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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2021	.	
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	.	

The Committee on Community Affairs (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 307

and insert:

Section 1. Subsection (8) is added to section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(8) PRIVATE PROVIDER INSPECTION SERVICES.—

(a) Notwithstanding any other law, ordinance, or policy,



11 the fee owner of an onsite sewage treatment and disposal system,
12 or the fee owner's contractor upon written authorization from
13 the fee owner, may select a private provider to provide
14 inspection services for onsite sewage treatment and disposal
15 systems and may pay the private provider directly for such
16 services if such services are the subject of a written contract
17 between the private provider, or the private provider's firm,
18 and the fee owner or the fee owner's contractor, upon written
19 authorization of the fee owner.

20 (b) It is the intent of the Legislature that owners and
21 contractors pay reduced fees related to onsite sewage treatment
22 disposal system inspections when selecting a private provider to
23 provide such inspections. The department must calculate the cost
24 savings to the department based on a fee owner or contractor
25 hiring a private provider to perform inspections in lieu of the
26 department and reduce permit fees accordingly. The department
27 may not charge fees for an inspection if the fee owner or
28 contractor hires a private provider to perform the inspection.

29 (c) Onsite sewage treatment and disposal system inspection
30 services may be performed only by a private provider or a duly
31 authorized representative of a private provider within the
32 disciplines covered under such person's licensure or if the
33 person is certified under s. 381.0101, is a master septic
34 contractor licensed pursuant to chapter 489, is a professional
35 engineer who has passed all three parts of the OSTDS Accelerated
36 Certification Training, or is a person working as staff under
37 the supervision of a licensed professional engineer and has
38 passed all three parts of the OSTDS Accelerated Certification
39 Training.



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40 (d)1. A fee owner or the fee owner's contractor using a
41 private provider for onsite sewage treatment and disposal system
42 inspection services must provide notice to the department at the
43 time of permit application, or by 2 p.m. local time, 2 business
44 days before the first scheduled inspection by the department.

45 The notice must include the following information:

46 a. The name, firm, address, telephone number, and e-mail
47 address of each private provider who is performing or will
48 perform such services, the private provider's professional
49 license or certification number, and qualification statements or
50 resumes for each private provider; and

51 b. An acknowledgment from the fee owner in substantially
52 the following form:

53
54 I have elected to use one or more private providers to
55 provide onsite sewage treatment and disposal system
56 inspection services that are the subject of the
57 enclosed permit application. I understand that the
58 department may not perform the required onsite sewage
59 treatment and disposal system inspections to determine
60 compliance with the applicable codes, except to the
61 extent authorized by law. Instead, inspections will be
62 performed by the licensed or certified personnel
63 identified in the application. By executing this form,
64 I acknowledge that I have made inquiry regarding the
65 competence of the licensed or certified personnel and
66 am satisfied that my interests are adequately
67 protected. I agree to indemnify, defend, and hold
68 harmless the department from any and all claims



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69 arising from my use of these licensed or certified
70 personnel to perform onsite sewage treatment and
71 disposable system inspections with respect to the
72 onsite sewage treatment and disposable system that are
73 the subject of the enclosed permit application.
74

75 2. If the fee owner or the fee owner's contractor makes any
76 changes to the listed private providers or the services to be
77 provided by the private providers, the fee owner or the fee
78 owner's contractor must update the notice to reflect the change
79 within 1 business day after the change. A change of a duly
80 authorized representative named in the permit application does
81 not require a revision of the permit and the department may not
82 charge a fee for making such change.

83 (e) The department may audit the performance of onsite
84 sewage treatment and disposal system inspection services by
85 private providers. However, the same private provider may not be
86 audited more than four times in a month unless the department
87 determines that an onsite sewage treatment and disposal system
88 inspected by the private provider should not have passed
89 inspection. Work on a building, a structure, or an onsite sewage
90 treatment and disposal system may proceed after inspection and
91 approval by a private provider if the fee owner or fee owner's
92 contractor has given notice of the inspection pursuant to
93 subsection (4) and, subsequent to such inspection and approval,
94 may not be delayed for completion of an inspection audit by the
95 department.

