

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 667 Building Inspections

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Regulatory Reform Subcommittee, Mooney and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1382

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 667 passed the House on April 21, 2021, and subsequently passed the Senate on April 26, 2021.

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.

Current law requires local governments to enforce the Building Code and issue building permits. Current law also requires state agencies, state universities, Florida College System institutions, and public school districts to enforce the Building Code in certain situations. It is unlawful for a person or corporation to construct, alter, repair, or demolish a building without obtaining a permit from the enforcing agency. Construction work that requires a building permit also requires inspections to ensure the work complies with the Building Code.

The bill requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to:

- E-mail;
- An electronic fill-in form available on the building department's website or a third-party submission management software; or
- An application that can be downloaded on a mobile device.

The bill provides that a local enforcement agency must refund 10 percent of the permit and inspection fees if:

- The inspector or building official determines the work, which requires the permit, fails an inspection; and
- The inspector or building official fails to provide a reason that is based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance, indicating why the work failed the inspection within 5 business days of the inspection.

If any permit and inspection fees must be refunded, the surcharges for funding the Building Commission, the Florida Building Code Administrators and Inspectors Board, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

The bill clarifies that any government entity with authority to enforce the Building Code may perform virtual inspections at the discretion of the government entity. However, a government entity may not perform a virtual inspection for structural inspections on threshold buildings.

The bill defines "virtual inspection" as an inspection that uses visual or electronic aids to allow a building official or inspector to perform an inspection without having to be physically present at the job site during the inspection.

The bill may have an indeterminate fiscal impact on state and local government. See Fiscal Comments.

The bill was approved by the Governor on June 29, 2021, ch. 2021-212, L.O.F., and became effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.¹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.² The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.³

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act 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.⁴

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by 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.⁵

Building Code Administrators, Inspectors, and Plans Examiners

Building code administrators, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate. The BCAIB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.⁶

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.⁷

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).

² *Id.*; DBPR, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited on Feb. 15, 2021).

³ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Feb. 26, 2021).

⁴ See s. 553.72(1), F.S.

⁵ Ss. 553.73, and 553.74, F.S.

⁶ See Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.

⁷ S. 468.603(2), F.S.

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. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:⁸

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with the Building Code. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:⁹

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

Enforcement of the Florida Building Code

It is the intent of the Legislature that 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.¹⁰

Every local government must enforce the Building Code and issue building permits.¹¹ A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.¹²

Current law also provides that state agencies may enforce the Building Code if specifically authorized to do so by law, unless they delegate that responsibility to another public entity.¹³ Current law provides that:¹⁴

- The Department of Corrections and the Department of Juvenile Justice together with the Department of Management Services (DMS), enforce the construction regulations relating to correctional facilities under their jurisdiction.
- DMS enforces the construction regulations for the Governor's Mansion and its grounds, the Capitol, and the Capitol complex.
- DBPR enforces the construction regulations relating to elevator equipment under its jurisdiction.

⁸ S. 468.603(4) and (5), F.S.

⁹ S. 468.603(8), F.S.

¹⁰ S. 553.72, F.S.

¹¹ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹² S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).

¹³ Ss. 255.31(1), and 553.80(1), F.S.

¹⁴ *Id.*

- The Turnpike Enterprise, which is part of the Department of Transportation, enforces the construction regulations for toll collection facilities under its jurisdiction.
- The Department of Children and Families (DCF) in conjunction with the Agency for Health Care Administration (ACHA) enforces construction regulations relating to secure mental health treatment facilities under DCF's jurisdiction.
- AHCA also reviews plans and surveys for construction of hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care Facilities for the Developmentally Disabled.

Current law also requires state universities, Florida College System institutions, and public school districts to enforce the Building Code for their building projects, including conducting plans review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plans examiners, and may elect to use a local government's building department to review plans and perform inspections.¹⁵

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 be directed, by resolution or regulation, to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.¹⁶

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the government entity.¹⁷ A local enforcement agency that issues building permits must post each type of building permit application on its website. A local enforcement agency must allow applicants to submit permit applications electronically to the local enforcement agency, which must provide accepted methods of electronic submission. Such methods include, but are not limited to:¹⁸

- E-mail submission of applications in PDF format;
- Submission of applications through an electronic fill-in form available on the building department's website; or
- Through a third-party submission management software.

