HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 423 Building Regulation
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

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.

Relating to building officials, building inspectors, and plans reviewers, the bill:

- Allows a person to sit for the building inspector or plans examiner licensure test by completing a 4-year internship with a private provider or a private provider's firm in certain circumstances.
- Requires the BCAIB to create a rule allowing partial completion of an internship program to be transferred to any other authorized internship.
- 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.

Relating to private providers, the bill:

- Allows a person with a provisional license from the BCAIB to be a duly authorized representative for a private provider in certain circumstances.
- Requires local governments to provide equal access to all permitting and inspection documents to a private provider, owner, and contractor in certain circumstances.
- Defines "reasonable administrative fee."
- Increases the amount of time, local building officials have to issue a certificate of occupancy or a notice of deficiencies for permits that are not related to single- or two-family dwellings.
- Provides that if a notice of deficiency is not issued within the required time-period:
  - A certificate is "automatically" granted, instead of "deemed" granted; and
  - Local building officials must provide the applicant with a certificate of occupancy within 10 days.

Relating to "demolition" building permits, the bill:

- Prohibits local governments from preventing private property owners from demolishing single-family buildings that are in certain flood zones, while exempting certain historic buildings.
- Limits the review process for applications for such demolition permits and provides.
- Prohibits local governments from requiring additional building requirements for new homes built on the construction site of such demolished single-family buildings.

Relating to local building departments, the bill:

- Requires local governments to review additional information for an application for certain building permits within a certain time-period.
- Provides a cause of action for certain individuals and associations to enforce the requirement that local governments must use excess funds generated by Building Code enforcement for lawful purposes.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.[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 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]

Local Enforcement of the Florida Building Code

The Legislature intends that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions to protect the public's health, safety, and welfare.[7]

Every local government must enforce the Building Code and issue building permits.[8] 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 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.[9]

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[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 Nov. 11, 2021).
[2] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Nov. 11, 2021).
[3] *Id.*
[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 Dec. 13, 2021).
[6] Ss. 553.73, and 553.74, F.S.
[7] S. 553.72, F.S.
[8] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[9] *See* ss. 125.56(4)(a), 553.79(1), F.S.

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.[10] 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.[11]

Building Officials, Inspectors, Plans Examiners, and Private Providers – Current Situation

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 subject to confirmation by the Senate.[12]

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.[13]

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:[14]

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

In 2020, the Legislature renamed the **"one and two family dwelling inspector"** category as the **"residential inspector"** category 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.[15]

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:[16]

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

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[10] S. 110, Seventh edition of the Florida Building Code (Building).
[11] 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%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Nov. 11, 2021).
[12] S. 468.605, F.S.
[13] S. 468.603(2), F.S.
[14] *See* s. 468.603(5), F.S.
[15] Ch. 2020-160, s. 19, Laws of Fla., *codified* at s. 468.603(5)(f), F.S.
[16] *See* s. 468.603(8), F.S.

- Electrical 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:[17]

- 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 have 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**,[18] which may not be less than 500 hours; or
- Complete a 4-year internship certification program.

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 license** by the BCAIB. A provisional license allows a person to engage in the duties of a building official, inspector, or plans examiner.[19]

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 license that is valid for the duration of the internship.[20]

The BCAIB may issue provisional licenses with special conditions or requirements relating to the place of employment of the licensee, the supervision of the licensee on a consulting or advisory basis, or other matters that the BCAIB deems necessary to protect the public safety and health.[21]

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.[22]

[17] S. 468.609(2), F.S.
[18] "One-family and two family dwelling" may need to be renamed to "residential" since the Legislature renamed the one-family and two-family dwelling inspector license to the residential inspector license during the 2020 Legislative Session.
[19] S. 468.609(7) and (10), F.S.
[20] *Id.*
[21] *Id.*
[22] *See* 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) 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 Nov. 23, 2021).

In response to the shortage, during the 2017 Legislative Session, the Legislature created the 4-year internship program as an additional way to obtain licensure as a plans examiner or inspector.[23] 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:[24]

- 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
- 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**.[25]

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.

Private Providers

In 2002, section 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 as an 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.[26]

Current law defines "duly authorized representative" as an employee of a private provider identified in a permit application who reviews plans or performs inspections, and is licensed as an engineer, architect, building official, inspector, or plans examiner. The term does not include a person with a provisional license by the BCAIB.[27]

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.[28]

[23] Ch. 2017-149, s. 5, Laws of Fla., *codified at* s. 468.609(2)(c)7., F.S.
[24] S. 468.609(2), F.S.
[25] S. 468.609(10), F.S.
[26] S. 553.791(1)(n) and (3), F.S.
[27] S. 553.791(1)(f) and (8), F.S.
[28] S. 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 may charge a **"reasonable administrative fee."**[29] However, current law does not define a "reasonable administrative."

