



OFFICE OF THE CITY MANAGER

LTC No. **261-2022**

LETTER TO COMMISSION

TO: Honorable Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager
Rafael A. Paz, City Attorney

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DATE: July 1, 2022

SUBJECT: **New Law Limiting City's Review of Demolition Permits for Single Family Homes in Miami Beach**

On May 25, 2022, the Governor signed into law HB 423, which will significantly impact the current review process for new construction and demolition permits for single-family homes within all zoning districts in the City. HB 423 was adopted unanimously by both the Florida Senate (38-0) and House of Representatives (113-0). The new Law will take effect on July 1, 2022.

HB 423, in pertinent part, applies to single-family homes 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 . . . if the lowest finished floor elevation of such structure is at or below base flood elevation as established by the Florida Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher"

The new Law therefore applies to single-family homes in Miami Beach with a lowest finished floor elevation at or below base flood elevation ("BFE") plus one (1) foot of freeboard (i.e. BFE + 1'). Because all single-family homes in the City are located in moderate flood zones or special flood hazard areas as designated by FEMA, the restrictions in the new Law will apply to ALL single-family homes in the City that have a lowest finished floor elevation at or below BFE + 1'.

A. New restrictions on demolition permits for single-family homes.

HB 423 includes the following amendments, which will impact the City's review and approval of demolition permits for qualifying single-family homes:

1. A local government may not prohibit or otherwise restrict a private property owner from obtaining a building permit to demolish a single-family residential structure that is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area if the lowest finished floor elevation is at or below BFE under the Florida Building Code or a higher BFE as may be required by local ordinance, whichever is higher. The following structures are exempt from these provisions:

- a. A structure designated on the National Register of Historic Places;
 - b. A privately owned single-family residential structure designated historic by a local, state, or federal government agency **on or before January 1, 2022**; and
 - c. A 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**.
2. An application for a demolition permit for a qualifying home **may only be reviewed administratively** for compliance with the Florida Building Code, Florida Fire Prevention Code, and the Life Safety Code, and any regulations applicable to a similarly situated parcel. **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.
 3. A local government may not impose additional regulatory or building requirements on a new home built on the site of a demolished single-family structure which would not otherwise be applicable to a similarly situated vacant parcel.

B. Impact on the City's review of applications to demolish single-family homes.

As it pertains to the City's current regulations on single-family homes, the new Law would preempt or otherwise restrict the City as follows:

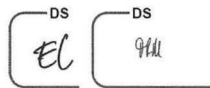
1. **The new Law prohibits the City from requiring the Design Review Board ("DRB") to review the design of a replacement for a pre-1942 single-family home prior to approval of a demolition permit for the existing home.** This includes related benchmarks that apply to the demolition of pre-1942 homes, namely, the requirements to obtain DRB approval for the replacement design prior to the issuance of a building permit, file a permit application, and pay all required fees.
2. **The new Law limits the City's ability to designate single-family homes as Historic, without the Owner's consent.** The Law exempts homes designated *before* January 1, 2022. However, for homes designated without the owner's consent *after* January 1, 2022, an application for a demolition permit may only be reviewed administratively, and the application may not be subject to any additional local land development regulations or public hearings. This particular provision will impact the City's ability, in the future, to designate a single-family home as historic without the owner's consent. As a general rule, under the City's Land Development Regulations, once a property is historically designated, any proposed demolition must be reviewed and approved by the Historic Preservation Board ("HPB") following a public hearing, pursuant to the Certificate of Appropriateness criteria. Because the new law *prohibits* the City from requiring a public hearing or imposing additional land development regulations prior to the issuance of a demolition permit for a home designated after January 1, 2022, and provides that demolition applications may only be reviewed administratively, the new law restricts the City's authority to designate single-family homes moving forward. The City may not impose any additional regulatory or building requirements on the new single-family home which would not otherwise be applicable

to a similarly situated vacant parcel. Notably, the law exempts single-family homes designated historic after January 1, 2022, if the home is designated with the consent of the owner.

