

By the Committee on Community Affairs; and Senator Brodeur

578-03609-21

20211146c1

1 A bill to be entitled
2 An act relating to the Florida Building Code; amending
3 s. 381.0065, F.S.; authorizing fee owners or fee
4 owners' contractors to select private providers to
5 provide inspection services for onsite sewage
6 treatment and disposal systems if certain requirements
7 are met; providing legislative intent; requiring the
8 Department of Health to reduce certain permit fees;
9 prohibiting the department from charging inspection
10 fees if the fee owner or contractor hires a private
11 provider to perform an inspection; providing
12 requirements for private providers or duly authorized
13 representatives of private providers performing such
14 inspections; requiring fee owners or contractors to
15 provide specified notice to the department when using
16 a private provider for such inspections; providing
17 requirements for the contents of such notice;
18 prohibiting the department from charging a fee for
19 changing the duly authorized representative named in a
20 permit application; authorizing the department to
21 audit the performance of private providers; providing
22 requirements relating to work on a building, a
23 structure, or an onsite sewage treatment and disposal
24 system relating to such audits; amending s. 514.0115,
25 F.S.; prohibiting the Department of Health from
26 requiring that pools serving assisted living
27 facilities be compliant with rules relating to
28 swimming pool lifeguards; amending s. 553.73, F.S.;
29 authorizing a substantially affected person to file a

578-03609-21

20211146c1

30 petition with the Florida Building Commission to
31 review certain local government regulations, laws,
32 ordinances, policies, amendments, or land use or
33 zoning provisions; defining the term "local
34 government"; providing requirements for the petition
35 and commission; requiring the commission to issue a
36 nonbinding advisory opinion within a specified
37 timeframe; authorizing the commission to issue errata
38 to the code; defining the term "errata to the code";
39 making technical changes; amending s. 553.77, F.S.;
40 conforming a cross-reference; amending s. 553.79,
41 F.S.; prohibiting a local government from requiring
42 certain contracts for the application for or issuance
43 of a building permit; amending s. 553.791, F.S.;
44 authorizing a county, a municipality, a school
45 district, or an independent special district to use a
46 private provider to provide building code inspection
47 services for certain purposes; amending s. 553.842,
48 F.S.; requiring evaluation entities that meet certain
49 criteria to comply with certain standards; amending
50 ss. 125.01 and 125.56, F.S.; conforming cross-
51 references; making technical changes; providing an
52 effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Subsection (8) is added to section 381.0065,
57 Florida Statutes, to read:

58 381.0065 Onsite sewage treatment and disposal systems;

578-03609-21

20211146c1

59 regulation.-

60 (8) PRIVATE PROVIDER INSPECTION SERVICES.-

61 (a) Notwithstanding any other law, ordinance, or policy,
62 the fee owner of an onsite sewage treatment and disposal system,
63 or the fee owner's contractor upon written authorization from
64 the fee owner, may select a private provider to provide
65 inspection services for onsite sewage treatment and disposal
66 systems and may pay the private provider directly for such
67 services if such services are the subject of a written contract
68 between the private provider, or the private provider's firm,
69 and the fee owner or the fee owner's contractor, upon written
70 authorization of the fee owner.

71 (b) It is the intent of the Legislature that owners and
72 contractors pay reduced fees related to onsite sewage treatment
73 disposal system inspections when selecting a private provider to
74 provide such inspections. The department must calculate the cost
75 savings to the department based on a fee owner or contractor
76 hiring a private provider to perform inspections in lieu of the
77 department and reduce permit fees accordingly. The department
78 may not charge fees for an inspection if the fee owner or
79 contractor hires a private provider to perform the inspection.

80 (c) Onsite sewage treatment and disposal system inspection
81 services may be performed only by a private provider or a duly
82 authorized representative of a private provider within the
83 disciplines covered under such person's licensure or if the
84 person is certified under s. 381.0101, is a master septic
85 contractor licensed pursuant to chapter 489, is a professional
86 engineer who has passed all three parts of the OSTDS Accelerated
87 Certification Training, or is a person working as staff under

578-03609-21

20211146c1

88 the supervision of a licensed professional engineer and has
89 passed all three parts of the OSTDS Accelerated Certification
90 Training.

