

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 89 Building Construction

SPONSOR(S): Commerce Committee and Regulatory Reform & Economic Development Subcommittee, Maggard and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 512

FINAL HOUSE FLOOR ACTION: 114 Y's

2 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 89 passed the House on April 20, 2023. The bill was amended in the Senate on April 28, 2023 and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on May 3, 2023.

The Florida Building Code is administered and enforced by local governments through the issuance of permits and completion of inspections by local building officials. Permits are generally issued prior to starting construction projects, but after plans are reviewed by local building officials. A local enforcing agency must identify the specific plan features that do not comply with the Building Code **whenever a permit is denied**. Currently, there is no similar requirement for fire safety officials related to the Fire Prevention Code.

Current law is not clear on whether local governments must notify permit holders about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code if they make or require substantive changes to building plans **after the permit is issued**.

The bill:

- Prohibits a local government from making substantive changes to building plans **after a building permit has been issued** unless such changes are required under the Building Code, or Fire Prevention Code.
- Requires any changes a local government makes to building plans **after a permit has been issued** to identify the specific parts of the plan that do not conform to the applicable code in writing.
- Requires a building official or inspector who asks another person or employee other than a building official, plans examiner, or inspector to review the building plans to notify the local government if such person or employee determines the plans do not comply with the Building Code.
- Requires a local fire official to notify the permit applicant of specific reasons why plans do not comply with the Fire Prevention Code.
- Allows a plans examiner, inspector, building official, or fire safety inspector to have their certificate disciplined for failure to notify the appropriate person of the reasons for making substantive changes to building plans.

The bill does not appear to have a significant fiscal impact on local or state governments.

The bill was approved by the Governor on June 13, 2023, ch. 2023-229, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Building Plans Requirements- Current Situation

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the 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 Building Code, and that first edition replaced all local codes on March 1, 2002.¹ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.²

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The Act provides 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.³

The Florida Building Commission (Building Commission) implements the Building Code. The Building Commission, which is housed within DBPR, 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.⁴

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.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.⁶

A building code administrator, also 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/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 13, 2023).

² Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx><https://floridabuilding.org/c/default.aspx> (last visited Feb. 13, 2023).

³ See s. 553.72(1), F.S.

⁴ Ss. 553.73, and 553.74, F.S.

⁵ S. 553.71(5), 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 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 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. 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.

The BCAIB may discipline building code administrators, plans examiners, and inspectors for violations of the practice act, such as violating BCAIB or DBPR rules, and failing to properly enforce applicable building codes or permit requirements.¹⁰ Types of discipline includes:¹¹

- Denial of an application for certification;
- Permanent revocation;
- Suspension of a certificate;
- Fines; and
- Probation.

Florida Fire Prevention Code

Florida law designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, within the Department of Financial Services (DFS), is charged with enforcing laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.¹²

The State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Fire Prevention Code, which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.¹³

⁸ S. 468.603(4) and (5), F.S.

⁹ S. 468.603(8), F.S.

¹⁰ Ss. 468.601, 486.621, and 468.633, F.S.; see also R. 61G19-5.003, F.A.C.

¹¹ S. 486.621, F.S.

¹² S. 633.104, F.S.

¹³ ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Prevention Code every three years.¹⁴ When adopting the Fire Prevention Code, the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA), including the:¹⁵

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.¹⁶ The most recent Fire Prevention Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Prevention Code took effect on December 31, 2020.¹⁷

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code.¹⁸ These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements, but may not enact fire safety ordinances that conflict with other state law.¹⁹

Fire Safety Inspectors

Each county, municipality, and special district with fire safety enforcement responsibilities is required to employ or contract with a fire safety inspector to conduct all fire safety inspections required by law.²⁰ A fire safety inspector is a person who is officially assigned the duties of conducting fire safety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities. Fire safety inspectors are certified and regulated by the State Fire Marshal and are separate from building code administrators, inspectors, and plans examiners who are regulated by the BCAIB.²¹

The State Fire Marshal may discipline fire safety inspectors by denying, refusing to renew, suspending, or revoking their certificate if the State Fire Marshal finds that the fire safety inspector has violated the practice act, including:²²

- Violating Fire Prevention laws or any rule or order of the State Fire Marshal, and
- Failing to properly enforce applicable fire codes or permit requirements within this state which the certificate holder knows are applicable by “committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property.”

¹⁴ S. 633.202, F.S.

¹⁵ S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on Feb. 13, 2023).

¹⁶ *Id.*

¹⁷ Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, <https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code> (last visited Feb. 13, 2023).

¹⁸ Ss. 633.108 and 633.208, F.S.

¹⁹ Ss. 633.208 and 633.214(4), F.S.

²⁰ S. 633.216(1), F.S.

²¹ Ss. 633.102(12) and 633.216, F.S.

²² S. 633.216(5)(a)-(g), F.S.; *see also*, s. 633.106, F.S.

