

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 Governmental Oversight and Accountability

BILL: CS/SB 1382

INTRODUCER: Community Affairs Committee and Senator Perry

SUBJECT: Building Inspections

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1382 requires local building code enforcement agencies to allow requests for inspections to be submitted electronically. Such requests for inspections may also be submitted in person in a non-electronic format at the building official's discretion.

The bill defines the term "virtual inspection" and provides that any government entity with the authority to enforce the Florida Building Code may perform virtual inspections, except for certain structural inspections, at their own discretion.

The bill requires a local enforcement agency to refund 10 percent of the permit and inspection fees to a permit holder who fails an inspection if the inspector or building official fails to provide a reason based on compliance with code or ordinance for why the work failed inspection within 3 business days after the inspection. If any permit and inspection fees are refunded, the Department of Business and Professional Regulation surcharges must be recalculated to reflect the refund.

The bill will have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Building Code

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

The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation (DBPR), implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.

Building Code Administrators, Inspectors, and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR. A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.² A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with building codes and state accessibility laws.³

Building Code Enforcement

Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public’s health, safety, and welfare.⁴ Every local government must enforce the Building Code and issue building permits.⁵ A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁶ State agencies may also enforce the Building Code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity.⁷

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 government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁸

¹ See Section 553.72(1), F.S.

² Section 468.603(2), F.S.

³ Section 468.603(4), F.S.

⁴ Section 553.72, F.S.

⁵ Sections 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

⁶ Section 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code.

⁷ Section 553.80(1), F.S.

⁸ See sections 125.56(4)(a) & 553.79(1), F.S.

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the government entity.⁹ A local enforcement agency¹⁰ must allow applicants to submit permit applications electronically to the local enforcement agency, which must provide accepted methods of electronic submission. Accepted methods of electronic submission include, but are not limited to email, fill-in form available online, or third party submission software.¹¹

If a building official or plans reviewer denies a permit application or revokes a building permit, the building official or plans reviewer must give the permit applicant a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the Building Code or a local ordinance, is grounds for discipline against the building official or plans reviewer's license.¹²

Building Inspections

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections. Construction work may not be done beyond a certain point until it passes an inspection.

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.¹³

Inspection Fees

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule on its website.¹⁴

A local government's permit and inspection fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Building Code. This includes:¹⁵

- The direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing;
- Building Code enforcement;
- Fire inspections associated with new construction; and

⁹ Section 713.135, F.S.

¹⁰ A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code. Section. 553.71(5), F.S.

¹¹ Sections 125.56(4)(b) and 553.79(1)(b), F.S.

¹² *Id.*

¹³ Section 110.3.10, Seventh Edition of the Florida Building Code (Building).

¹⁴ Sections 125.56(2), 166.222, 553.79(1), and 553.80(7), F.S.

¹⁵ Section 553.80(7), F.S.

- Training costs associated with the enforcement of the Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

DBPR Surcharges

Current law requires that all local governments assess and collect a one percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to the DBPR to fund the activities of the Florida Building Commission, the DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.¹⁶

Current law also requires that all local governments assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. Local governments collect the assessment and remit the surcharge fees to the DBPR, where it is divided equally to fund the activities of the BCAIB and the Florida Homeowners' Construction Recovery Fund.¹⁷

Electronic Requests for Inspections

Current law requires all local enforcement agencies to allow contractors to apply for permits electronically. However, there is no provision requiring local enforcement agencies to allow contractors to request inspections electronically. Multiple building departments in Florida already allow permit holders to electronically request inspections, while others do not.¹⁸ Instead, they require permit holders to call the building department during its business hours, which limits the time when a permit holder can request an inspection, or use an interactive voice response.¹⁹

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building

¹⁶ Section 553.721, F.S.

¹⁷ Section 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. Section 489.1401(2), F.S.

¹⁸ See Orange County Government Florida, Division of Building Safety, <https://www.orangecountyfl.net/PermitsLicenses/DivisionOfBuildingSafety.aspx#inspections> (last visited March 5, 2021); Brevard County, Brevard County Building Inspection Request, <https://www.brevardfl.gov/PlanningDev/BuildingPermits/InspectionRequest> (last visited March 5, 2021); Town of Davie Florida, Online Self Service, <https://www.davie-fl.gov/213/Online-Self-Service> (last visited March 5, 2021). Fort Myers Community Development, Building, Permitting & Inspections (BPI), <https://cityftmyers.com/1293/Building-PermittingInspections> (last visited March 5, 2021); Monroe County, Building and Permitting Quick Links, <https://www.monroecountyfl.gov/149/Building-and-Permitting> (last visited March 5, 2021)

¹⁹ *Id.*

departments to continue operating during the COVID-19 pandemic, which allows contractors to keep working.²⁰

Virtual inspections can range from roofing inspections, windows and doors inspections, to A/C change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, allowing contractors to immediately request an inspection once they finish work, and allowing the contractor to remain on the jobsite.²¹

Current law does not specifically prohibit building departments from performing virtual inspections, but it also does not specifically allow building departments to perform virtual inspections.

