

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 644

INTRODUCER: Community Affairs Committee and Senator Brodeur

SUBJECT: Building Inspections

DATE: January 26, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	<b>Fav/CS</b>
2.			RI	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 644 provides a number of revisions relating to building inspectors and plans reviewers licensure requirements and workforce availability. The bill also makes changes relating to transparency and efficiency for private providers and building officials under the alternative plans review and inspection process.

The bill makes the following changes pertaining to building inspector and plans examiner licensure:

- Provides that a person may sit for the building inspector or plans examiner licensure test by completing a 4-year internship with a private provider or private provider's firm and under the direct supervision of a licensed architect or engineer.
- Requires the Building Code Administrators and Inspectors Board (BCAIB) to create a rule establishing that partial completion of an internship program may be transferred between local governments or private provider or private provider's firm.
- Prohibits the BCAIB from issuing a provisional license with a special condition or requirement that such licensee be employed by a municipality, county, or other local government agency.

As it relates to private providers, the bill specifies that if a person uses a private provider, the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor. It also defines the "reasonable

administrative fee” a local government may charge for using a private provider as the actual cost incurred.

The bill states that a local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish any single-family residential structure located in certain flood hazard areas according to Flood Insurance Rate Maps produced by the FEMA under certain circumstances.

The bill provides that if a local building official does not provide a notice of deficiencies within two business days, the request for a certificate of occupancy is automatically granted and considered issued the next business day. The bill also provides that if a local building official does not provide a notice of deficiencies within two business days, the building permit is closed and the local building official must provide the permit applicant with the written certificate of occupancy or certificate of completion within 10 days after it has been automatically granted and considered issued.

## II. Present Situation:

### The Florida Building Code

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.<sup>1</sup>

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.<sup>2</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>3</sup>

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.<sup>4</sup>

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<sup>1</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Nov. 11, 2021).

<sup>2</sup> *Id.*; DBPR, *Building Code Information System*, available at: <https://floridabuilding.org/c/default.aspx#> (last visited on Nov. 11, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> Section 553.72(1), F.S.

The Florida Building 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,<sup>5</sup> 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.<sup>6</sup>

### **Local 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.<sup>7</sup>

Every local government must enforce the Building Code and issue building permits.<sup>8</sup> 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 enforcing agency 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

### **Building Code Administrators and Inspectors and Plans Examiners**

Building officials, inspectors, and plans examiners are regulated by the Florida 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.<sup>12</sup>

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.<sup>13</sup>

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<sup>5</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Dec 2, 2021).

<sup>6</sup> Sections 553.73, and 553.74, F.S.

<sup>7</sup> Section 553.72, F.S.

<sup>8</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>9</sup> Sections 125.56(4)(a), 553.79(1), F.S.

<sup>10</sup> Section 110 Seventh edition of the Florida Building Code (Building).

<sup>11</sup> Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, available at: <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Dec 2, 2021).

<sup>12</sup> Section 468.605, F.S.

<sup>13</sup> Section 468.603(2), F.S.

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories the inspector has been licensed. The inspector categories are:<sup>14</sup>

- Building inspector
- Coastal construction inspector
- Commercial electrical inspector
- Residential electrical inspector
- Mechanical inspector
- Plumbing inspector
- Residential inspector
- Electrical inspector

During the 2020 Regular Session, the Legislature renamed the “one and two family dwelling inspector” to the “residential inspector” and expanded the scope of practice to include inspecting one-family, two-family, or three-family residences, and accessory use structures in connection therewith, for compliance with the building, plumbing, mechanical, accessibility, and electrical codes.<sup>15</sup>

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. 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 the plans examiner has been licensed. The plans examiner categories are:<sup>16</sup>

- Building plans examiner
- Plumbing plans examiner
- Mechanical plans examiner
- Electrical plans examiner

The BCAIB may also create voluntary certificates that licensed inspectors and plans examiners may obtain. A voluntary certificate is a limited certificate that allows a licensed inspector or plans examiner to inspect or examine plans for additional categories. Voluntary certificates are not available to people who are not licensed as an inspector, plans examiner, or construction contractor. The BCAIB has created the following voluntary certificates:<sup>17</sup>

- Residential pool inspector
- Commercial pool inspector
- Roofing inspector
- Modular inspector
- Modular plans examiner

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<sup>14</sup> Section 468.603(5), F.S.

