

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 580

INTRODUCER: Senator Oelrich

SUBJECT: Building Construction Standards

DATE: March 26, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Pre-meeting</b>
2.			RI	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

This bill prohibits local enforcement agencies, inspectors, building officials, and other entities from requiring the inspection of any portion of a residential structure that is not directly related to the activity for which a permit is sought as a condition for issuance of that permit.

This bill substantially amends section 553.79 of the Florida Statutes.

**II. Present Situation:**

**The Florida Building Code**

The purpose and intent of the Florida Building Codes Act, located in part IV of ch. 553, F.S., is “to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code,” known as the Florida Building Code.<sup>1</sup> Section 553.72, F.S., defines the Florida Building Code as a “single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state” which establishes minimum standards that shall be enforced by authorized state and local government enforcement agencies. The Florida Building Code consists of seven volumes which include: Building, Residential, Mechanical, Plumbing, Fuel Gas, Existing Building, and Test Protocols for High-Velocity Hurricane Zones.

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

## Florida Building Commission

The Florida Building Commission is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.<sup>2</sup> The Commission is responsible for adopting and enforcing the Florida Building Code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.<sup>3</sup> The Commission is required to update the Florida Building Code triennially based upon the “code development cycle of the national model building codes, . . . .”<sup>4</sup> Pursuant to s. 553.73, F.S., the Commission is authorized to adopt internal administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.<sup>5</sup>

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the Florida Building Code to enter into agreements with other governmental units in order to delegate their code enforcement powers and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

## Building Permits

Section 553.79, F.S., prohibits any person, firm, corporation, or governmental entity from constructing, erecting, altering, modifying, repairing, or demolishing any building within this state without first obtaining a permit from the appropriate enforcing agency.<sup>6</sup> An enforcing agency may not issue a permit for these activities until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code to ensure compliance with the Code and until a certified firesafety inspector ensures compliance with the Florida Fire Prevention Code.

***Existing Building Permits.***—The Existing Buildings Volume of the Florida Building Code provides construction requirements for the repair, alteration, change of occupancy, addition, and relocation of existing buildings.<sup>7</sup> Pursuant to this volume of the Code, the Department of Community Affairs (Department) states that the following situations are examples of construction activities that may require the inspection of an existing building or structure prior to issuing a permit for the proposed improvement:

- Change of occupancy Permit may be necessary to substantiate the proposed improvements and insure that the existing building systems are sufficient to accommodate the new occupancy classification.
- Repair to damaged buildings A full inspection of a damaged building may be necessary before issuing a permit for improvement to ensure that the proposed improvements will eliminate any existing dangerous conditions.

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<sup>2</sup> See s. 553.74(1)(a)-(w), F.S.

<sup>3</sup> Sections 553.73 and 553.74, F.S.

<sup>4</sup> Florida Building Commission, *Report to the 2009 Legislature*, at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).

<sup>5</sup> See ss. 553.76, 553.775, and 553.73(7), F.S., respectively.

<sup>6</sup> Section 553.79(1), F.S.

<sup>7</sup> Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 3 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

- Addition or modification Permit may be necessary to determine whether the proposed addition/modification would impact the existing building or structure, and whether the addition creates or extends any nonconformity in the existing building to which the addition is being made in regards to accessibility, structural strength, fire safety, means of egress, or the capacity of mechanical, plumbing, or electrical systems.

**Local Code Enforcement.**—The Department states that it is commonplace for local governments to adopt the International Property Maintenance Code through a local ordinance in order to establish minimum maintenance requirements for existing buildings, and to provide authority to inspect such existing buildings or structures for property maintenance, code violation, and unsafe structures.<sup>8</sup>

**Florida Fire Prevention Code.**—The Florida Fire Prevention Code has been adopted by the State Fire Marshal and is enforced locally by the local fire officials. The Florida Fire Prevention Code is updated every three years and contains all firesafety regulations relating to the construction and modification of building structures.<sup>9</sup> The State Fire Marshal is required to notify local fire departments no later than 180 days prior to the triennial adoption of the Florida Fire Prevention Code in order to consider whether local amendments should be implemented. The Florida Fire Prevention Code also applies to existing buildings, to the extent that the local fire official determines that a threat to firesafety or property exists.