91 (d)1. A fee owner or the fee owner's contractor using a
92 private provider for onsite sewage treatment and disposal system
93 inspection services must provide notice to the department at the
94 time of permit application, or by 2 p.m. local time, 2 business
95 days before the first scheduled inspection by the department.
96 The notice must include the following information:

97 a. The name, firm, address, telephone number, and e-mail
98 address of each private provider who is performing or will
99 perform such services, the private provider's professional
100 license or certification number, and qualification statements or
101 resumes for each private provider; and

102 b. An acknowledgment from the fee owner in substantially
103 the following form:

104
105 I have elected to use one or more private providers to
106 provide onsite sewage treatment and disposal system
107 inspection services that are the subject of the
108 enclosed permit application. I understand that the
109 department may not perform the required onsite sewage
110 treatment and disposal system inspections to determine
111 compliance with the applicable codes, except to the
112 extent authorized by law. Instead, inspections will be
113 performed by the licensed or certified personnel
114 identified in the application. By executing this form,
115 I acknowledge that I have made inquiry regarding the
116 competence of the licensed or certified personnel and

578-03609-21

20211146c1

117 am satisfied that my interests are adequately
118 protected. I agree to indemnify, defend, and hold
119 harmless the department from any and all claims
120 arising from my use of these licensed or certified
121 personnel to perform onsite sewage treatment and
122 disposable system inspections with respect to the
123 onsite sewage treatment and disposable system that are
124 the subject of the enclosed permit application.

125
126 2. If the fee owner or the fee owner's contractor makes any
127 changes to the listed private providers or the services to be
128 provided by the private providers, the fee owner or the fee
129 owner's contractor must update the notice to reflect the change
130 within 1 business day after the change. A change of a duly
131 authorized representative named in the permit application does
132 not require a revision of the permit and the department may not
133 charge a fee for making such change.

134 (e) The department may audit the performance of onsite
135 sewage treatment and disposal system inspection services by
136 private providers. However, the same private provider may not be
137 audited more than four times in a month unless the department
138 determines that an onsite sewage treatment and disposal system
139 inspected by the private provider should not have passed
140 inspection. Work on a building, a structure, or an onsite sewage
141 treatment and disposal system may proceed after inspection and
142 approval by a private provider if the fee owner or fee owner's
143 contractor has given notice of the inspection pursuant to
144 subsection (4) and, subsequent to such inspection and approval,
145 may not be delayed for completion of an inspection audit by the

578-03609-21

20211146c1

146 department.

147 Section 2. Present subsections (3) through (8) of section
148 514.0115, Florida Statutes, are redesignated as subsections (4)
149 through (9), respectively, and a new subsection (3) is added to
150 that section, to read:

151 514.0115 Exemptions from supervision or regulation;
152 variances.—

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

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

158 553.73 Florida Building Code.—

159 (4) (a) All entities authorized to enforce the Florida
160 Building Code under ~~pursuant to~~ s. 553.80 shall comply with
161 applicable standards for issuance of mandatory certificates of
162 occupancy, minimum types of inspections, and procedures for
163 plans review and inspections as established by the commission by
164 rule. Local governments may adopt amendments to the
165 administrative provisions of the Florida Building Code, subject
166 to the limitations in ~~of~~ this subsection ~~paragraph~~. Local
167 amendments must ~~shall~~ be more stringent than the minimum
168 standards described in this section ~~herein~~ and must ~~shall~~ be
169 transmitted to the commission within 30 days after enactment.
170 The local government shall make such amendments available to the
171 general public in a usable format. The State Fire Marshal is
172 responsible for establishing the standards and procedures
173 required in this subsection ~~paragraph~~ for governmental entities
174 with respect to applying the Florida Fire Prevention Code and

578-03609-21

20211146c1

175 the Life Safety Code.