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.¹⁹

Payments, attachments, or drawings required as part of the permit application may be submitted in person in a nonelectronic format, at the discretion of the building official.²⁰

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.²¹

¹⁵ S. 553.80(6), F.S.

¹⁶ See Ss. 125.56(4)(a) and 553.79(1), F.S.

¹⁷ S. 713.135(5) and (6), F.S.

¹⁸ Ss. 125.56(4)(b) and 553.79(1)(b), F.S.

¹⁹ S. 553.71(5), F.S.

²⁰ Ss. 125.56(4)(b) and 553.79(1)(b), F.S.

²¹ *Id.*

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.²² Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.²³

The Building Code requires the following inspections depending on the scope of the construction work:²⁴

- Building, including;
 - Foundation.
 - Framing.
 - Sheathing.
 - Exterior wall coverings.
 - Roofing.
 - Swimming pool.
 - Demolition.
 - Manufactured building.
 - Impact-resistant coverings.
 - Final inspection.
- Electrical;
- Plumbing;
- Mechanical;
- Gas;
- Lath, gypsum board, and gypsum panel product;
- Weather-exposed balcony and walking surface waterproofing;
- Fire- and smoke-resistant penetrations;
- Energy efficiency;
- Termites;
- Shoring; and
- Threshold.

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.²⁵

Local Government Fees & Permits

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.²⁶

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:²⁷

²² S. 110 Seventh edition of the Florida Building Code (Building).

²³ Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%9320Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Mar. 15, 2021).

²⁴ S. 110, Seventh Edition of the Florida Building Code (Building).

²⁵ S. 110.3.10, Seventh Edition of the Florida Building Code (Building).

²⁶ Ss. 125.56(2), 166.222, 553.79(1), and 553.80(7), F.S.

²⁷ S. 553.80(7), F.S.

- 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
- 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 1.0 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 DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.²⁸

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. The local governments collect the assessment and remit the surcharge fees to DBPR, where the money is divided equally to fund the activities of the BCAIB and the Florida Homeowners' Construction Recovery Fund.²⁹

Local government building departments are permitted to retain 10 percent of the amount of the surcharges they collect to fund participation of their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.³⁰

Electronic Request 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,³¹ while others do not. 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 system.³²

Proponents argue that allowing permit holders to electronically request inspections can provide inspectors a real-time schedule, including cancellation, location, and contact information for their scheduled inspections. Building departments note that there is an initial cost for the transition to electronic requests.³³

²⁸ S. 553.721, F.S.

²⁹ S. 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. DBPR then presents the claim to the Construction Industry Licensing Board for review. s. 489.1401(2), F.S.

³⁰ Ss. 468.631, and 553.721, F.S.

³¹ Orange County Government Florida, *Division of Building Safety*,

<https://www.orangecountyfl.net/PermitsLicenses/DivisionOfBuildingSafety.aspx#inspections> (last visited Feb. 12, 2021); Brevard County, *Brevard County Building Inspection Request*, <https://www.brevardfl.gov/PlanningDev/BuildingPermits/InspectionRequest> (last visited Feb. 12, 2021); Town of Davie Florida, *Online Self Service*, <https://www.davie-fl.gov/213/Online-Self-Service> (last visited Feb. 12, 2021).

³² Fort Myers Community Development, *Building, Permitting & Inspections (BPI)*, <https://cityftmyers.com/1293/Building-Permitting-Inspections> (last visited Feb. 12, 2021); Monroe County, *Building and Permitting Quick Links*, <https://www.monroecounty-fl.gov/149/Building-and-Permitting> (last visited Feb. 12, 2021).

³³ National Institute of Building Sciences, Washington, D.C., *Electronic Permitting Systems and How to Implement Them*, (April 2002) https://www.huduser.gov/publications/pdf/permitting_all_4_12_02.pdf (last visited Feb. 23, 2021).

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 departments to continue operating during the COVID-19 epidemic, which allows contractors to keep working.³⁴

Virtual inspections can range from roofing inspections, windows and doors inspections, to air conditioning change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, by allowing contractors to immediately request an inspection once they finish work, and by allowing the contractor to remain on the jobsite.³⁵

Virtual inspections are usually done by having the contractor or owner at the jobsite with a mobile phone or tablet with a camera. The building official or inspector calls the contractor or owner via video chat, and the building official or inspector directs the contractor or owner to allow him or her to view specific work.³⁶

Some building departments have indicated that they plan to continue using virtual inspections once the COVID-19 emergency is over.³⁷

Current law neither specifically prohibits nor allows virtual inspections by building departments.