96 Section 2. Present subsections (3) through (8) of section
97 514.0115, Florida Statutes, are redesignated as subsections (4)



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98 through (9), respectively, and a new subsection (3) is added to
99 that section, to read:

100 514.0115 Exemptions from supervision or regulation;
101 variances.—

102 (3) The department may not require compliance with rules
103 relating to swimming pool lifeguard standards for pools serving
104 assisted living facilities.

105 Section 3. Subsections (4) and (8) of section 553.73,
106 Florida Statutes, are amended to read:

107 553.73 Florida Building Code.—

108 (4) (a) All entities authorized to enforce the Florida
109 Building Code under ~~pursuant to~~ s. 553.80 shall comply with
110 applicable standards for issuance of mandatory certificates of
111 occupancy, minimum types of inspections, and procedures for
112 plans review and inspections as established by the commission by
113 rule. Local governments may adopt amendments to the
114 administrative provisions of the Florida Building Code, subject
115 to the limitations in ~~of~~ this subsection ~~paragraph~~. Local
116 amendments must ~~shall~~ be more stringent than the minimum
117 standards described in this section ~~herein~~ and must ~~shall~~ be
118 transmitted to the commission within 30 days after enactment.
119 The local government shall make such amendments available to the
120 general public in a usable format. The State Fire Marshal is
121 responsible for establishing the standards and procedures
122 required in this subsection ~~paragraph~~ for governmental entities
123 with respect to applying the Florida Fire Prevention Code and
124 the Life Safety Code.

125 (b) Local governments may, subject to the limitations in ~~of~~
126 this section and not more than once every 6 months, adopt



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127 amendments to the technical provisions of the Florida Building
128 Code that ~~which~~ apply solely within the jurisdiction of such
129 government and that ~~which~~ provide for more stringent
130 requirements than those specified in the Florida Building Code, ~~7~~
131 ~~not more than once every 6 months~~. A local government may adopt
132 technical amendments that address local needs if:

133 1. The local governing body determines, following a public
134 hearing which has been advertised in a newspaper of general
135 circulation at least 10 days before the hearing, that there is a
136 need to strengthen the requirements of the Florida Building
137 Code. The determination must be based upon a review of local
138 conditions by the local governing body, which review
139 demonstrates by evidence or data that the geographical
140 jurisdiction governed by the local governing body exhibits a
141 local need to strengthen the Florida Building Code beyond the
142 needs or regional variation addressed by the Florida Building
143 Code, that the local need is addressed by the proposed local
144 amendment, and that the amendment is no more stringent than
145 necessary to address the local need.

146 2. Such additional requirements are not discriminatory
147 against materials, products, or construction techniques of
148 demonstrated capabilities.

149 3. Such additional requirements may not introduce a new
150 subject not addressed in the Florida Building Code.

151 (c)4. The enforcing agency shall make readily available, in
152 a usable format, all amendments adopted under ~~pursuant to~~ this
153 section.

154 (d)5. Any amendment to the Florida Building Code shall be
155 transmitted within 30 days after adoption by the ~~adopting~~ local



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156 government to the commission. The commission shall maintain
157 copies of all such amendments in a format that is usable and
158 obtainable by the public. Local technical amendments are shall
159 not ~~become~~ effective until 30 days after the amendment has been
160 received and published by the commission.

161 (e)6. ~~An Any~~ amendment to the Florida Building Code adopted
162 by a local government under pursuant to this subsection is
163 ~~paragraph shall be~~ effective only until the adoption ~~by the~~
164 ~~commission~~ of the new edition of the Florida Building Code by
165 the commission every third year. At such time, the commission
166 shall review such amendment for consistency with the criteria in
167 paragraph (9) (a) and adopt such amendment as part of the Florida
168 Building Code or rescind the amendment. The commission shall
169 immediately notify the respective local government of the
170 rescission of any amendment. After receiving such notice, the
171 respective local government may readopt the rescinded amendment
172 under pursuant to the provisions of this subsection ~~paragraph~~.

