

1 A bill to be entitled
2 An act relating to open and expired building permits;
3 amending s. 489.129, F.S.; authorizing the
4 Construction Industry Licensing Board to take
5 specified actions against any certificateholder or
6 registrant if a contractor, a financially responsible
7 officer, or certain business organization is found
8 guilty of failing to properly close any permit or
9 satisfy any applicable permit requirement; creating s.
10 553.7905, F.S.; requiring a building permit to be
11 considered an open permit if it is issued for any
12 portion of construction of any commercial,
13 residential, or mixed-use project that has not
14 received final inspection approval and that has not
15 complied with other requirements of the permit at
16 issue within a specified period; requiring an open
17 permit that expires without receiving final inspection
18 approval and complying with other requirements of the
19 permit at issue to be considered an expired permit;
20 specifying conditions under which a permit is a closed
21 permit; authorizing uncompleted permitted projects to
22 be transferred, or sold, and completed by a new owner
23 in accordance with procedures or requirements of a
24 local governmental jurisdiction; authorizing open or
25 expired permits to be closed by or on behalf of the

26 | current property owner by complying with certain
27 | requirements; providing applicability; prohibiting the
28 | permitting authority from denying issuance of permits
29 | to, issuing notices of violation to, or fining,
30 | penalizing, sanctioning, or assessing fees against a
31 | subsequent arms-length purchaser of the subject
32 | property for value solely because a building permit
33 | was not properly closed within certain periods;
34 | requiring the permitting authority to continue to have
35 | all rights and remedies against the property owner and
36 | contractor identified on the permit; requiring the
37 | Florida Building Commission to adopt rules and amend
38 | the applicable Florida Building Code to enact
39 | procedures designed to encourage property owners and
40 | contractors to close permits properly; authorizing
41 | individual trade permits or certain other permit types
42 | to be closed under certain circumstances; providing
43 | applicability; authorizing local boards or
44 | governmental jurisdictions to adopt stricter standards
45 | to govern the closure of building permits under
46 | certain circumstances; authorizing the owner of a home
47 | for sale to assume the role of an owner-builder in
48 | order to resolve an open permit for a substantially
49 | completed project under certain circumstances;
50 | prohibiting such owner from being required to continue

51 to reside in the home for a specified period;
52 authorizing a local building official to refuse to
53 accept new permit applications from any contractor who
54 holds expired or inactive permits under a specified
55 circumstance; authorizing a contractor to hold an
56 unlimited number of active permits; providing that
57 provisions in the Florida Building Code authorizing
58 permits to be administratively closed by the local
59 building official are not applicable to a permit
60 subject to regulation by an agency not specifically
61 enforcing the Florida Building Code, except where the
62 local building official has regulatory authority over
63 other areas related to the permit; requiring the local
64 building department to provide to the property owner a
65 certain mandatory written notice when issuing a
66 building permit, subject to certain requirements;
67 authorizing a governmental entity to charge only one
68 search fee for searching for and identifying certain
69 open or unexpired building permits in an amount
70 commensurate with research and time costs incurred by
71 the jurisdiction; requiring, for a permit issued after
72 a certain date, the local building department to send
73 a written notice to the current property owner within
74 a specified period after issuance of such permit if
75 the permit has not been properly closed within that

76 period; providing requirements for the notice;
 77 providing that failure to receive written notice does
 78 not relieve the contractor or property owner from
 79 taking the necessary actions to legally close a
 80 permit; providing construction; providing an effective
 81 date.