176 (b) Local governments may, subject to the limitations in ~~of~~
177 this section and not more than once every 6 months, adopt
178 amendments to the technical provisions of the Florida Building
179 Code that ~~which~~ apply solely within the jurisdiction of such
180 government and that ~~which~~ provide for more stringent
181 requirements than those specified in the Florida Building Code,
182 ~~not more than once every 6 months~~. A local government may adopt
183 technical amendments that address local needs if:

184 1. The local governing body determines, following a public
185 hearing which has been advertised in a newspaper of general
186 circulation at least 10 days before the hearing, that there is a
187 need to strengthen the requirements of the Florida Building
188 Code. The determination must be based upon a review of local
189 conditions by the local governing body, which review
190 demonstrates by evidence or data that the geographical
191 jurisdiction governed by the local governing body exhibits a
192 local need to strengthen the Florida Building Code beyond the
193 needs or regional variation addressed by the Florida Building
194 Code, that the local need is addressed by the proposed local
195 amendment, and that the amendment is no more stringent than
196 necessary to address the local need.

197 2. Such additional requirements are not discriminatory
198 against materials, products, or construction techniques of
199 demonstrated capabilities.

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

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

578-03609-21

20211146c1

204 section.

205 ~~(d)5.~~ Any amendment to the Florida Building Code shall be
206 transmitted within 30 days after adoption by the ~~adopting~~ local
207 government to the commission. The commission shall maintain
208 copies of all such amendments in a format that is usable and
209 obtainable by the public. Local technical amendments are ~~shall~~
210 not ~~become~~ effective until 30 days after the amendment has been
211 received and published by the commission.

212 ~~(e)6.~~ An Any amendment to the Florida Building Code adopted
213 by a local government under ~~pursuant to~~ this subsection is
214 ~~paragraph shall be~~ effective only until the adoption ~~by the~~
215 ~~commission~~ of the new edition of the Florida Building Code by
216 the commission every third year. At such time, the commission
217 shall review such amendment for consistency with the criteria in
218 paragraph (9) (a) and adopt such amendment as part of the Florida
219 Building Code or rescind the amendment. The commission shall
220 immediately notify the respective local government of the
221 rescission of any amendment. After receiving such notice, the
222 respective local government may readopt the rescinded amendment
223 under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

224 ~~(f)7.~~ Each county and municipality desiring to make local
225 technical amendments to the Florida Building Code shall ~~by~~
226 ~~interlocal agreement~~ establish by interlocal agreement a
227 countywide compliance review board to review any amendment to
228 the Florida Building Code that is, ~~adopted~~ by a local government
229 within the county under ~~pursuant to~~ this subsection and
230 ~~paragraph~~, that is challenged by a ~~any~~ substantially affected
231 party for purposes of determining the amendment's compliance
232 with this subsection ~~paragraph~~. If challenged, the local

578-03609-21

20211146c1

233 technical amendments are ~~shall~~ not ~~become~~ effective until the
234 time for filing an appeal under paragraph (g) ~~pursuant to~~
235 ~~subparagraph 8.~~ has expired or, if there is an appeal, until the
236 commission issues its final order determining if the adopted
237 amendment is in compliance with this subsection.

238 (g) 8. If the compliance review board determines such
239 amendment is not in compliance with this subsection ~~paragraph~~,
240 the compliance review board shall notify such local government
241 of the noncompliance and that the amendment is invalid and
242 unenforceable until the local government corrects the amendment
243 to bring it into compliance. The local government may appeal the
244 decision of the compliance review board to the commission. If
245 the compliance review board determines that such amendment is ~~to~~
246 ~~be~~ in compliance with this subsection ~~paragraph~~, any
247 substantially affected party may appeal such determination to
248 the commission. Any such appeal must ~~shall~~ be filed with the
249 commission within 14 days after ~~of~~ the board's written
250 determination. The commission shall promptly refer the appeal to
251 the Division of Administrative Hearings by electronic means
252 through the division's website for the assignment of an
253 administrative law judge. The administrative law judge shall
254 conduct the required hearing within 30 days after being assigned
255 to the appeal, and shall enter a recommended order within 30
256 days after ~~of~~ the conclusion of such hearing. The commission
257 shall enter a final order within 30 days after an order is
258 rendered thereafter. ~~The provisions of Chapter 120 and the~~
259 uniform rules of procedure shall apply to such proceedings. The
260 local government adopting the amendment that is subject to
261 challenge has the burden of proving that the amendment complies