173 (f)7. Each county and municipality desiring to make local
174 technical amendments to the Florida Building Code shall ~~by~~
175 ~~interlocal agreement~~ establish by interlocal agreement a
176 countywide compliance review board to review any amendment to
177 the Florida Building Code that is, adopted by a local government
178 within the county under pursuant to this subsection and
179 ~~paragraph,~~ that is challenged by a any substantially affected
180 party for purposes of determining the amendment's compliance
181 with this subsection ~~paragraph~~. If challenged, the local
182 technical amendments are shall not ~~become~~ effective until the
183 time for filing an appeal under paragraph (g) pursuant to
184 ~~subparagraph 8.~~ has expired or, if there is an appeal, until the



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185 commission issues its final order determining if the adopted
186 amendment is in compliance with this subsection.

187 (g)~~8~~. If the compliance review board determines such
188 amendment is not in compliance with this subsection ~~paragraph~~,
189 the compliance review board shall notify such local government
190 of the noncompliance and that the amendment is invalid and
191 unenforceable until the local government corrects the amendment
192 to bring it into compliance. The local government may appeal the
193 decision of the compliance review board to the commission. If
194 the compliance review board determines that such amendment is ~~to~~
195 ~~be~~ in compliance with this subsection ~~paragraph~~, any
196 substantially affected party may appeal such determination to
197 the commission. Any such appeal must ~~shall~~ be filed with the
198 commission within 14 days after ~~of~~ the board's written
199 determination. The commission shall promptly refer the appeal to
200 the Division of Administrative Hearings by electronic means
201 through the division's website for the assignment of an
202 administrative law judge. The administrative law judge shall
203 conduct the required hearing within 30 days after being assigned
204 to the appeal, and shall enter a recommended order within 30
205 days after ~~of~~ the conclusion of such hearing. The commission
206 shall enter a final order within 30 days after an order is
207 rendered thereafter. ~~The provisions of~~ Chapter 120 and the
208 uniform rules of procedure shall apply to such proceedings. The
209 local government adopting the amendment that is subject to
210 challenge has the burden of proving that the amendment complies
211 with this subsection ~~paragraph~~ in proceedings before the
212 compliance review board and the commission, as applicable.
213 Actions of the commission are subject to judicial review under



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214 ~~pursuant to~~ s. 120.68. The compliance review board shall
215 determine whether its decisions apply to a respective local
216 jurisdiction or apply countywide.

217 ~~(h)9.~~ An amendment adopted under this subsection ~~paragraph~~
218 must shall include a fiscal impact statement that which
219 documents the costs and benefits of the proposed amendment.
220 Criteria for the fiscal impact statement shall include the
221 impact to local government relative to enforcement and, the
222 impact to property and building owners and, ~~as well as to~~
223 ~~industry,~~ relative to the cost of compliance. The fiscal impact
224 statement may not be used as a basis for challenging the
225 amendment for compliance.

226 ~~(i)10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs~~
227 ~~7. and 9.,~~ the commission may review any amendments adopted
228 under pursuant to this subsection and make nonbinding
229 recommendations related to compliance of such amendments with
230 this subsection.

231 ~~(j)(e)~~ Any amendment adopted by a local enforcing agency
232 under pursuant to this subsection may shall not apply to state
233 or school district owned buildings, manufactured buildings or
234 factory-built school buildings approved by the commission, or
235 prototype buildings approved under pursuant to s. 553.77(3). The
236 respective responsible entities shall consider the physical
237 performance parameters substantiating such amendments when
238 designing, specifying, and constructing such exempt buildings.

239 ~~(k)(d)~~ A technical amendment to the Florida Building Code
240 related to water conservation practices or design criteria
241 adopted by a local government under pursuant to this subsection
242 is not ~~rendered~~ void when the code is updated if the technical



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243 amendment is necessary to protect or provide for more efficient
244 use of water resources as provided in s. 373.621. However, any
245 such technical amendment carried forward into the next edition
246 of the code under ~~pursuant to~~ this paragraph is subject to
247 review or modification as provided in this part.

248 (1) If a local government adopts a regulation, law,
249 ordinance, policy, amendment, or land use or zoning provision
250 without using the process established in this subsection, and a
251 substantially affected person considers such regulation, law,
252 ordinance, policy, amendment, or land use or zoning provision to
253 be a technical amendment to the Florida Building Code, then the
254 substantially affected person may submit a petition to the
255 commission for a nonbinding advisory opinion. If a substantially
256 affected person submits a request in accordance with this
257 paragraph, the commission shall issue a nonbinding advisory
258 opinion stating whether or not the commission interprets the
259 regulation, law, ordinance, policy, amendment, or land use or
260 zoning provision as a technical amendment to the Florida
261 Building Code. As used in this paragraph, the term "local
262 government" means a county, municipality, special district, or
263 political subdivision of the state.