82

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

84

85 Section 1. Paragraph (o) of subsection (1) of section
 86 489.129, Florida Statutes, is amended to read:

87 489.129 Disciplinary proceedings.—

88 (1) The board may take any of the following actions
 89 against any certificateholder or registrant: place on probation
 90 or reprimand the licensee, revoke, suspend, or deny the issuance
 91 or renewal of the certificate or registration, require financial
 92 restitution to a consumer for financial harm directly related to
 93 a violation of a provision of this part, impose an
 94 administrative fine not to exceed \$10,000 per violation, require
 95 continuing education, or assess costs associated with
 96 investigation and prosecution, if the contractor, financially
 97 responsible officer, or business organization for which the
 98 contractor is a primary qualifying agent, a financially
 99 responsible officer, or a secondary qualifying agent responsible
 100 under s. 489.1195 is found guilty of any of the following acts:

101 (o) Proceeding on any job without obtaining applicable
 102 local building department permits and inspections, or failing to
 103 properly close any permit or satisfy any applicable permit
 104 requirement.

105
 106 For the purposes of this subsection, construction is considered
 107 to be commenced when the contract is executed and the contractor
 108 has accepted funds from the customer or lender. A contractor
 109 does not commit a violation of this subsection when the
 110 contractor relies on a building code interpretation rendered by
 111 a building official or person authorized by s. 553.80 to enforce
 112 the building code, absent a finding of fraud or deceit in the
 113 practice of contracting, or gross negligence, repeated
 114 negligence, or negligence resulting in a significant danger to
 115 life or property on the part of the building official, in a
 116 proceeding under chapter 120.

117 Section 2. Section 553.7905, Florida Statutes, is created
 118 to read:

119 553.7905 Open and expired permits; procedures for closing;
 120 notices to owners applying for permits.-

121 (1) A building permit shall be considered an open permit
 122 if it is issued for any portion of construction of any
 123 commercial, residential, or mixed-use project that has not
 124 received final inspection approval and that has not complied
 125 with other requirements of the permit at issue within one of the

126 following periods:

127 (a) One year after the expiration of the notice of
128 commencement or last amendment thereto.

129 (b) In the absence of a notice of commencement:

130 1. One year after the last inspection conducted under the
131 permit.

132 2. If an inspection has not been performed on the project,
133 2 years after the date of issuance of the permit.

134 (2) If an open permit expires without receiving final
135 inspection approval and complying with other requirements of the
136 permit at issue, the open permit shall be considered an expired
137 permit as provided in s. 105.4 of the Florida Building Code.

138 (3) A closed permit is a building permit in which any of
139 the following apply:

140 (a) A final inspection approval has been obtained upon
141 satisfaction of permit requirements.

142 (b) No work is started under the original permit within 6
143 months after issuance of the permit.

144 (c) The requirements of paragraph (4)(b) are satisfied.

145 (4)(a) An uncompleted permitted project may be
146 transferred, or sold, and completed by a new owner in accordance
147 with procedures or requirements of a local governmental
148 jurisdiction.

149 (b) An open or expired permit may be closed by or on
150 behalf of the current property owner, regardless of whether the

151 property owner is the same owner who originally applied for the
152 permit or is a subsequent owner, by complying with the
153 requirements for closing permits pursuant to a mutual agreement
154 between the current property owner and the local building
155 department that issued the permit or, absent such an agreement,
156 by complying with the following requirements:

157 1. The property owner may retain the original contractor
158 who obtained the permit or hire a different contractor licensed
159 in this state who possesses any license required for the
160 performance of any work necessary to satisfy conditions of the
161 permit at issue, in order to close the open or expired permit;
162 reactivate the permit if it is expired; or satisfy any
163 requirement of the permit at issue not yet satisfied, including
164 correction of any code violation in accordance with the code in
165 effect when the application for the permit was filed and
166 obtaining any necessary inspection. The state license of
167 whichever contractor performs these functions must be current
168 and active. The contractor and the owner must comply with the
169 local building department's change of contractor process, after
170 which the contractor may not be liable for any existing defect
171 or existing work failing to comply with any applicable code,
172 rule, regulation, ordinance, requirement of the permit at issue,
173 or law other than the work actually performed by the contractor.
174 The property owner and the permitholder under the original open
175 or expired permit remain liable, within the period of any

176 applicable statute of limitations or repose and as provided by
177 applicable law, for any defect in the work or for failure to
178 comply with any applicable code, rule, regulation, ordinance,
179 permit requirement, or law. To the extent required by chapter
180 489, the owner or the contractor may hire licensed
181 subcontractors in the scope of the permitted work who may
182 perform the functions of the contractor as outlined in this
183 subsection to the extent of work covered by the subcontractor's
184 license. All work required to properly close an open or expired
185 permit under this section shall be performed in accordance with
186 the building code in effect on the date of filing of the
187 application for the open or expired permit.