578-03609-21

20211146c1

262 with this subsection ~~paragraph~~ in proceedings before the
263 compliance review board and the commission, as applicable.
264 Actions of the commission are subject to judicial review under
265 ~~pursuant to~~ s. 120.68. The compliance review board shall
266 determine whether its decisions apply to a respective local
267 jurisdiction or apply countywide.

268 (h)9. An amendment adopted under this subsection ~~paragraph~~
269 must ~~shall~~ include a fiscal impact statement that ~~which~~
270 documents the costs and benefits of the proposed amendment.
271 Criteria for the fiscal impact statement shall include the
272 impact to local government relative to enforcement and, ~~the~~
273 impact to property and building owners and, ~~as well as to~~
274 industry, ~~relative to the cost of compliance.~~ The fiscal impact
275 statement may not be used as a basis for challenging the
276 amendment for compliance.

277 (i)10. In addition to paragraphs (f) and (g) ~~subparagraphs~~
278 ~~7. and 9.~~, the commission may review any amendments adopted
279 under ~~pursuant to~~ this subsection and make nonbinding
280 recommendations related to compliance of such amendments with
281 this subsection.

282 (j)(e) Any amendment adopted by a local enforcing agency
283 under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state
284 or school district owned buildings, manufactured buildings or
285 factory-built school buildings approved by the commission, or
286 prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The
287 respective responsible entities shall consider the physical
288 performance parameters substantiating such amendments when
289 designing, specifying, and constructing such exempt buildings.

290 (k)(d) A technical amendment to the Florida Building Code

578-03609-21

20211146c1

291 related to water conservation practices or design criteria
292 adopted by a local government under ~~pursuant to~~ this subsection
293 is not ~~rendered~~ void when the code is updated if the technical
294 amendment is necessary to protect or provide for more efficient
295 use of water resources as provided in s. 373.621. However, any
296 such technical amendment carried forward into the next edition
297 of the code under ~~pursuant to~~ this paragraph is subject to
298 review or modification as provided in this part.

299 (1) If a local government adopts a regulation, law,
300 ordinance, policy, amendment, or land use or zoning provision
301 without using the process established in this subsection, and a
302 substantially affected person considers such regulation, law,
303 ordinance, policy, amendment, or land use or zoning provision to
304 be a technical amendment to the Florida Building Code, then the
305 substantially affected person may submit a petition to the
306 commission for a nonbinding advisory opinion. If a substantially
307 affected person submits a request in accordance with this
308 paragraph, the commission shall issue a nonbinding advisory
309 opinion stating whether or not the commission interprets the
310 regulation, law, ordinance, policy, amendment, or land use or
311 zoning provision as a technical amendment to the Florida
312 Building Code. As used in this paragraph, the term "local
313 government" means a county, municipality, special district, or
314 political subdivision of the state.

315 1. Requests to review a local government regulation, law,
316 ordinance, policy, amendment, or land use or zoning provision
317 may be initiated by any substantially affected person. A
318 substantially affected person includes an owner or builder
319 subject to the regulation, law, ordinance, policy, amendment, or

578-03609-21

20211146c1

320 land use or zoning provision, or an association of owners or
321 builders having members who are subject to the regulation, law,
322 ordinance, policy, amendment, or land use or zoning provision.

323 2. In order to initiate a review, a substantially affected
324 person must file a petition with the commission. The commission
325 shall adopt a form for the petition and directions for filing,
326 which shall be published on the Building Code Information
327 System. The form shall, at a minimum, require the following:

328 a. The name of the local government that enacted the
329 regulation, law, ordinance, policy, amendment, or land use or
330 zoning provision.