Conflicting Requirements in The Building Code and the Fire Prevention Code

The Building Code and the Fire Prevention Code work together, but are independent of each other. The Building Commission must reference the Fire Prevention Code in the Building Code. However, the Building Commission may not adopt a fire prevention or life safety code, and nothing in the Building Code may affect the statutory powers, duties, and responsibilities of any local fire safety official or DFS.²³

Conflicting requirements between the Building Code and the Fire Prevention Code must be resolved by agreement between the Building Commission and the State Fire Marshal, or the question must be referred to a mediator to resolve the conflict.²⁴

Building Permits

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.²⁵ Every local government must enforce the Building Code and issue building permits.²⁶

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.²⁷ Any construction work that requires a building permit also requires plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.²⁸

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building 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.²⁹ A building permit is not valid until the fees for the permit have been paid.³⁰

Building Plans

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.³¹

An application for a permit must include building plans. Building plans are plans for construction, erection, alteration, modification, repair, or demolition of any building or structure and must comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes in the Building Code.³²

A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.³³

²³ S. 553.73(1), F.S.; Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).

²⁴ *Id.*

²⁵ S. 553.72, F.S.

²⁶ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

²⁷ S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).

²⁸ Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).

²⁹ See ss. 125.56(4)(a) and 553.79(1), F.S.

³⁰ S. 109.1 of the Seventh edition of the Florida Building Code (Building).

³¹ Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.

³² Ss. 468.603(8), and 553.79(2), F.S.

³³ S. 553.79(2), F.S.

When the building official issues the permit, the building official must approve the plans by writing or stamping, "Reviewed for Code Compliance" on the plans. The local building official must keep one set of plans and another set must be returned to the applicant, who must keep the set at the work site.³⁴

Fire Prevention Code Plans Review

With respect to fire inspections and review, building officials or plans examiner do not review building plans to determine if they comply with the Fire Prevention Code. If the building or structure is subject to the Fire Prevention Code, the local fire safety official must also review the building plans.³⁵ A local enforcing agency may not issue the permit until the local fire safety official has approved the plans. However, if the building or structure is not subject to the Fire Prevention Code, the local enforcing agency may not require the local fire safety inspector to review the plans.³⁶

Changes to the Building Permit or Plans

Construction work must be in accordance with the approved plans, and any changes made during construction that are not in compliance with the approved plans must be resubmitted for approval as an amended set of construction documents.³⁷

If the local building official or plans examiner finds that building plans do not comply with the Building Code, the local building official or inspector **must identify** the specific plan features that do not comply with the **Building Code**, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information **to the permit applicant**.³⁸

Whenever a permit is denied or revoked because plans are found to not comply with the Building Code, the local enforcing agency must identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information **to the permit applicant**.³⁹ A plans examiner or building official who is responsible for issuing a denial, revocation, or modification request but fails to provide to the permit applicant a reason for denying, revoking, or requesting a modification, based on compliance with the Building Code, is subject to licensure disciplinary action.⁴⁰

There is no similar requirement for fire safety officials or inspectors when they deny, revoke, or modify plans based on the Fire Prevention Code.

Current law is not clear on whether local governments must notify **permitholders** about the specific reasons why the buildings plans do not comply with the Building Code or the Fire Prevention Code, if they make or require **substantive changes to building plans after the permit is issued**.

According to construction industry representatives, there have been industry reports that building inspectors and local fire officials are making substantive changes to building plans after the building permit has been issued, which deviate from the Building Code or Fire Prevention Code. These changes can lead to delays in construction and can also increase the costs of construction.⁴¹

³⁴ S. 107.3.1 of the Seventh edition of the Florida Building Code (Building).

³⁵ *Id.*

³⁶ *Id.*

³⁷ S. 107.4 of the Seventh edition of the Florida Building Code (Building).

³⁸ S. 553.79(2), F.S.

³⁹ S. 553.79(2), F.S.

⁴⁰ S. 553.79(1), F.S.

⁴¹ Testimony from Representative Randall Scott Maggard, *1/12/2022 House Regulatory Reform Subcommittee*, <https://thefloridachannel.org/videos/1-12-22-house-regulatory-reform-subcommittee/> (last visited Feb. 13, 2023).

Building Plans Requirements– Effect of the Bill

The bill provides that after a local enforcement agency or local government issues a building permit, the local government may not make or require any substantive changes to the building plans unless the changes are required for compliance with the Building Code, the Fire Prevention Code, or local amendments thereto.

If changes are needed after the permit has been issued, the local enforcement agency must identify specific parts of the plan that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permitholder in writing.

The bill provides that if the building code administrator, plans examiner, or inspector requests another local enforcing agency employee or person contracted by the local enforcing agency to review the plans and such person identifies specific plan features that do not comply with the Building Code, the building code administrator, plans examiner, or inspector, must provide this information to the local enforcing agency.

The bill provides that a plans examiner or inspector who fails to provide the building code administrator with the reasons for making or requiring substantive changes to building plans is subject to discipline against their license.

The bill provides that a building code administrator who fails to provide a permit applicant or permit holder with the reasons for making or requiring substantive changes to building plans is subject to discipline against his or her license.

The bill provides that if a county, municipality, or special district concludes that the building plans for a building permit application do not comply with the Florida Fire Prevention Code or Life Safety Code or local amendments thereto, the local fire official must identify the specific parts of the plan that do not comply with the applicable codes, identify the specific chapters and sections upon which the determination is based, and provide the information to the permit applicant.

If the local fire official requires changes to a permit that has already been issued, and fails to cite specific parts in the plans that need changes to comply with the applicable codes and does not provide the information to the permit applicant, the local fire official is subject to disciplinary action against his or her license.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
The impact on revenues is unknown.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on construction industry professionals and companies due to increased information on completing a permit application timely.

D. FISCAL COMMENTS:

None.