C. Conclusion.

HB 423 significantly constrains the City's authority to review and approve demolition permits for qualifying single-family homes. However, the Administration will fully comply with the new State requirements, which take effect on July 1, 2022, and which supersede certain conflicting provisions of the Land Development Regulations. Any land use board application that conflicts with the new Law will be withdrawn from the respective board agenda, as the City's land use boards can no longer consider such applications under Florida law. This includes any application for DRB approval for the replacement of a pre-1942 single-family home, which does not include a variance, waiver, or understory; and any HPB application to designate a single-family home as historic without the consent of the property owner.

We intend to draft any LDR amendments necessary to comply with HB 423 as part of the Resiliency Code. If you have any questions, please do not hesitate to contact the Planning Director or the City Attorney.



ATH/RAP/ETC/TRM/NEK/DHT/MAB

Attachments: Ch. 2022-136, Laws of Florida (HB 423)
House of Representatives Final Bill Staff Analysis for HB 423

c: Rafael E. Granado, City Clerk

CHAPTER 2022-136

Committee Substitute for
Committee Substitute for House Bill No. 423

An act relating to building regulation; amending s. 468.603, F.S.; defining the term “private provider”; amending s. 468.609, F.S.; revising eligibility requirements for a person applying to become certified as a building code inspector or plans examiner; authorizing an individual to perform certain duties under certain conditions if he or she is under the direct supervision of a certified building code official; revising the special conditions or requirements that the Florida Building Code Administrators and Inspectors Board may impose on provisional certificates; authorizing a person to perform certain duties under certain conditions if the person is under the direct supervision of a person licensed as a building code official, engineer, or architect; authorizing that partial completion of an internship program be transferable among jurisdictions, private providers, and firms of private providers; amending s. 553.79, F.S.; providing that a local government may not prohibit or restrict demolition permits for single-family residential structures located in certain areas; providing that local governments may only review demolition permits administratively for compliance with certain regulations; prohibiting a property owner from being penalized for a demolition that is in compliance with a demolition permit; prohibiting local governments from imposing additional requirements on certain structures; providing applicability; amending s. 553.791, F.S.; revising the definition of the term “duly authorized representative”; limiting the administrative fee that a local jurisdiction can charge when an owner or contractor hires a private provider for inspection services; requiring the local jurisdiction to provide access to certain documents to a private provider, contractor, and owner with certain restrictions; requiring the local building official to issue a certificate of occupancy or certificate of completion within a certain number of days after receipt of certain information, including the payment of all outstanding fees; providing that a certificate of occupancy or certificate of completion is automatically granted and issued, and the permit application closed, under certain circumstances; requiring the local building official to provide a written certificate of occupancy or certificate of completion within a specified time; amending s. 553.792; revising requirements for when a local government requests certain additional information from an applicant for a building permit; limiting the number of times the local government may request such information; providing requirements for a local government if a certain request is made by an applicant; amending s. 553.80, F.S.; authorizing a civil action under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) is added to section 468.603, Florida Statutes, to read:

468.603 Definitions.—As used in this part:

(9) “Private provider” has the same meaning as in s. 553.791(1).

Section 2. Paragraph (c) of subsection (2), paragraphs (c) and (d) of subsection (7), and paragraph (b) of subsection (10) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 4 years’ combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633, with a minimum of 3 years’ verifiable full-time experience in firesafety inspection or firesafety plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years’ experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved

training portion of this requirement must shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board must shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633 and:

a. Has at least 4 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 4 years' verifiable full-time experience as a firesafety inspector licensed under ~~pursuant to~~ chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for residential one-family and two-family dwelling training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while also employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. A person may also complete the internship certification program while employed full time by a private provider or a private provider's firm that performs the services of a building code inspector or plans examiner, while under the direct supervision of a certified 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.

b. Has passed an examination administered by the International Code Council in the certification category sought. Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)

(c) The board shall provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters as the board deems ~~may deem~~ necessary to protect the public safety and health. The board may not place a special condition or requirement on a provisional certificate with respect to the requirement of employment by a municipality, county, or other local governmental agency.