188 2.a. As an alternative to the procedure in subparagraph
189 1., the property owner may hire an engineer or architect who
190 possesses a current and active license in this state; is
191 experienced in designing, supervising, or inspecting work of the
192 nature covered by the open or expired permit at issue; and has
193 at least 3 years of experience in performing field inspections
194 regarding such work, in order to inspect the construction work
195 subject to the open or expired building permit, direct any
196 repair necessary to comply with all the requirements of the
197 permit at issue, and then confirm compliance therewith by
198 submitting an affidavit bearing the seal of the engineer or
199 architect to the issuing local building department. The
200 affidavit must be substantially in the following form:

201
 202 I, ...(specify name)..., possess a current and active
 203 ...(specify engineering or architectural)... license
 204 within the State of Florida. I am experienced in
 205 designing, supervising, or inspecting work of the
 206 nature covered by the open or expired permit at the
 207 real property located at ...(specify address).... I
 208 have at least three years of experience in performing
 209 field inspections as to such work. I have inspected
 210 the construction work subject to the open or expired
 211 building permit number ...(specify number)..., and I
 212 confirm that the construction work complies with all
 213 known requirements of the permit at issue.

214
 215 Signed:

216
 217 ...(affix licensing seal)...
 218

219 b. If any of the permitted work includes construction
 220 outside the engineer's or architect's area of expertise, the
 221 property owner, engineer, or architect may hire an engineer or
 222 architect licensed in the scope of the permitted work who may
 223 direct any necessary repair to comply with all requirements of
 224 the permit at issue. The engineer or architect hired by the
 225 property owner, engineer, or architect must confirm compliance

226 by submitting to the local building department issuing the
227 permit a signed and sealed affidavit attesting to compliance
228 with all requirements of the permit at issue. The local building
229 department issuing the permit shall accept the affidavit or
230 affidavits referenced in sub-subparagraph a. as satisfaction of
231 all requirements of the permit at issue and shall thereafter
232 close the building permit, unless it conducts its own final
233 inspections within 7 business days after receipt of the
234 affidavit or affidavits. If the local building department
235 conducts its own final inspection and discovers conditions
236 constituting code or permit violations within the scope of work
237 covered by the permit, the conditions must be repaired to the
238 local building department's satisfaction as a condition to
239 closing the permit. All work required to properly close an open
240 or expired permit under this section shall be performed in
241 accordance with the building code in effect on the date of
242 filing the application for the open or expired permit.

243 (5) The requirements of paragraph (4) (b) apply regardless
244 of whether the building permit is still open or has expired.

245 (6) (a) The permitting authority may not deny issuance of a
246 building permit to; issue a notice of violation to; or fine,
247 penalize, sanction, or assess fees against a subsequent arms-
248 length purchaser of the subject property for value solely
249 because a building permit was not properly closed within one of
250 the following periods:

251 1. Five years after expiration of the date of recordation
252 of the notice of commencement or last amendment thereto.

253 2. If a notice of commencement was not recorded, within 7
254 years after the building permit was issued.

255 (b) The permitting authority shall continue to have all
256 rights and remedies against the property owner and contractor
257 identified on the permit. The Florida Building Commission shall
258 adopt rules and amend the applicable Florida Building Code to
259 enact procedures designed to encourage property owners and
260 contractors to close permits properly.

261 (7) (a) An individual trade permit or any other permit type
262 as determined by the local building official as defined in s.
263 553.791(1)(g) may be closed when no apparent safety hazard
264 exists, and for which no code violation has been previously
265 documented, after 6 years after issuance of the permit. This
266 paragraph does not apply to a building permit for a building
267 project still under construction with a legally granted permit
268 extension.