264 1. Requests to review a local government regulation, law,
265 ordinance, policy, amendment, or land use or zoning provision
266 may be initiated by any substantially affected person. A
267 substantially affected person includes an owner or builder
268 subject to the regulation, law, ordinance, policy, amendment, or
269 land use or zoning provision, or an association of owners or
270 builders having members who are subject to the regulation, law,
271 ordinance, policy, amendment, or land use or zoning provision.



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272 2. In order to initiate a review, a substantially affected
273 person must file a petition with the commission. The commission
274 shall adopt a form for the petition and directions for filing,
275 which shall be published on the Building Code Information
276 System. The form shall, at a minimum, require the following:
277 a. The name of the local government that enacted the
278 regulation, law, ordinance, policy, amendment, or land use or
279 zoning provision.
280 b. The name and address of the local government's general
281 counsel or administrator.
282 c. The name, address, and telephone number of the
283 petitioner; the name, address, and telephone number of the
284 petitioner's representative, if any; and an explanation of how
285 the petitioner's substantial interests are being affected by the
286 regulation, law, ordinance, policy, amendment, or land use or
287 zoning provision.
288 d. A statement explaining why the regulation, law,
289 ordinance, policy, amendment, or land use or zoning provision is
290 a technical amendment to the Florida Building Code, and which
291 provisions of the Florida Building Code, if any, are being
292 amended by the regulation, law, ordinance, policy, amendment, or
293 land use or zoning provision.
294 3. The petitioner shall serve the petition on the local
295 government's general counsel or administrator by certified mail,
296 return receipt requested, and send a copy of the petition to the
297 commission, in accordance with the commission's published
298 directions. The local government shall respond to the petition
299 in accordance with the form by certified mail, return receipt
300 requested, and send a copy of its response to the commission,



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301 within 14 days after receipt of the petition, including
302 Saturdays, Sundays, and legal holidays.

303 4. Upon receipt of a petition that meets the requirements
304 of this paragraph, the commission shall publish the petition,
305 including any response submitted by the local government, on the
306 Building Code Information System in a manner that allows
307 interested persons to address the issues by posting comments.

308 5. Before issuing an advisory opinion, the commission shall
309 consider the petition, the response, and any comments posted on
310 the Building Code Information System. The commission may also
311 provide the petition, the response, and any comments posted on
312 the Building Code Information System to a technical advisory
313 committee, and may consider any recommendation provided by the
314 technical advisory committee. The commission shall issue an
315 advisory opinion stating whether the regulation, law, ordinance,
316 policy, amendment, or land use or zoning provision is a
317 technical amendment to the Florida Building Code within 30 days
318 after the filing of the petition, including Saturdays, Sundays,
319 and legal holidays. The commission shall publish its advisory
320 opinion on the Building Code Information System and in the
321 Florida Administrative Register. The commission's advisory
322 opinion is nonbinding and is not a declaratory statement under
323 s. 120.565.

324 (8) Notwithstanding subsection (3) or subsection (7), the
325 commission may address issues identified in this subsection by
326 amending the code under ~~pursuant to~~ the rule adoption procedures
327 in chapter 120. Updates to the Florida Building Code, including
328 provisions contained in referenced standards and criteria which
329 relate to wind resistance or the prevention of water intrusion,



330 may not be amended under ~~pursuant to~~ this subsection to diminish
331 those standards; however, the commission may amend the Florida
332 Building Code to enhance such standards. Following the approval
333 of any amendments to the Florida Building Code by the commission
334 and publication of the amendments on the commission's website,
335 authorities having jurisdiction to enforce the Florida Building
336 Code may enforce the amendments.