(d) A person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a person licensed as a certified building code administrator under this part who holds a standard certification and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

2. That an applicant for certification as a building code inspector or plans examiner may apply for a provisional certificate valid for the duration of the internship period.

3. That partial completion of an internship program is transferable among jurisdictions, private providers, and firms of private providers ~~may be transferred between jurisdictions~~ on a form prescribed by the board.

4. That an applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

5. That an applicant may apply for a standard certificate at least 30 days but ~~and~~ no more than 60 days before completing the internship certification program.

6. That a building code inspector or plans examiner who has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code Council and a board-approved 40-hour code training course.

Section 3. Subsection (25) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(25)(a) 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 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 if the lowest finished floor elevation of such structure is at or below base flood elevation as established by the Florida Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher, provided that such permit otherwise complies with all applicable Florida Building Code, Florida Fire Prevention Code, and Life Safety Code requirements, or local amendments thereto.

(b) An application for a demolition permit sought under this subsection may only be reviewed administratively for compliance with the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulations applicable to a similarly situated parcel. 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.

(c) 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 which would not otherwise be applicable to a similarly situated vacant parcel.

(d) This subsection does not apply to any of the following:

1. A structure designated on the National Register of Historic Places.
2. A privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022.
3. A 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.

Section 4. Paragraph (f) of subsection (1), paragraph (b) of subsection (2), and subsection (13) of section 553.791, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

553.791 Alternative plans review and inspection.—

(1) As used in this section, the term:

(f) “Duly authorized representative” means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard or provisional certificate under part XII of chapter 468. A duly authorized representative who only holds a provisional certificate under part XII of chapter 468 must be under the direct supervision of a person licensed as a building code administrator under part XII of chapter 468.

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee, which shall be based on the cost that is actually incurred, including the labor cost of the personnel providing the service, by the local jurisdiction or attributable to the local jurisdiction for the clerical and supervisory assistance required, or both.

(c) If an owner or a contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must provide equal access to all permitting and inspection documents and reports to the private provider, owner, and contractor if such access is provided by software that protects exempt records from disclosure.

(13)(a) No more than 10 2 business days, or if the permit is related to single-family or two-family dwellings then no more than 2 business days, after receipt of a request for a certificate of occupancy or certificate of completion and the applicant’s presentation of a certificate of compliance and approval of all other government approvals required by law, including the payment of all outstanding fees, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections.

(b) If the local building official does not provide notice of the deficiencies within the applicable time periods under paragraph (a) prescribed 2-day period, the request for a certificate of occupancy or certificate of completion is automatically shall be deemed granted and deemed the certificate of occupancy or certificate of completion shall be issued as of by the local building official on the next business day. The local building official must provide the applicant with the written certificate of occupancy or certificate of completion within 10 days after it is automatically granted and issued. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit a corrected request for a certificate of occupancy or certificate of completion.

Section 5. Subsection (1) of section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government.—

(1)(a) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(b)1. When reviewing an application for a building permit, a local government may not request additional information from the applicant more than three times, unless the applicant waives such limitation in writing.

2. If a local government requests additional information from an applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 15 days after receiving such information:

- a. Determine if the application is properly completed;
- b. Approve the application;

- c. Approve the application with conditions;
- d. Deny the application; or
- e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.

3. If a local government makes a second request for additional information from the applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 10 days after receiving such information:

- a. Determine if the application is properly completed;
- b. Approve the application;
- c. Approve the application with conditions;
- d. Deny the application; or
- e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.

4. Before a third request for additional information may be made, the applicant must be offered an opportunity to meet with the local government to attempt to resolve outstanding issues. If a local government makes a third request for additional information from the applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 10 days after receiving such information unless the applicant waived the local government's limitation in writing, determine that the application is complete and:

- a. Approve the application;
- b. Approve the application with conditions; or
- c. Deny the application.

5. 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, must process the application and either approve the application, approve the application with conditions, or deny the application.

(c)(b) If a local government fails to meet a deadline provided in paragraphs (a) and (b) paragraph (a), it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline.