<sup>15</sup> Chapter 2020-160, s. 19, Laws of Fla.

<sup>16</sup> Section 468.603(8), F.S.

<sup>17</sup> See s. 468.609(10), F.S.; Fla. Admin. Code R. 61G19-6.016 (2021)

- Residential plans examiner

In order to sit for the plans examiner or inspector exam a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:<sup>18</sup>

- Have 4 years of combined relevant experience;
- Have 3 years of combined postsecondary education and relevant experience;
- Have 3 years of combined technical education and relevant experience;
- Complete an approved cross-training program and have at least 2 years of experience;
- Hold a standard certificate issued by the BCAIB or a firesafety inspector license; and
  - Have at least 4 years of relevant experience as an inspector or plans examiner;
  - Have a minimum of 3 years of experience in firesafety inspection, or firesafety plan review and completed a training program of not less than 100 hours in the new category sought;
  - Complete an approved training program of not less than 200 hours in inspection or plans review except for one-family and two-family dwelling training programs, which may not be less than 500 hours; or
- Complete a 4-year internship certification program.

### **Internship Programs**

After the recession in 2008, Florida experienced a shortage of inspectors, plans examiners, and building officials on account of many of them being laid off. In at least one county, the shortage forced the local building board to rehire retired inspectors.<sup>19</sup>

In response to the shortage, during the 2017 Regular Session, the Legislature created the 4-year internship program as an additional way to obtain licensure as a plans examiner or inspector.<sup>20</sup> A person may sit for the plans examiner or inspector exam in all categories if the person is at least 18 years of age, is of good moral character, and completes an internship program. The requirements of the internship program are:<sup>21</sup>

- Completing a 4-year internship as an inspector or plans examiner while employed full-time by a local government, under the direct supervision of a building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year;
- Passing an ICC administered examination in the license category sought;
- Passing the principles and practice examination before completing the internship program;
- Passing a BCAIB-approved 40-hour code training course in the license category sought before completing the internship; and

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<sup>18</sup> Section 468.609(2), F.S.

<sup>19</sup> James Sullivan, Charles Kibert, Andriel Fenner, & Shirley Morque, *Florida Construction Workforce Taskforce: Address training issues among building code inspectors to increase the number qualified inspectors*, (March 9, 2017) available at: <http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf> (last visited Dec 2, 2021).

<sup>20</sup> Chapter 2017-149, s. 5, Laws of Fla.

<sup>21</sup> Section 468.609(2), F.S.

- Obtaining a favorable recommendation from the supervising building official after completion of the internship.

Current law requires the BCAIB to establish by rule that partial completion of the internship program may be transferred between jurisdictions.<sup>22</sup>

Currently, the 4-year internship program only applies to a person employed full-time by a local government, and does not apply if the person is employed full-time with a private entity that provides building inspection and/or plans review services.

### **Provisional Licensure**

A person who is qualified to sit for the building official, plans examiner, or inspector exam but has not taken the exam may be granted a provisional certificate by the BCAIB. A provisional certificate allows a person to engage in the duties of a building official, inspector, or plans examiner. Provisional licenses are valid for two years, but may be renewed by the BCAIB for just cause. A provisional license is not valid for more than three years. However, an applicant who is obtaining licensure as an inspector or plans examiner through an internship may apply to the BCAIB for a provisional certificate that is valid for the duration of the internship.<sup>23</sup>

The BCAIB may issue provisional certificates with special conditions or requirements including conditions or requirements relating to the place of employment of the applicant, the supervision of the applicant on a consulting or advisory basis, or any other conditions the BCAIB deem necessary to protect the public safety and health.<sup>24</sup>

### **Private Providers**

In 2002, s. 553.791, F.S., was created to allow property owners and contractors to hire licensed building code officials, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.<sup>25</sup>

If an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department and reduce the building permit fees accordingly.<sup>26</sup>

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<sup>22</sup> Section 468.609(10), F.S.

<sup>23</sup> Section 468.609, F.S.; Fla. Admin. Code R. 61G19-6.012 (2018)

<sup>24</sup> *Id.*

<sup>25</sup> Section 553.791(1)(n) and (3), F.S.

<sup>26</sup> Section 553.791(2)(b), F.S.

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider, but it may charge a “reasonable administrative fee.”<sup>27</sup> However, current law does not specify what a “reasonable administrative” fee is.