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.[30]

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.[31]

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.[32] 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.[33]

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.[34]

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.[35]

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** or certificate of completion, and a sworn statement indicating compliance with the Building Code. Upon receipt of the request and approval of all other governmental approvals, the building official has **two business days** to issue the certificate of occupancy or certificate of completion or provide the permit applicant a notice of deficiencies.[36]

If the local building official does not provide a notice of the deficiencies within two business days, the request for a certificate of occupancy or certificate of completion is **deemed granted**, and the local building official **must issue the certificate of occupancy or certificate of completion the next business day**.[37]

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[29] *Id.*
[30] S. 553.791(1), (14), and (19), F.S.
[31] S. 553.791(4)-(5), F.S.
[32] S. 553.791(6), F.S.
[33] S. 553.791(7), F.S.
[34] S. 553.791(9) and (18), F.S.
[35] S. 553.791(11), F.S.
[36] S. 553.791(11)-(13), F.S.
[37] *Id.*

Building Officials, Inspectors, Plans Examiners, and Private Providers – Effect of the Bill

The bill corrects a scrivener's error and renames the "one-family and two-family dwelling" training program as the "residential" training program in order to conform with the use of "residential inspector" in related provisions of Florida Statutes.

The bill provides that a person may complete the 4-year internship as a building code inspector or plans examiner while **employed full-time with a private provider or a private provider's firm,** which performs the services of a building inspector or plans examiner, while under the direct supervision of a licensed building official.

The bill also provides that the BCAIB must create a rule allowing partial completion of an internship program to be transferred between any authorized internship provider, including local jurisdictions or **private providers, or a private provider's firm.**

The bill removes "the supervision of the licensee on a consulting or advisory basis" from the list of examples of specifically identified "special conditions or requirements" to be used by the BCAIB when issuing provisional licenses.

The BCAIB may still issue a provisional license with a special condition or requirement that the BCAIB deems necessary to protect the public safety and health. However, the bill prohibits the BCAIB from issuing a provisional license with a special condition or requirement related to employment by a municipality, county, or other local government agency.

Private Providers

The bill provides that a person with a provisional license issued by the BCAIB may be a duly authorized representative for a private provider. A duly authorized representative, who only has a provisional license, must be under the direct supervision of a licensed building official.

The bill provides that if an owner or contractor retains a private provider for plans review or inspection services the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor as long as such access is provided by software that protects exempt records from disclosure.

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.

The bill provides that upon receiving a request for a certificate of occupancy or certificate of completion and approval of all other government approvals, a building official has **10 business days**, instead of two business days, to issue the certificate or provide the permit applicant a notice of deficiencies. However, if the permit is related to a single-family or two-family dwelling, the local building official still has only two business days to issue the certificate or provide the permit applicant a notice of deficiencies.

The bill also provides that payment of all outstanding fees is included in "all other government approvals," and must be paid before the time-period begins for a local building official to issue a certificate of occupancy or certificate of completion or provide the permit applicant a notice of deficiencies.

If a local building official does not provide a notice of deficiencies within two business days, the request for a certificate of occupancy or certificate of completion 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 ten business days or two business days, 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.

Demolition Building Permits – Current Situation

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.[38]

According to news reports, since 2019, there has been an uptick in permits to demolish older single-family homes in South Florida in order to build new single-family homes.[39]

Some local governments in Florida have adopted land development regulations that determine certain older single-family buildings to be historic. Some local governments have placed restrictions on property owners from obtaining permits for the demolition of the older single- family buildings that the local governments have deemed historic. Below are examples of such regulations:

- Prohibiting certain building permits, such as demolition permits, for buildings that are being considered for historic designation.[40]
- Requiring a public hearing before a preservation board.[41]
- Requiring a special demolition permit.[42]
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:[43]
    - The colors, pattern, and trim used in the building's façade.
    - Design of the roof.
    - The proportions and relationships between doors and windows.

Proponents to these land development regulations argue that people buy property in order to demolish homes that are designed by noteworthy architects, owned by famous people, or reflect Florida's history. Proponents argue these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.[44]

Opponents of these regulations argue that these older homes are damaged, do not meet the Building Code's minimum flood elevation requirements, and can be demolished for a new home that meets the requirements of the current Building Code.[45]

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[38] S. 553.79(1), F.S.
[39] Pedro Portal, *More demolition applications for historic houses in Miami Beach*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166757.html (last visited Jan. 12, 2022).
[40] *Id.*
[41] Article 8, Coral Gables Zoning Code; *Preserving Our Past*: A Guide to Historic Preservation in Coral Gables, https://evogov.s3.amazonaws.com/media/91/media/52093.pdf (last visited Jan. 17, 2022).
[42] Sec. 54-71., Town of Palm Beach Code of Ordinances.
[43] Sec. 54-122., Town of Palm Beach Code of Ordinances.
[44] Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022) https://www.miamiherald.com/opinion/editorials/article257198932.html (last visited Jan. 17, 2022).
[45] Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166737.html (last visited Jan. 12, 2022); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/ (last visited Jan. 17, 2022).