Each 10-percent reduction shall be based on the original amount of the building permit fee, unless the parties agree to an extension of time.

Section 6. Paragraph (a) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7)(a) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida 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. Any unexpended balances must ~~shall~~ be carried forward to future years for allowable activities or must ~~shall~~ be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years. For purposes of this subsection, the term "operating budget" does not include reserve amounts. Any amount exceeding this limit must be used as authorized in subparagraph 2. However, a local government that ~~which~~ established, as of January 1, 2019, a Building Inspections Fund Advisory Board consisting of five members from the construction stakeholder community and carries an unexpended balance in excess of the average of its operating budget for the previous 4 fiscal years may continue to carry such excess funds forward upon the recommendation of the advisory board. The basis for a fee structure for allowable activities must ~~shall~~ relate to the level of service provided by the local government and must ~~shall~~ include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged must ~~shall~~ be consistently applied.

1. As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

2. A local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees, or to pay for the construction of a building or structure that houses a local government's building code enforcement agency or the training programs for building officials, inspectors, or plans examiners associated with the enforcement of the Florida Building Code. Excess funds used to construct such a building or

structure must be designated for such purpose by the local government and may not be carried forward for more than 4 consecutive years. An owner or builder who has a valid building permit issued by a local government for a fee, or an association of owners or builders located in the state that has members with valid building permits issued by a local government for a fee, may bring a civil action against the local government that issued the permit for a fee to enforce this subparagraph.

3. The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

- a. Planning and zoning or other general government activities.
- b. Inspections of public buildings for a reduced fee or no fee.
- c. Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.
- d. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code as defined in subparagraph 1.

4. A local government ~~must~~ shall use recognized management, accounting, and oversight practices to ensure that fees, fines, and investment earnings generated under this subsection are maintained and allocated or used solely for the purposes described in subparagraph 1.

5. The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

- a. Providing proof of licensure under ~~pursuant to~~ chapter 489;
- b. Recording or filing a license issued under ~~pursuant to~~ this chapter;
- c. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440; or
- d. Charging surcharges or other similar fees not directly related to enforcing the Florida Building Code.

Section 7. This act shall take effect July 1, 2022.

Approved by the Governor May 25, 2022.

Filed in Office Secretary of State May 25, 2022.

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 423 Building Regulation

SPONSOR(S): Commerce Committee and Regulatory Reform Subcommittee, LaMarca and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 644

FINAL HOUSE FLOOR ACTION: 113 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 423 passed the House on March 4, 2022, and subsequently passed the Senate on March 4, 2022.

The Florida Building Code (Building Code) must be applied and enforced uniformly and consistently across the state. 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 Building Code Administrators and Inspectors Board (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.
- 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:

- Allows three requests for additional information from an applicant for certain building permits.
- Requires local governments to review such information 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. See Fiscal Comments.

The bill was approved by the Governor on May 25, 2022, ch. 2022-136, L.O.F., and will become effective on July 1, 2022.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0423z1.DOCX

DATE: 5/31/2022

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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.

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

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

⁹ See ss. 125.56(4)(a), 553.79(1), F.S.

¹⁰ S. 110, Seventh edition, 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.

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
- 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

¹⁶ See s. 468.603(8), F.S.

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)

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

<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).

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.

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

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

²⁸ S. 553.791(2)(b), F.S.

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.

building official **must issue the certificate of occupancy or certificate of completion the next business day.**³⁷

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

³⁷ *Id.*

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

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).

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

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.

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-slanted-for-demolition/> (last visited Jan. 17, 2022).

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).

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 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

⁴⁸ S. 163.3164(16), F.S.

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.

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

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.

⁵⁸ S. 553.792, F.S.

⁵⁹ S. 553.792(2), F.S.

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.

- 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.

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 complete and approve the application, approve the application with conditions, or deny the application 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

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.

“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.

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

⁶⁸ S. 553.80(7), F.S.

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.*

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.

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:

See Fiscal Comments.

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:

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. The amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by

⁷⁶ *Id.*

state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.