A building official may audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the Building Code. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.<sup>28</sup>

When a property owner or a contractor elects to use a private provider, he or she must notify the building official, on a form adopted by the Florida Building Commission, at the time of the permit application or no less than two business days before the first or next scheduled inspection.<sup>29</sup>

A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider is authorized to review the plans.<sup>30</sup> Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit. Denying a permit automatically tolls the remaining 20 business days.<sup>31</sup>

Before a private provider performs building inspections, he or she must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.<sup>32</sup>

A private provider must post records of every inspection, including the results of the inspections, electronically or on the jobsite and provide the records to the local building official within two business days of posting the records.<sup>33</sup>

Upon completion of all required inspections, a private provider must give the building official a record of all the inspections, a request for a certificate of occupancy, and a sworn statement indicating compliance with the Building Code. Upon receipt, the building official has two business days to issue the certificate of completion or provide the permit applicant a notice of deficiencies.<sup>34</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Section 553.791(1), (14), and (19), F.S.

<sup>29</sup> Section 553.791(4)-(5), F.S.

<sup>30</sup> Section 553.791(6), F.S.

<sup>31</sup> Section 553.791(7), F.S.

<sup>32</sup> Section 553.791(9) and (18), F.S.

<sup>33</sup> Section 553.791(11), F.S.

<sup>34</sup> Section 553.791(11)-(13), F.S.

If the local building official does not provide a notice of the deficiencies within two business days, the request for a certificate of occupancy is deemed granted, and the local building official must issue the certificate of occupancy the next business day.<sup>35</sup>

### **Federal Emergency Management Agency Flood Maps**

The Federal Emergency Management Agency (FEMA) is an agency within the United States Department of Homeland Security. The FEMA coordinates responses to disasters within the United States. The FEMA provides resources and assistance to local and state authorities when a disaster overwhelms local response capacities.

The FEMA is responsible for various services related to flood insurance, floodplain management, and flood mapping. The FEMA provides flood hazard and risk data products to help set insurance rates for the National Flood Insurance Program (NFIP) and help guide local and state governments' flood mitigation actions.

### ***The National Flood Insurance Program***

The NFIP is a program created by the Congress of the United States in 1968 through the National Flood Insurance Act of 1968. The NFIP aims to share the risk of flood losses through flood insurance and reduce flood damage by restricting development within floodplains. The program enables property owners in participating communities to purchase insurance protection, administered by the government, against flooding losses. Participation in the NFIP is limited to communities that adopt adequate land use and control measures with effective enforcement provisions to reduce flood damages by restricting development in areas exposed to flooding.<sup>36</sup>

### ***Flood Insurance Rate Maps***

The NFIP insurance rates are correlated with the unique flooding risks of a geographic area. To facilitate the allocation of insurance rates, the FEMA prepares flood insurance rate maps (FIRM). A FIRM is an official map of a community within the United States that displays the floodplains, more explicitly particular hazard areas and risk premium zones, as delineated by the FEMA.<sup>37</sup>

FIRMs display areas that fall within the 100-year flood boundary, special flood hazard areas, and insurance risk zones. FIRMs are used to set insurance rates against the risk of flood and whether buildings are insurable at all against flood. Furthermore, towns and municipalities use FIRMs for local land use policy and zoning.<sup>38</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> FEMA, *Flood Insurance*, available at: <https://www.fema.gov/flood-insurance> (last visited Jan 26, 2021).

<sup>37</sup> FEMA, *Flood Insurance Rate Map (FIRM)*, available at: <https://www.fema.gov/glossary/flood-insurance-rate-map-firm> (last visited Jan. 26, 2022).

<sup>38</sup> *Id.*



### **III. Effect of Proposed Changes:**

#### **Building Inspector and Plans Examiner Licensure**

The bill amends s. 468.609 F.S., to expand licensing opportunities for building inspectors and plans examiners, by allowing a person to sit for the certification test upon completion of a 4-year full-time internship as an inspector or plans examiner with a private provider or private provider's firm while under the supervision of a licensed architect or engineer. Current law allows such for internships with a local government. An internship program may be transferred between jurisdictions, private providers, and firms of private providers. The bill allows engineers and architects to give favorable recommendation after completion of the internship program

The bill also directs the BCAIB to create a rule establishing that partial completion of an internship program may be transferred between jurisdictions or private entities.