331 b. The name and address of the local government's general
332 counsel or administrator.

333 c. The name, address, and telephone number of the
334 petitioner; the name, address, and telephone number of the
335 petitioner's representative, if any; and an explanation of how
336 the petitioner's substantial interests are being affected by the
337 regulation, law, ordinance, policy, amendment, or land use or
338 zoning provision.

339 d. A statement explaining why the regulation, law,
340 ordinance, policy, amendment, or land use or zoning provision is
341 a technical amendment to the Florida Building Code, and which
342 provisions of the Florida Building Code, if any, are being
343 amended by the regulation, law, ordinance, policy, amendment, or
344 land use or zoning provision.

345 3. The petitioner shall serve the petition on the local
346 government's general counsel or administrator by certified mail,
347 return receipt requested, and send a copy of the petition to the
348 commission, in accordance with the commission's published

578-03609-21

20211146c1

349 directions. The local government shall respond to the petition
350 in accordance with the form by certified mail, return receipt
351 requested, and send a copy of its response to the commission,
352 within 14 days after receipt of the petition, including
353 Saturdays, Sundays, and legal holidays.

354 4. Upon receipt of a petition that meets the requirements
355 of this paragraph, the commission shall publish the petition,
356 including any response submitted by the local government, on the
357 Building Code Information System in a manner that allows
358 interested persons to address the issues by posting comments.

359 5. Before issuing an advisory opinion, the commission shall
360 consider the petition, the response, and any comments posted on
361 the Building Code Information System. The commission may also
362 provide the petition, the response, and any comments posted on
363 the Building Code Information System to a technical advisory
364 committee, and may consider any recommendation provided by the
365 technical advisory committee. The commission shall issue an
366 advisory opinion stating whether the regulation, law, ordinance,
367 policy, amendment, or land use or zoning provision is a
368 technical amendment to the Florida Building Code within 30 days
369 after the filing of the petition, including Saturdays, Sundays,
370 and legal holidays. The commission shall publish its advisory
371 opinion on the Building Code Information System and in the
372 Florida Administrative Register. The commission's advisory
373 opinion is nonbinding and is not a declaratory statement under
374 s. 120.565.

375 (8) Notwithstanding subsection (3) or subsection (7), the
376 commission may address issues identified in this subsection by
377 amending the code under ~~pursuant to~~ the rule adoption procedures

578-03609-21

20211146c1

378 in chapter 120. Updates to the Florida Building Code, including
379 provisions contained in referenced standards and criteria which
380 relate to wind resistance or the prevention of water intrusion,
381 may not be amended under ~~pursuant to~~ this subsection to diminish
382 those standards; however, the commission may amend the Florida
383 Building Code to enhance such standards. Following the approval
384 of any amendments to the Florida Building Code by the commission
385 and publication of the amendments on the commission's website,
386 authorities having jurisdiction to enforce the Florida Building
387 Code may enforce the amendments.

388 (a) The commission may approve amendments that are needed
389 to address:

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

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

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

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

396 5.~~(e)~~ Changes to or inconsistencies with federal or state
397 law; or

398 6.~~(f)~~ Adoption of an updated edition of the National
399 Electrical Code if the commission finds that delay of
400 implementing the updated edition causes undue hardship to
401 stakeholders or otherwise threatens the public health, safety,
402 and welfare.

403 (b) The commission may issue errata to the code to correct
404 demonstrated errors in provisions contained within the Florida
405 Building Code. The determination of such errors and the issuance
406 of errata to the code must be approved by a 75 percent

578-03609-21

20211146c1

407 supermajority vote of the commission. For purposes of this
408 paragraph, "errata to the code" means a list of errors in
409 current and previous editions of the Florida Building Code.

