancy, as defined in the code.
- A conversion from residential to nonresidential or mixed use pursuant to s. 553.507(2)(a), F.S., or the code.
- An historic building, as defined in the code.

This CS does not prohibit a local enforcement agency, or any local building code administrator, inspector, or other official or entity from:

- Citing a violation that was inadvertently observed in plain view during the course of an inspection conducted in accordance to this act.
- Inspecting a physically nonadjacent portion of the building, structure, or real property that is directly impacted by the activity for which the permit is sought.
- Inspecting any portion of the building, structure, or real property in which the owner or person having control has voluntarily consented to such inspection.
- Inspecting any portion of the building, structure, or real property pursuant to an inspection warrant issued in accordance to ss. 933.20-933.30, F.S.
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The CS provides that s. 553.79(17), F.S., shall expire upon the Secretary of State's receipt of written certification by the chair of the commission that the commission has adopted an amendment to the code that has substantially incorporated the provisions of this subsection and that such amendment has taken effect.

This act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the proponents of the bill, it would help streamline the permitting process by limiting the inspections to only the portion of the real property that is directly being affected.

C. Government Sector Impact:

Local enforcement agencies and other officials and entities will not be allowed to require, as a condition of issuance of a one- or two-family residential building permit, to inspect any portion of a building, structure, or real property that is not directly related to the activity for which a permit is sought.

The Department of Community Affairs has articulated that this CS may impede local code enforcement authorities' ability to inspect and determine whether an existing structure is unsafe.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The CS provides that s. 553.79(17), F.S., shall expire upon the Secretary of State's receipt of written certification by the chair of the commission that the commission has adopted an amendment to the code that has substantially incorporated the provisions of this subsection and that such amendment has taken effect. However, after the provisions of this bill have expired, the CS would not prevent the commission from amending the code to repeal those provisions from the code.

According to the Division of Statutory Revision, a reviser's bill would be needed to delete the provisions of this bill after the DCA's certification that it has adopted an amendment that substantially incorporates the provisions of s. 522.79(17), F.S.

¹⁵ Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 5 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 4, 2011:

This CS makes clarifying amendments and specifies situations in which the provisions of the act do not apply. The CS also provides that the provisions of this act shall expire upon being adopted into the Florida Building Code.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