The bill addresses the special conditions or requirements the BCAIB may impose when issuing provisional certificates for building officials, plans examiners, and building inspectors. The BCAIB may continue to impose special conditions or requirements to protect the public safety and health, but it may not require an applicant to be employed by a municipality, county, or other local government agency.

The bill corrects a scrivener's error by renaming the "one-family and two-family dwelling" training program to the "residential" training program to conform to changes made during the 2020 Regular Session.<sup>39</sup>

#### **Building Permits for Demolition**

The bill amends s. 553.79, F.S., to provide that a local government may not prohibit or otherwise restrict the ability of a property owner to obtain a building permit to demolish and replace any single-family residential dwelling located in a coastal high hazard area, moderate flood zone, or special flood hazard area if the lowest floor elevation of the dwelling is at or below the property's base flood elevation plus one foot, pursuant to the building code or local ordinance. Such a demolition permit may only be reviewed administratively for compliance with the building code and applicable construction regulations, and is not subject to additional land development regulation or zoning approval that requires a public hearing before the issuance of the permit.

Local governments may not impose additional regulatory requirements on the replacement of the single-family residential dwelling which would not otherwise be applicable to a similarly situated vacant parcel, and may not penalize the owner for such demolition.

#### **Alternative Plans Review and Inspection**

The bill amends s. 553.791 F.S., to provide that if an owner or contractor retains a private provider for plans review or inspection services, the local government must provide equal access

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<sup>39</sup> See ch. 2020-160, s. 19, Laws of Fla.

to all permitting and inspection documents and reports to the private provider, the owner, and the contractor.

The bill provides that the “reasonable administrative fee” a local government charges for using a private provider must be based on the cost that is actually incurred by the local government, including the labor cost of the personnel providing the service, or the cost attributable to the local government for the clerical and supervisory assistance required, or both.

The bill provides that if a local building official does not provide a notice of deficiencies within two business days, the request for a certificate of occupancy is “**automatically**” granted and **considered issued** the next business day, instead of “**deemed**” granted and required to be issued by the local building official on the next business day.

The bill also provides that if a local building official does not provide a notice of deficiencies within two business days, the building permit is closed and the local building official must provide the permit applicant with the written certificate of occupancy or certificate of completion within 10 days after it has been automatically granted and considered issued.

The bill provides for an effective date of July 1, 2022.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The bill may provide for more availability of building inspectors and plans reviewers by providing additional opportunities for persons to qualify for licensure, which may also reduce construction costs and delays.

Private property owners may benefit from fewer regulatory requirements imposed by local governments for the demolition and replacement of single family residences located in a FEMA flood zone.

**C. Government Sector Impact:**

The bill may increase costs to local governments by requiring equal access to records for private providers, owners, and contractors under the alternative plans review and inspection process, however, any costs are likely minimal.

Additionally, the bill may result in a slight reduction of revenues to local governments by limiting the amount of an administrative fee a local government may charge when a permit holder uses the services of a private provider.

The Department of Business and Professional Regulation expects minimal impact to the agency, which can be absorbed with existing resources.

**VI. Technical Deficiencies:**

The title of the bill is “Building Inspections,” however section 3 of the bill provides that a local government may not prohibit or restrict a property owner to obtain a building permit to demolish any single-family residential structure located in certain flood hazard areas. The sponsor may consider a title amendment to ensure that the single subject rule is accurately reflected.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 468.603, 468.609, 553.791, and 553.79.

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

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

**CS by Community Affairs on January 25, 2022:**

- Clarifies that a person may complete a 4-year internship program at a private provider’s firm while under the direct supervision of a certified building official or

licensed engineer architect, and allows engineers and architects to give favorable recommendation after completion of the internship program;

- Provides that a local government may not prohibit or restrict a property owner to obtain a building permit to demolish any single-family residential structure located in certain flood hazard areas provided that the permit otherwise complies with applicable building code requirements; and
- Provides that a building official may rescind a certificate of occupancy or certificate of completion within 30 days after issuance for failure to comply, and must provide written notice to the applicant, private provider, and the fee owner. The notice must include reasons for rescinding the certificate and detail how the certificate can be reinstated. A private provider must have the opportunity to cure any deficiencies and resubmit the application.

**B. Amendments:**

None.