337 (a) The commission may approve amendments that are needed
338 to address:

339 1.~~(a)~~ Conflicts within the updated code;

340 2.~~(b)~~ Conflicts between the updated code and the Florida
341 Fire Prevention Code adopted under ~~pursuant to~~ chapter 633;

342 3.~~(c)~~ Unintended results from the integration of previously
343 adopted amendments with the model code;

344 4.~~(d)~~ Equivalency of standards;

345 5.~~(e)~~ Changes to or inconsistencies with federal or state
346 law; or

347 6.~~(f)~~ Adoption of an updated edition of the National
348 Electrical Code if the commission finds that delay of
349 implementing the updated edition causes undue hardship to
350 stakeholders or otherwise threatens the public health, safety,
351 and welfare.

352 (b) The commission may issue errata to the code to correct
353 demonstrated errors in provisions contained within the Florida
354 Building Code. The determination of such errors and the issuance
355 of errata to the code must be approved by a 75 percent
356 supermajority vote of the commission. For purposes of this
357 paragraph, "errata to the code" means a list of errors in
358 current and previous editions of the Florida Building Code.



359 Section 4. Subsection (7) of section 553.77, Florida
360 Statutes, is amended to read:

361 553.77 Specific powers of the commission.—

362 (7) Building officials shall recognize and enforce variance
363 orders issued by the Department of Health under s. 514.0115(9)
364 ~~pursuant to s. 514.0115(8)~~, including any conditions attached to
365 the granting of the variance.

366 Section 5. Paragraph (d) is added to subsection (1) of
367 section 553.79, Florida Statutes, to read:

368 553.79 Permits; applications; issuance; inspections.—

369 (1)

370 (d) A local government may not require a contract between a
371 builder and an owner for the issuance of a building permit or as
372 a requirement for the submission of a building permit
373 application.

374 Section 6. Subsection (20) is added to section 553.791,
375 Florida Statutes, to read:

376 553.791 Alternative plans review and inspection.—

377 (20) Notwithstanding any other law, a county, a
378 municipality, a school district, or an independent special
379 district may use a private provider to provide building code
380 inspection services for a public works project, an improvement,
381 a building, or any other structure pursuant to this section.

382
383 ===== T I T L E A M E N D M E N T =====

384 And the title is amended as follows:

385 Delete lines 3 - 21

386 and insert:

387 s. 381.0065, F.S.; authorizing fee owners or fee



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388 owners' contractors to select private providers to
389 provide inspection services for onsite sewage
390 treatment and disposal systems if certain requirements
391 are met; providing legislative intent; requiring the
392 Department of Health to reduce certain permit fees;
393 prohibiting the department from charging inspection
394 fees if the fee owner or contractor hires a private
395 provider to perform an inspection; providing
396 requirements for private providers or duly authorized
397 representatives of private providers performing such
398 inspections; requiring fee owners or contractors to
399 provide specified notice to the department when using
400 a private provider for such inspections; providing
401 requirements for the contents of such notice;
402 prohibiting the department from charging a fee for
403 changing the duly authorized representative named in a
404 permit application; authorizing the department to
405 audit the performance of private providers; providing
406 requirements relating to work on a building, a
407 structure, or an onsite sewage treatment and disposal
408 system relating to such audits; amending s. 514.0115,
409 F.S.; prohibiting the Department of Health from
410 requiring that pools serving assisted living
411 facilities be compliant with rules relating to
412 swimming pool lifeguards; amending s. 553.73, F.S.;
413 authorizing a substantially affected person to file a
414 petition with the Florida Building Commission to
415 review certain local government regulations, laws,
416 ordinances, policies, amendments, or land use or



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417 zoning provisions; defining the term "local
418 government"; providing requirements for the petition
419 and commission; requiring the commission to issue a
420 nonbinding advisory opinion within a specified
421 timeframe; authorizing the commission to issue errata
422 to the code; defining the term "errata to the code";
423 making technical changes; amending s. 553.77, F.S.;
424 conforming a cross-reference; amending s. 553.79,
425 F.S.; prohibiting a local government from requiring
426 certain contracts for the application for or issuance
427 of a building permit; amending s. 553.791, F.S.;
428 authorizing a county, a municipality, a school
429 district, or an independent special district to use a
430 private provider to provide building code inspection
431 services for certain purposes; amending s. 553.842,
432 F.S.;