Demolition Building Permits – Effect of the Bill

The bill provides 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** his or her single-family residential structure provided that:

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program;[46]
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

An application for a demolition permit for such single-family structure may only be reviewed administratively for compliance with the Building Code, Fire Prevention Code, local amendments to such codes, and any regulations applicable to a similarly situated parcel. Such applications may not be subject to any additional local land development regulations or public hearings.

A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.

If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new single-family residential structure constructed on the site of the demolished structure that would not otherwise be applicable to a similarly situated vacant parcel.

The bill provides that this does not apply to a:

- Structure designated on the National Register of Historic Places;[47]
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

Local Government Review of Building Permit Applications – Current Situation

Development Orders and Permits

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.[48] A

[46] In order to support the National Flood Insurance Program, FEMA identifies, publishes, and periodically updates flood hazard data nationwide. This data is provided to communities in the form of a Flood Insurance Rate Map and Flood Insurance Study report, typically prepared in a countywide format. FEMA, *Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019*, https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited Jan. 17, 2022).

[47] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Jan. 17, 2022); National Park Service, *How to List a Property*, https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm (last visited Jan. 17, 2022).

[48] S. 163.3164(16), F.S.

development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.[49]

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specifying the deficiencies.[50] If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information.[51]

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.[52]

If a county or municipality requests additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or municipality must:[53]

- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 30 days of receiving the information, if the request is the county or municipality's **first request**;
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 10 days of receiving the information, if the request is the county or municipality's **second request**; and
- Deem the application complete within 10 days of receiving the information or proceed to process the application for approval or denial unless the applicant waived the county or municipality's time limitations in writing, if the request is the county or municipality's **third request**.

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.[54] If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant may request the county or municipality proceed to process the application for approval or denial.[55] If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.[56]

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.[57]

Building Permit Applications

Local governments are required to review certain building permit applications within a specified time period after receiving the application.[58] These permit types include, but are not limited to, construction or installation of an accessory structure, installation of an alarm system, a nonresidential building less than 25,000 square feet, electric, plumbing, mechanical, or roofing systems, master building permits, or the construction of single-family residential buildings.[59]

[49] *See* ss. 125.022, 163.3164(15), and 166.033, F.S.
[50] Ss. 125.022(1) and (2), and 166.033 (1) and (2), F.S.
[51] *Id.*
[52] Ss. 125.022(2)(a) and 166.033(2)(a), F.S.
[53] Ss. 125.022(2) and 166.033(2), F.S.
[54] *Id.*
[55] *Id.*
[56] Ss. 125.022(3) and 166.033(3), F.S.
[57] Ss. 125.022(1) and 166.033(1), F.S.
[58] S. 553.792, F.S.
[59] S. 553.792(2), F.S.

When a local government receives an application for a building permit, except for master building permits, and single-family residential buildings, the local government must: [60]

- Inform the applicant within 10 days of receiving the application what additional information, if any, is needed to complete the application;[61]
- Notify the applicant within 45 days of the application being deemed complete if additional information is necessary to determine the sufficiency of the application;[62] and
- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.[63]

These time limitations do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.[64]

Local governments are required to reduce the permit fee for any building permit application by 10 percent of the original permit fee for each business day that a local government fails to meet the time period required for building permit application approval by statute or local ordinance.[65] This requirement does not apply if the local government and the applicant have agreed to an extension of time to process the permit.

Local Government Review of Building Permit Applications – Effect of the Bill

The bill provides that a local government may only make three requests for additional information from an applicant applying for the following types of building permits:

- Accessory structure.
- Alarm permit.
- Nonresidential buildings less than 25,000 square feet.
- Electric.
- Irrigation permit.
- Landscaping.
- Mechanical.
- Plumbing.
- Residential units other than a single-family unit.
- Multifamily residential not exceeding 50 units.
- Roofing.
- Signs.
- Site-plan approvals and subdivision plats not requiring public hearings or public notice.
- Lot grading and site alteration associated with the permit application

However, an applicant may agree in writing to waive the limitation that local governments may only make three requests for additional information for such permits.

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[60] S. 553.792(1), F.S.

[61] If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.

[62] If additional information is needed the local government must specify what additional information is necessary. The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.

[63] This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

[64] S. 553.792(2), F.S.

[65] S. 553.792(1)(b), (2)(b), F.S.