Reasons for Failing an Inspection

Current law requires a building official or plans reviewer, who denies or revokes a building permit, to provide the permit applicant or permit holder a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. If a building official or plans reviewer fails to provide a reason for denying or revoking a building permit based on compliance with the Building Code or a local ordinance, the building official or plans reviewer's license may be disciplined.²²

The Building Code requires an inspector to notify the permit holder or his or her agent if there are any violations that need to be corrected in order to comply with the Building Code.²³ However, current law does not require a building official or inspector to provide the permit holder a specific reason for failing the inspection.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 125.56 and 553.79, F.S., respectively, to require local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to email, fill-in form available online, or mobile device application. Requests for inspections may be submitted in person in nonelectronic form at the discretion of the local official.

Section 2 authorizes a state or local enforcement agency to perform virtual inspections to enforce the Florida Building Code at the enforcement agency's discretion. A virtual inspection may not be performed on a threshold building.²⁴ "Virtual inspection" is defined as a form of visual

²⁰ Monica Casey, Tallahassee creates virtual building inspections to save jobs and keep social distancing, WCTV.tv (Apr. 8, 2020) <https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing569485561.html> (last visited March 5, 2021)

²¹ Miami Beach, Modified Procedures for Building Code Inspections During COVID-19 Emergency Period, <https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf> (last visited March 5, 2021); Boca Raton, Virtual Inspections, <https://myboca.us/1846/Virtual-Inspections> (last visited March 5, 2021)

²² Section 553.79(1)(a), F.S.

²³ Section 110.3, Seventh Edition of the Florida Building Code (Building).

²⁴ A threshold building is a building that is greater than three stories or 50 feet in height, exceeds 5,000 square feet, has an occupancy of greater than 500 persons, and is for the gathering of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption, or awaiting transportation. A special inspector, who is licensed as an architect or engineer, must perform structural inspections on threshold buildings. Section 553.71(12), F.S.

inspection using visual or electronic aids to allow building code administrators or inspectors to perform the inspection without physical presence.

Section 2 requires a local enforcement agency to refund 10 percent of the permit and inspection fees to a permit holder if:

- The inspector or building official determines that the work, which requires the permit, fails an inspection; and
- The inspector or building official fails to provide a reason based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance for why the work failed inspection within 3 business days after the inspection.

If any permit and inspection fees are refunded because of the above, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

Sections 3 and 4 amend s. 440.103 and 553.80, F.S., respectively, to correct cross references.

Section 5 provides that the bill will take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a), of the State Constitution provides:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; . . .

The bill may implicate this constitutional restriction to the extent that local governments are required to expend funds (i) to update processing systems to allow permit holders to electronically request building inspections; and (ii) to refund permit and inspection fees in certain instances. However, a portion of these expenses may be offset by any efficiencies gained by allowing electronic requests. As currently drafted, this bill does not include a legislative finding that the bill fulfills an important state interest.

However, Article VII, s. 18(d) of the State Constitution provides that the mandate requirements do not apply to laws having an insignificant impact,²⁵ which for Fiscal Year

²⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021).

2020-2021 is forecast at \$2.2 million.²⁶ If the total cost of this legislation is less than \$2.2 million, then the mandate requirements do not apply. If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., enactment by vote of two-thirds of the membership of each house).

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 ability for permit holders to electronically request building inspections and for government entities to perform virtual inspections, in limited circumstances, may create efficiencies and reduce the time needed to complete construction projects. The provisions in the bill that incentivize local governments to timely provide the reasons for which a permit holder failed an inspection may also lead to greater efficiencies and cost savings for permit holders.

C. Government Sector Impact:

Local governments that do not already allow permit holders to electronically request building inspections may need to expend funds to update their processing systems to accommodate such requests. However, this expense may be offset by any efficiencies gained by allowing electronic requests.

²⁶ Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

The bill requires permit fee amounts to be refunded by local governments for failing to timely provide the reasons for which a permit holder failed an inspection. To the extent an enforcement agency fails to timely provide reasons for failure of inspection or is required to increase staff to protect against this failure, such entity will experience a negative fiscal impact. Additionally, if the refund provision is triggered and enforcement agencies are required to recalculate the surcharge, there will be a negative indeterminate fiscal impact on the surcharges received by DBPR.

Government entities may experience cost savings associated with performing certain building inspections virtually, at their discretion.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.56, 553.79, 440.103, and 553.80.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 10, 2021:

The committee substitute clarifies that 10 percent of permit and inspection fees must be refunded after both a failed inspection *and* the inspector fails to provide a reason for such failure within three business days. The committee substitute also specifies three *business* days.

- B. **Amendments:**

None.