269 (b) A local board or governmental jurisdiction may adopt
270 stricter standards to govern the closure of a building permit if
271 the stricter standards apply only prospectively and not
272 retroactively to previously issued permits, regardless of
273 whether the permits remain open or have expired, and if the
274 stricter standards do not change the requirements of paragraph
275 (4) (b) and do not supersede this section.

276 (8) As an alternative to the requirements of paragraph
277 (4) (b) on real property consisting of single or multiple family
278 dwelling up to and including four units, with the approval of
279 the local building official, the owner of a home for sale may
280 assume the role of an owner-builder in order to resolve an open
281 permit for a substantially completed project when the project is
282 abandoned or otherwise not completed by the licensed contractor
283 who obtained the permit. The owner may not be required to
284 continue to reside in the home for 1 year.

285 (9) (a) A local building official may refuse to accept a
286 new building permit application from a contractor who holds
287 expired or inactive permits in excess of a specific publicized
288 threshold number of expired or inactive permits which is set in
289 advance by written policy or ordinance in a local jurisdiction.

290 (b) A contractor may hold an unlimited number of active
291 permits.

292 (10) Provisions in the Florida Building Code authorizing
293 permits to be administratively closed by the local building
294 official are not applicable to a permit subject to regulation by
295 an agency not specifically enforcing the Florida Building Code,
296 except where the local building official has regulatory
297 authority over other areas related to the permit, such as zoning
298 or other land development code provisions. The regulations not
299 subject to such provisions in the Florida Building Code include,
300 but are not limited to, local zoning and land use rules, local

301 stormwater management rules, local platting and subdivision
 302 requirements, rules implemented by the Department of Health,
 303 rules implemented by the Department of Business and Professional
 304 Regulation, local utility standards, and provisions of the
 305 National Flood Insurance Program Community Rating System.

306 (11) When issuing a building permit, the local building
 307 department shall provide to the property owner a mandatory
 308 written notice, which may be electronically provided if the
 309 permit package is electronically provided, in the following
 310 form:

311
 312 IMPORTANT NOTICE REGARDING COMPLYING WITH THE
 313 INSPECTION AND APPROVAL PROCESS FOR ALL BUILDING
 314 PERMITS

315
 316 You are receiving a building permit authorizing the
 317 construction referenced in the application that was
 318 submitted to this local building department by you or
 319 on your behalf. The permit is issued with conditions,
 320 including required building inspections and assurances
 321 that the construction complies with the design
 322 submitted with the permit application and any other
 323 conditions referenced in the permit. It is critical
 324 that you ensure that all necessary building
 325 inspections are passed before the expiration of any

326 notice of commencement or amendment thereto, as these
327 inspections are important to ensure that construction
328 has been performed in a safe and proper manner. If you
329 have any questions regarding these procedures, please
330 call the local building department. Your failure to
331 comply may also result in unsafe conditions arising
332 from your construction.

333
334 (12) The applicable governmental entity may charge only
335 one search fee for searching for and identifying open or
336 unexpired building permits for any unit or subunit assigned by a
337 municipality or county to a particular tax parcel identification
338 number, in an amount commensurate with research and time costs
339 incurred by the jurisdiction.

340 (13) For all building permits issued after July 1, 2018,
341 the local building department must send a written notice to the
342 current property owner within 1 year to 3 years after issuance
343 of any building permit that has not been properly closed out
344 within that period. The notice must advise the property owner of
345 the need to properly close the permit upon completion of the
346 work covered by the permit. Failure to receive written notice
347 does not relieve the contractor or the property owner from
348 taking the necessary actions to legally close the permit.

349 (14) This act does not prevent a local governmental entity
350 from enforcing any provision of a local land development code or

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351 other local ordinance to the extent not inconsistent with this
352 section or prevent a local governmental entity from enacting a
353 provision that adds more requirements to the process of closing
354 out open or expired permits.

355 Section 3. This act shall take effect July 1, 2018.