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 the denial or revocation. 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.³⁸

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.³⁹ However, current law does not require a building official or inspector to provide the permit holder a specific reason for failing the inspection.

According to industry members, some local government inspectors do not provide a reason for failing an inspection that is based on compliance with the Building Code or a local ordinance. This results in a

³⁴ 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-distancing-569485561.html> (last visited Feb. 23, 2021); Orange County, *Orange County Division of Building Safety Launches Remote Inspections*, (Jul. 22, 2020) <https://newsroom.ocfl.net/2020/07/orange-county-division-of-building-safety-launches-remote-inspections/> (last visited Feb. 23, 2021) Marsha Lidskin, *Palm Coast building inspections for occupied homes go virtual for COVID-19 safety*, PalmCoastObserver.com (Aug. 27, 2020) <https://www.palmcoastobserver.com/article/palm-coast-building-inspections-for-occupied-homes-go-virtual-for-covid-19-safety> (last visited Feb. 23, 2021).

³⁵ 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 Feb. 23, 2021); Boca Raton, *Virtual Inspections*, <https://myboca.us/1846/Virtual-Inspections> (last visited Feb. 23, 2021); Orange County, *supra* note 34.

³⁶ *Id.*
³⁷ Kim Slowey, *Building officials turn to video inspections to mitigate COVID-19 risk*, Construction Dive (Apr. 15, 2020) <https://www.constructiondive.com/news/covid-19-forces-building-officials-to-explore-remote-video-inspections/576072/> (last visited Feb. 23, 2021).

³⁸ S. 553.79(1)(a), F.S.

³⁹ S. 110.3, Seventh Edition of the Florida Building Code (Building).

permit holder having to speculate why the work did not pass the inspection, and causes delays until the permit holder can speak with the inspector.⁴⁰

Effect of the Bill

The bill requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to:

- E-mail;
- An electronic fill-in form available on the building department's website;
- A third-party submission management software; or
- An application that can be downloaded on a mobile device.

The bill provides that requests for inspections may be submitted in a non-electronic format at the discretion of the building official.

The bill clarifies that any government entity with authority to enforce the Building Code and inspections may perform virtual inspections at its discretion.

The bill defines "virtual inspection" as a form of visual inspection that uses visual or electronic aids to allow a building official, inspector, or team of inspectors to perform an inspection without having to be physically present at the job site during the inspection.

The bill prohibits a government entity from performing a virtual inspection for structural inspections on threshold buildings.⁴¹

The bill requires a local enforcement agency to refund 10 percent of 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, which is based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection within 5 business days after the inspection.

If any permit and inspection fees are refunded because a building official or inspector fails to provide a reason for failing an inspection, the DBPR surcharges for funding the 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁴⁰ Email from Brian Hastings, President of 4 Seasons Air Conditioning & Heating, Florida building inspectors, code section reference for failed inspections (Feb. 23, 2021); Email from Rick Sims, President of Johnson's Air Conditioning, HVAC; Requiring Code Citation References (Feb. 22, 2021); Email from David Shepard, Director of Service Operations of Cortez Heating & Air Conditioning, Inspectors Citing Specific Codes (Feb. 23, 2021).

⁴¹ A threshold building is a building that is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons. A special inspector, who is licensed as an architect or engineer, must perform structural inspections on threshold buildings. Ss. 553.71(9), (12), and 553.79(5), F.S.

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

Indeterminate. Local governments that do not currently allow electronic submission of inspections may have to expend funds to meet the requirements in the bill. However, the fiscal impact is likely to be insignificant since local governments currently are required to allow building permit applicants to electronically submit building permit applications.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact by allowing permit holders to electronically request inspections and clarifying that government entities may perform virtual inspections at their discretion, which may reduce the time to complete a construction project.

The bill may also have a positive impact by requiring inspectors to provide a reason for failing an inspection, which may decrease the time to complete a construction project.

D. FISCAL COMMENTS:

The amount of permit and inspection fees that are refunded by local governments for failing to provide a reason for failing an inspection is indeterminate. However, any amount will likely be minimal. It is unclear if refunding a percentage of permit fees will have an impact on the surcharges received by DBPR. However, any impact will likely be insignificant.