

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 Committee on Community Affairs

BILL: SB 1036

INTRODUCER: Senator Gruters

SUBJECT: Florida Building Code

DATE: April 3, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Toman | Yeatman | CA | Pre-meeting |
| 2. | | | IT | |
| 3. | | | RC | |

I. Summary:

SB 1036 prohibits a local government from carrying forward a budget balance greater than its average cost for enforcing the Florida Building Code for the preceding two fiscal years. The bill also requires a local government to use any excess funds to increase services, reduce fees, or provide funding to non-profit organizations that expand training opportunities for the construction industry.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.¹ The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction.² The Florida Building Commission develops and maintains the Florida Building Code.³

Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FPPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and

¹ Section 553.72(1), F.S.

² *Id.*

³ Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

the enforcement of such fire safety laws and rules.⁴ The FFPC operates in conjunction with the Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.⁵

Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.⁶ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁸ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹ A local enforcement agency must post each type of building permit application on its website.¹⁰

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.¹¹ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,¹² including certain required building, electrical, plumbing, mechanical, and gas inspections.¹³

Local Government Building Code Permitting Fees

Determination and Usage

A local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code.¹⁴ The local government entity's fees must be used solely for carrying out that local government entity's responsibilities

⁴ Section 633.202(1), F.S.

⁵ See ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

⁶ Section 553.72(2), F.S.

⁷ See ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1), F.S.

⁸ Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited February 26, 2019). Section 553.79(1)(b), F.S. requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

⁹ See ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

¹⁰ Section 553.79(1)(b), F.S.

¹¹ Section 468.603(2), F.S.

¹² Section 553.79(2), F.S.

¹³ Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited February 26, 2019).

¹⁴ See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

in enforcing the Florida Building Code.¹⁵ The basis for the fee structure must relate to the level of service provided by the local government.¹⁶ The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.¹⁷ Fees charged must be consistently applied.¹⁸ The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.¹⁹

Fiscal Tracking and Accountability

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.²⁰ Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.²¹

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2017. For that year, 63 counties reported building permit fee revenues totaling \$265,162,945; while 310 municipalities reported revenues totaling \$478,299,301.²²

Tax Exempt 501(c)(3) Not For Profit Organizations²³

An organization described in section 501(c)(3) of the Internal Revenue Code is commonly referred to as a charitable organization. The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual. In addition, it may not be an action organization, *i.e.*, it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

¹⁵ The phrase “enforcing the Florida Building Code” includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement. *See* s. 553.80(7)(a), F.S.

¹⁶ Section 553.80(7), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

²⁰ Section 553.80(7)(b), F.S.

²¹ Section 553.80(7), F.S.

²² Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited April 3, 2019).

²³ For information this section of the analysis *see* Internal Revenue Services, *Exemption Requirements - 501(c)(3) Organizations*, available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations> (last visited April 3, 2019).

The Construction Industry

Section 440.02(8), F.S., defines “construction industry” to mean for-profit activities involving any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. However, “construction” does not mean a homeowner’s act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold, resold, or leased by the owner within one year after the commencement of construction.

III. Effect of Proposed Changes:

Section 1 amends s. 553.80, F.S., to prohibit a local government from carrying forward an amount of funds generated by code enforcement that exceeds a two year rolling average of its operating budget for code enforcement. The bill defines “operating budget” as not including reserve amounts.

If a local government has funds in excess of the defined average amount, it must use the funds to increase services, reduce fees, or provide funding to entities designated as not for profit under s. 501(c)(3) of the Internal Revenue Code whose primary purpose is to expand training opportunities for the construction industry, as defined in s. 440.02(8), F.S.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill may result in a reduction in permitting fees to the extent local governments are levying fees in excess of the amount necessary to cover authorized expenses.

C. Government Sector Impact:

The bill may require local governments to provide rebates to fee-payers, and funding for non-profits engaged in construction industry training programs, to the extent the local government has maintained reserves in excess of its average operating budget for enforcing the Code in the previous four fiscal years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 553.80 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.