

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 579 Use of Private Providers for Plans Review and Inspection

SPONSOR(S): Griffitts

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Appropriations Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Every local government must enforce the building code and issue building permits. Any construction work that requires a building permit also requires plans to be examined by a local plans examiner, and buildings to be inspected periodically by a local building official or inspector. Since 2002, Florida has allowed property owners to hire licensed building code officials, engineers, and architects, that are not associated with the local government, to review building plans, perform building inspections, and prepare certificates of completion, who are referred to as "private providers."

A local government may not charge a permit fee for building inspections when private providers are used, but may charge any amount that is actually incurred by the local government's building official related to the permit. A building official may audit a private provider to ensure the private provider has performed their duties appropriately and may deny a building permit or a certificate of completion or issue a stop work order if the work approved by the private provider does not comply with the Florida Building Code in order to protect public safety and welfare.

Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit.

The bill prohibits a local jurisdiction from conducting its own plans review for the project if a "fee owner" or the "fee owner's" contractor retains a private provider for purposes of plans review.

The bill provides that if the local building official is notified that a private provider is being used for inspection services, the local government may not send an inspector to the building or structure to conduct an inspection and may not charge the owner or contractor a fee for inspection services.

The bill reduces the timeframe, from 20 days to 12 days, that the local government has to grant or deny a permit for projects where a private provider, who is a licensed engineer or architect that affixes his or her industry seal to the affidavit required for building plans.

The bill provides that, if the local jurisdiction does not reduce the permit fee for using private provider services, a fee owner or the fee owner's contractor may file a complaint with the Department of Commerce against the local jurisdiction for such failure and allows the Department of Commerce to assess fines.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 building 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 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,⁵ 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.⁶

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 Jan. 13, 2024).

² *Id.*

³ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 13, 2024).

⁴ See s. 553.72(1), F.S.

⁵ 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*, <https://www.iccsafe.org/about/who-we-are/> (last visited Jan. 13, 2024).

⁶ S. 553.73(7)(a), F.S.

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.⁷ Every local government must enforce the Building Code and issue building permits.⁸ A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁹ Any construction work that requires a building permit also requires the review of building plans and inspections of the progress of work completed by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.¹⁰

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.¹¹ A building permit is not valid until the fees for the permit have been paid.¹²

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.¹³ An application for a permit must include building plans.¹⁴ 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.¹⁵

Use of Building Code Enforcement Fees

A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.¹⁶ Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Building Code.¹⁷ Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building plans, building inspections, re-inspections, building permit processing, and fire inspections.¹⁸ Local governments must post all building permit and inspection fee schedules on their website.¹⁹

Local governments are only allowed to collect building permit fees that are sufficient to cover their costs in enforcing the Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.²⁰

DBPR Surcharges

Current law requires all local governments to assess and collect a 1% 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.²¹

⁷ S. 553.72, F.S.

⁸ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

⁹ S. 468.603(2), F.S.; § 202, FBC, Building, 7th Ed., (2020).

¹⁰ §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).

¹¹ See ss. 125.56(4)(a) and 553.79(1), F.S.

¹² § 109.1, FBC, Building, 7th Ed., (2020).

¹³ Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.

¹⁴ Ss. 468.603(8), and 553.79(2), F.S.

¹⁵ S. 553.79(2), F.S.

¹⁶ S. 553.80 F.S.

¹⁷ *Id.*

¹⁸ S. 553.80 (7)(a)1., F.S.

¹⁹ Ss. 125.56 (4)(c) F.S., and 166.222(2), F.S.

²⁰ S. 553.80(7)(a), F.S.

²¹ S. 553.721, F.S.

Current law also requires all local governments to assess and collect a separate 1.5% 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 it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.²²

Local government building departments are permitted to retain 10% of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.²³

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. Delays in the completion of a construction project may:²⁴

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:²⁵

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue; and
- Encourage economic development by having an efficient permit system.

Building Officials, Inspectors, Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the BCAIB within DBPR.²⁶

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.²⁷

²² 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. The DBPR then presents the claim to the Construction Industry Licensing Board for review. s. 489.1401(2), F.S.

²³ Ss. 468.631, and 553.721, F.S.

²⁴ City of Austin Development Services Department, *A Program for Expedited Permitting*, http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf (last visited Jan. 13, 2024); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).

²⁵ *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) <https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf> (last visited Jan. 13, 2024).

²⁶ S. 468.605, F.S.

²⁷ S. 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 under which the inspector has been licensed. The inspector categories are:²⁸

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

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 under which the plans examiner has been licensed. The plans examiner categories are:²⁹

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

Professional Engineers

Professional engineers and related qualified business organizations are regulated by Ch. 471, F.S., and by the Florida Board of Professional Engineers under DBPR.³⁰

“Engineering” includes the term “professional engineering” and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services....”³¹

Architects

Architects and related qualified business organizations in the state are regulated by ch. 481, pt. I, F.S., and by the Board of Architecture and Interior Design under DBPR.

“Architecture services” means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services

²⁸ See s. 468.603(5), F.S.

²⁹ See s. 468.603(8), F.S.

³⁰ S. 20.165(4)(a)11., F.S.

³¹ S. 471.005(7), F.S.

include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.³²

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 and their duly authorized representatives 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 or representative's license.

Current law defines "private provider" as person licensed as a building official, engineer, or architect. 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.³³

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.³⁴

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider but may charge a "reasonable administrative fee."³⁵ A "reasonable administrative fee" 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.