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

412 553.77 Specific powers of the commission.—

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

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

419 553.79 Permits; applications; issuance; inspections.—

420 (1)

421 (d) A local government may not require a contract between a
422 builder and an owner for the issuance of a building permit or as
423 a requirement for the submission of a building permit
424 application.

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

427 553.791 Alternative plans review and inspection.—

428 (20) Notwithstanding any other law, a county, a
429 municipality, a school district, or an independent special
430 district may use a private provider to provide building code
431 inspection services for a public works project, an improvement,
432 a building, or any other structure pursuant to this section.

433 Section 7. Paragraph (a) of subsection (8) of section
434 553.842, Florida Statutes, is amended to read:

435 553.842 Product evaluation and approval.—

578-03609-21

20211146c1

436 (8) The commission may adopt rules to approve the following
437 types of entities that produce information on which product
438 approvals are based. All of the following entities, including
439 engineers and architects, must comply with a nationally
440 recognized standard demonstrating independence or no conflict of
441 interest:

442 (a) Evaluation entities approved under ~~pursuant to~~ this
443 paragraph or that meet the criteria for approval adopted by the
444 commission by rule. The commission shall specifically approve
445 the National Evaluation Service, the International Association
446 of Plumbing and Mechanical Officials Evaluation Service, the
447 International Code Council Evaluation Services, Underwriters
448 Laboratories, LLC, Intertek Testing Services NA, Inc., and the
449 Miami-Dade County Building Code Compliance Office Product
450 Control Division. Architects and engineers licensed in this
451 state are also approved to conduct product evaluations as
452 provided in subsection (5).

453 Section 8. Paragraph (bb) of subsection (1) of section
454 125.01, Florida Statutes, is amended to read:

455 125.01 Powers and duties.—

456 (1) The legislative and governing body of a county shall
457 have the power to carry on county government. To the extent not
458 inconsistent with general or special law, this power includes,
459 but is not restricted to, the power to:

460 (bb) Enforce the Florida Building Code~~7~~ as provided in s.
461 553.80~~7~~ and adopt and enforce local technical amendments to the
462 Florida Building Code as provided in s. 553.73(4), ~~pursuant to~~
463 ~~s. 553.73(4)(b) and (c)~~.

464 Section 9. Subsection (1) of section 125.56, Florida

578-03609-21

20211146c1

465 Statutes, is amended to read:

466 125.56 Enforcement and amendment of the Florida Building
467 Code and the Florida Fire Prevention Code; inspection fees;
468 inspectors; etc.-

469 (1) The board of county commissioners of each of the
470 several counties of the state may enforce the Florida Building
471 Code and the Florida Fire Prevention Code~~7~~ as provided in ss.
472 553.80, 633.206, and 633.208~~7~~ and, at its discretion, adopt
473 local technical amendments to the Florida Building Code as
474 provided in s. 553.73(4)~~7~~, ~~pursuant to s. 553.73(4)(b) and (c)~~
475 and local technical amendments to the Florida Fire Prevention
476 Code as provided in~~7~~, ~~pursuant to~~ s. 633.202~~7~~ to provide for the
477 safe construction, erection, alteration, repair, securing, and
478 demolition of any building within its territory outside the
479 corporate limits of any municipality. Upon a determination to
480 consider amending the Florida Building Code or the Florida Fire
481 Prevention Code by a majority of the members of the board of
482 county commissioners of such county, the board shall call a
483 public hearing and comply with the public notice requirements of
484 s. 125.66(2). The board shall hear all interested parties at the
485 public hearing and may then amend the building code or the fire
486 code consistent with the terms and purposes of this act. Upon
487 adoption, an amendment to the code shall be in full force and
488 effect throughout the unincorporated area of such county until
489 otherwise notified by the Florida Building Commission under
490 ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant~~
491 ~~to~~ s. 633.202. This subsection does not ~~Nothing herein contained~~
492 ~~shall be construed to~~ prevent the board of county commissioners
493 from repealing such amendment to the building code or the fire

578-03609-21

20211146c1

494 code at any regular meeting of such board.

495 Section 10. This act shall take effect July 1, 2021.