### **Classification of Residential Buildings**

Chapter three of the Florida Building Code classifies the term “residential building” to include single-family dwellings, two-family dwellings, multi-family dwellings, transient residential buildings, adult care facilities, and childcare facilities.<sup>10</sup>

Pursuant to s. 310 of the Florida Building Code, Residential Group R includes the use of a building or structure, or a portion thereof, for sleeping purposes. Residential Group R is broken down into four groups labeled R-1 through R-4, which are based on the residential occupancy of the structure.<sup>11</sup> The residential group occupancy classifications are as follows:

- Group R-1 are residential occupancies containing sleeping units where the occupants are primarily transient in nature. R-1 occupancies include transient boarding houses, hotels and motels.
- Group R-2 are residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature. R-2 occupancies include apartment houses, non-transient boarding houses, convents, dormitories, fraternities/sororities, non-transient hotels and motels, monasteries, and vacation timeshare properties.
- Group R-3 are residential occupancies where the occupants are primarily permanent in nature and are not classified as Group R-1, R-2, R-4 or Institutional Group I. R-3 occupancies include buildings that do not contain more than two dwelling units, adult and

<sup>8</sup> *Id.* at 4.

<sup>9</sup> Section 633.0215(1), F.S.

<sup>10</sup> Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 2 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

<sup>11</sup> *Id.*

child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours, and congregate living facilities with 16 or fewer persons.

- Group R-4 are residential occupancies that include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.<sup>12</sup>

### III. Effect of Proposed Changes:

This bill would create subsection (17) within s. 552.79, F.S., to prohibit a local enforcement agency, local building code administrator, inspector, and other officials and entities from requiring the inspection of any portion of a residential structure that is not directly related to the construction, erection, alteration, modification, repair, or demolition for which a permit is sought, as a condition for issuance of that permit.

This act shall take effect July 1, 2011.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

The provisions of this bill will have an impact on builders, contractors, engineers, and architects in relation to the issuance of residential building permits.<sup>13</sup>

#### C. Government Sector Impact:

Local enforcement agencies and other officials and entities will not be allowed to require, as a condition of issuance of a residential building permit, the inspection of any portion of

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> *Id.* at 5.

a residential structure that is not directly related to the activity for which a permit is sought.

The Department of Community Affairs has articulated that this bill will have an impact on the Florida Building Commission and may impede upon local code enforcement authority to inspect and determine whether an existing structure is unsafe.<sup>14</sup>

## VI. Technical Deficiencies:

The Department of Community Affairs recommends clarification of the term “residential building” in section one of this bill. The Department states that the term “residential building” as used in this bill is vague and inconsistent with the classification of residential property in the Section 310 of the Florida Building Code (*see* present situation for discussion).<sup>15</sup>

The Department further recommends the term “not directly related” be clarified, since it currently may be interpreted to prohibit inspections of existing buildings.<sup>16</sup>

As a result of these two concerns, the Department has suggested the following amendment:

**(17) Except as required by the Florida Building Code, a local enforcement agency or local building code administrator, inspector, or other official or entity may not require, as a condition of issuance of a detached single-family dwelling residential building permit, the inspection of any portion of a building, or structure real property, or building systems that is not directly related to the construction, erection, alteration, modification, repair, or demolition of the building, structure or real property parcel for which the permit is sought. This section does not apply to existing buildings, structures, or systems that are unsafe and/or of imminent danger of failure of collapse.**<sup>17</sup>

## VII. Related Issues:

The Department of Community Affairs is unsure whether the provisions of this bill are in conflict with the Florida Fire Prevention Code.<sup>18</sup>

## VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

<sup>14</sup> Florida Department of Community Affairs, *SB 580 Agency Analysis*, at 5 (Feb. 21, 2011) (on file with the Florida Senate Committee on Community Affairs).

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 7.

<sup>18</sup> *Id.* (stating that “it is advisable to refer the proposed language to the State Fire Marshal for input”).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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