If a local government makes a request for additional information from an applicant for one the above building permits, and the applicant provides the information within 30 days of receiving the request, the local government must:

- Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies within 15 days of receiving the information from the applicant, if the request is the local government's **first request**.
- Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies within 10 days of receiving the information from the applicant, if the request is the local government's **second request**.
- Deem the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies within 10 days of receiving the information from the applicant, if the request is the local government's **third request**.

Prior to making a third request for information the local government must offer to meet with the permit applicant to attempt to resolve outstanding issues.

If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, shall proceed to process the application for approval, approval with conditions, or denial.

If a local government fails to meet these deadlines it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. However, these time limitations do not apply when a law, agency rule, or local ordinance specifies different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.

Local Government Building Permit Fees – Current Situation

Each local government may provide a schedule of reasonable fees in order to cover the costs of inspection and enforcement of the Building Code.[66] A local government entity's fees, including any fines or investments, must be used solely for carrying out that local government entity's responsibilities in enforcing the Building Code. The basis for the fee structure must relate to the level of service provided by the local government. The fees charged must be consistently applied.[67]

"Enforcing the Building Code," includes:[68]

- The direct costs and reasonable indirect costs associated with review of building plans, building inspections, re-inspections, and building permit processing.
- Building code enforcement.
- Fire inspections associated with new construction.
- 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.

[66] Ss. 125.56(2), 166.222, and 553.80(7), F.S.
[67] Ss. 125.56(2) and (4), 166.222, and 553.80(7), F.S.
[68] S. 553.80(7), F.S.

Local governments are prohibited from using fees to cover the cost of enforcing the Building Code to fund:[69]

- Planning and zoning or other general government activities;
- Inspections of public buildings for a reduced fee or no fee;
- Public information requests, community functions, boards, and any program not directly related to enforcement of the Building Code; and
- Enforcement and implementation of any other local ordinance, excluding local amendments to the Building Code and local ordinances directly related to enforcing the Building Code.

Local governments are also prohibited from levying fees that would generate a total estimated annual revenue that exceeds the total estimated annual cost of its enforcement activities.[70] If any excess funds are accumulated, the local government has discretion to issue refunds or **carry forward those funds into future years**. Local governments are required to use "recognized management, accounting, and oversight practices" to ensure fees, fines, and investment earnings are maintained and used only for authorized purposes.[71]

Prior to 2019, there was no limit on the amount of such funds that local governments could carry forward into future years.[72]

In 2019, the Legislature limited the amount of funds generated by Building Code enforcement activities that local governments could carry forward.[73] Current law provides that **local governments may not carry forward an amount that exceeds an amount equal to one year of their operating budget for Building Code enforcement activities**. The amount of the operating budget is determined by averaging the local government's operating budget for Building Code enforcement activities from the previous four fiscal years. A local government may not count any funds held in reserve when determining the four-year rolling average of its operating budget.[74]

If a local government carries forward an amount of funds that exceeds the statutory limit, it must use the excess funds to rebate and reduce permit fees or for the construction of a building that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners.[75]

However, a local government may carry forward funds that exceed the allowed statutory limit if the local government established a Building Inspections Fund Advisory Board prior to 2019, and the board recommends to carry forward such excess funds. The board must consist of five members from the construction industry stakeholder community.[76]

Local Government Fees – Effect of the Bill

The bill provides that an owner or builder with a valid building permit issued by a local government for a fee, or an association of owners or builders located in Florida that has members with valid building permits issued by a local government for a fee, **may bring a civil action** against the local government to enforce the requirement that the local government must use excess funds to rebate and reduce permit fees or construct a building that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners.

B. SECTION DIRECTORY:

[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *See* s. 553.80(7), F.S. (2018).
[73] *See* Ch. 19-75, Laws of Fla.
[74] S. 553.80(7), F.S.
[75] *Id.*
[76] *Id.*

Section 1. Amends s. 468.603, F.S., relating to definitions.

Section 2. Amends s. 468.609, F.S., relating to standards for certification; additional categories of certification.

Section 3. Amends s. 553.79, F.S., relating to permits; applications; issuance; inspections.

Section 4. Amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 5. Amends s. 553.792, F.S., relating to building permit application to local government.

Section 6. Amends s. 553.80, F.S., relating to enforcement.

Section 7. Providing an effective date of July 1, 2022.

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:

   None.

2. Expenditures:

   Indeterminate. The bill provides a cause of action for certain individuals and associations to enforce the requirement that local governments must use excess funds generated by Building Code enforcement for lawful purposes. It is indeterminate if this will require local governments to expend funds to defend such actions.

   Local governments may also have to expend funds to ensure they meet the bill's requirements relating to requesting additional information for reviewing building permit applications. However, the amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of people who qualify for licensure as a building inspector or plans examiner, which may lead to a decrease in the cost of construction because of a decrease in the time needed for inspections and plans review.

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 neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES