

By Senator Powell

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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 a 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,

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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

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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.—

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88 (1) The board may take any of the following actions against  
89 any certificateholder or registrant: place on probation or  
90 reprimand the licensee, revoke, suspend, or deny the issuance or  
91 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.

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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 if  
122 it is issued for any portion of construction of any commercial,  
123 residential, or mixed-use project that has not received final  
124 inspection approval and that has not complied with other  
125 requirements of the permit at issue within one of the following  
126 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 transferred,

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146 or sold, and completed by a new owner in accordance with  
147 procedures or requirements of a local governmental jurisdiction.

148 (b) An open or expired permit may be closed by or on behalf  
149 of the current property owner, regardless of whether the  
150 property owner is the same owner who originally applied for the  
151 permit or is a subsequent owner, by complying with the  
152 requirements for closing permits pursuant to a mutual agreement  
153 between the current property owner and the local building  
154 department that issued the permit or, absent such an agreement,  
155 by complying with the following requirements:

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

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

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

200  
201 I, ...(specify name)..., possess a current and active  
202 ...(specify engineering or architectural)... license  
203 within the State of Florida. I am experienced in

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204 designing, supervising, or inspecting work of the  
205 nature covered by the open or expired permit at the  
206 real property located at ...(specify address).... I  
207 have at least three years of experience in performing  
208 field inspections as to such work. I have inspected  
209 the construction work subject to the open or expired  
210 building permit number ...(specify number)..., and I  
211 confirm that the construction work complies with all  
212 known requirements of the permit at issue.

213  
214 Signed:

215  
216 ...(affix licensing seal)...  
217

218 b. If any of the permitted work includes construction  
219 outside the engineer's or architect's area of expertise, the  
220 property owner, engineer, or architect may hire an engineer or  
221 architect licensed in the scope of the permitted work who may  
222 direct any necessary repair to comply with all requirements of  
223 the permit at issue. The engineer or architect hired by the  
224 property owner, engineer, or architect must confirm compliance  
225 by submitting to the local building department issuing the  
226 permit a signed and sealed affidavit attesting to compliance  
227 with all requirements of the permit at issue. The local building  
228 department issuing the permit shall accept the affidavit or  
229 affidavits referenced in sub-subparagraph a. as satisfaction of  
230 all requirements of the permit at issue and shall thereafter  
231 close the building permit, unless it conducts its own final  
232 inspections within 7 business days after receipt of the



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233 affidavit or affidavits. If the local building department  
234 conducts its own final inspection and discovers conditions  
235 constituting code or permit violations within the scope of work  
236 covered by the permit, the conditions must be repaired to the  
237 local building department's satisfaction as a condition to  
238 closing the permit. All work required to properly close an open  
239 or expired permit under this section shall be performed in  
240 accordance with the building code in effect on the date of  
241 filing the application for the open or expired permit.

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

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

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

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

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

260 (7) (a) An individual trade permit or any other permit type  
261 as determined by the local building official as defined in s.

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262 553.791(1)(g) may be closed when no apparent safety hazard  
263 exists, and for which no code violation has been previously  
264 documented, after 6 years after issuance of the permit. This  
265 paragraph does not apply to a building permit for a building  
266 project still under construction with a legally granted permit  
267 extension.

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

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

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

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

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291 (10) Provisions in the Florida Building Code authorizing  
292 permits to be administratively closed by the local building  
293 official are not applicable to a permit subject to regulation by  
294 an agency not specifically enforcing the Florida Building Code,  
295 except where the local building official has regulatory  
296 authority over other areas related to the permit, such as zoning  
297 or other land development code provisions. The regulations not  
298 subject to such provisions in the Florida Building Code include,  
299 but are not limited to, local zoning and land use rules, local  
300 stormwater management rules, local platting and subdivision  
301 requirements, rules implemented by the Department of Health,  
302 rules implemented by the Department of Business and Professional  
303 Regulation, local utility standards, and provisions of the  
304 National Flood Insurance Program Community Rating System.

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

310

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

314

315 You are receiving a building permit authorizing the  
316 construction referenced in the application that was  
317 submitted to this local building department by you or  
318 on your behalf. The permit is issued with conditions,  
319 including required building inspections and assurances

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320 that the construction complies with the design  
321 submitted with the permit application and any other  
322 conditions referenced in the permit. It is critical  
323 that you ensure that all necessary building  
324 inspections are passed before the expiration of any  
325 notice of commencement or amendment thereto, as these  
326 inspections are important to ensure that construction  
327 has been performed in a safe and proper manner. If you  
328 have any questions regarding these procedures, please  
329 call the local building department. Your failure to  
330 comply may also result in unsafe conditions arising  
331 from your construction.

332  
333 (12) The applicable governmental entity may charge only one  
334 search fee for searching for and identifying open or unexpired  
335 building permits for any unit or subunit assigned by a  
336 municipality or county to a particular tax parcel identification  
337 number, in an amount commensurate with research and time costs  
338 incurred by the jurisdiction.

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

348 (14) This act does not prevent a local governmental entity

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

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