A building official may audit a private provider to ensure the private provider and their duly authorized agent 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.³⁶

A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider or their duly authorized representative is authorized to review the plans.³⁷ 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.³⁸

If the local building official denies the requested permit, they must provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections.³⁹

Before a private provider or their duly authorized representative performs building inspections, the private provider 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 required inspections are being performed. Construction work on a building may continue as long as the private provider or their duly authorized representative passes each inspection and the private provider gives proper notice of each inspection to the building official.⁴⁰

³² S. 481.206(6), F.S.

³³ S. 553.791(1)(n) and (3), F.S.

³⁴ S. 553.791(2)(b), F.S.

³⁵ *Id.*

³⁶ S. 553.791(1), (14), and (19), F.S.

³⁷ S. 553.791(6), F.S.

³⁸ S. 553.791(7), F.S.

³⁹ S. 553.791(7)(a), F.S.

⁴⁰ S. 553.791(9) and (18), F.S.

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.⁴¹

Fee Simple Ownership

A fee simple is the greatest possible property interest in land, granting its owner all traditional property rights.⁴²

Department of Commerce

The Department of Commerce was created in 2023 to replace the former Department of Economic Opportunity⁴³ to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.⁴⁴

The following divisions and offices are established within the Department of Commerce:⁴⁵

- The Division of Economic Development.
- The Division of Community Development.
- The Division of Workforce Services.
- The Division of Finance and Administration.
- The Division of Information Technology.
- The Office of the Secretary.
- The Office of Economic Accountability and Transparency.

Effect of the Bill

The bill provides that a "private provider firm" means a business organization, including a corporation, partnership, business trust, or other legal entity, that offers building administrator, building inspection, and plans review services to the public through licensees who are acting as agents, employees, officers, or partners of the firm. A person who is licensed as a building code administrator, as an engineer, or as an architect, may act as a private provider as an agent, employee, or officer of the private provider firm.

The bill requires a private provider firm that uses licensed architects and engineers as private providers acting as agents, employees, or officers of the firm to qualify as an engineering or architecture business organization.

The bill clarifies that a "fee owner," not just an owner, has rights to obtain private provider services for a property.

The bill provides that, if the local jurisdiction does not reduce the permit fee for using private provider services, a fee owner or the fee owner's contractor may file a complaint with the Department of Commerce against the local jurisdiction for such failure. If the Department of Commerce finds that a violation occurred, the local jurisdiction must immediately refund to the fee owner or the fee owner's contractor all fees paid to the local jurisdiction, and the Department of Commerce must assess a fine equal to the amount charged to the fee owner or the fee owner's contractor on the local jurisdiction to be deposited into the Florida Homeowners' Construction Recovery Fund.

⁴¹ S. 553.791(11), F.S.

⁴² Cornell Law School, Legal Information Institute, *fee simple*, https://www.law.cornell.edu/wex/fee_simple (last visited Jan. 13, 2024).

⁴³ Ch. 2023-173, L.O.F.

⁴⁴ S. 20.60(4), F.S.

⁴⁵ S. 20.60(3)(a), F.S.

The bill prohibits a local jurisdiction from conducting its own plans review for the project if a fee owner or the fee owner's contractor retains a private provider for purposes of plans review or building inspection services.

The bill provides that if the local building official is notified by the fee owner or the fee owner's contractor that a private provider is being used for inspection services, the local building official and the local enforcement agency may not send an inspector to the building or structure to conduct an inspection and may not charge the owner or contractor a fee for inspection services.

The bill reduces the timeframe that the local government has to grant or deny a permit for provides for a private provider who is a licensed as an engineer or as an architect and **affixes** his or her industry seal to the affidavit required for building plans, from 20 days, to **12** days, after receipt of the permit application and affidavit.

If the private provider is a person licensed as a building code administrator, as an engineer, or as an architect and the private provider **does not** affix his or her industry seal to the affidavit required for building plans, the local building official must issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections, within **20** business days after receipt of the permit application and affidavit.

The bill makes conforming changes.

B. SECTION DIRECTORY:

- Section 1: Amends s. 553.791, F.S.; providing requirements and time frames for plans review and inspection services performed by a private provider.
- Section2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
 - The surcharge collected pursuant to s. 553.791, F.S., and s. 468.631, F.S., could be impacted by the bill.
- 2. Expenditures:
 - None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
 - The bill may reduce the amount of permit fees that could be collected by local governments in certain circumstances.
- 2. Expenditures:
 - The bill may impact local governments because they may have to hire more employees to meet the prescribed timeframes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the cost of permit fees paid by the private sector to local governments based on the local governments failure to meet time requirements. On the other hand, the local jurisdiction may raise permit fees so that they can hire employees to meet the time requirements in the bill.

The streamlined permitting processes in the bill may expedite development across the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill would require the Florida Building Commission to amend the Building Code to reflect some of the bill's changes to building permit application processing requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear why certain complaints about permit fees will be handled by the Department of Commerce, and not DBPR, who regulates the Building Code, Building Commission, Florida Homeowners Construction Recovery Fund, and Building Code Enforcement professionals.

The bill is unclear why it prohibits a local government from performing its own plans review if a fee owner or the fee owner's contractor retains a private provider for purposes of building inspection services. There may be situations where a private provider is retained for inspections services, but not for plans review, which would need to be performed by the local government.

There is a potential life and safety concern with prohibiting a local government from performing onsite inspections when a provider is performing such services.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES