

By the Committee on Comprehensive Planning, Local and Military Affairs; and Senator Constantine

316-2090-02

1 A bill to be entitled

2 An act relating to uniform building codes;

3 requiring the Florida Building Commission to

4 develop building code provisions to facilitate

5 the rehabilitation and use of existing

6 structures; requiring the commission to

7 identify legislative changes required to

8 implement such code provisions; requiring a

9 report to the Legislature; amending s. 604.50,

10 F.S.; redefining the term "nonresidential farm

11 building" for purposes of applicability of

12 building codes; creating s. 553.791, F.S.;

13 providing an alternative method of building

14 plan code review and building inspections;

15 providing for building owners to use private

16 providers for building code inspection

17 services; prescribing standards for such

18 private providers; prescribing powers and

19 duties of private providers and local building

20 officials; providing an appeals process;

21 prohibiting certain local rules and standards;

22 providing for exemptions from alternative

23 review and inspections; providing immunity from

24 liability for certain personnel in connection

25 with building code inspection services;

26 providing an effective date.

27

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

29

30 Section 1. (1) The Legislature directs the Florida

31 Building Commission to develop building code provisions that

1 may be added to the Florida Building Code to facilitate the
2 rehabilitation and use of existing structures. The commission
3 shall select from available national or international model
4 codes or the codes or code provisions adopted by another state
5 to form the foundation for the code provisions required by
6 this section.

7 (2) The commission shall seek consensus with fire
8 safety professionals, advocates for persons with disabilities,
9 representatives of the construction industry, land-use
10 planners, building officials, and others identified by the
11 commission as having an interest in building code provisions.
12 The commission may modify the selected model codes and
13 standards as needed to accommodate the specific needs of this
14 state.

15 (3) In conjunction with its code development
16 activities, the commission shall identify legislative changes
17 required to implement the code provisions developed pursuant
18 to subsections (1) and (2).

19 (4) The commission shall report the activities
20 undertaken in response to the requirements of this act to the
21 Legislature on or before January 1, 2003, as a part of the
22 annual report required by section 553.77(1)(b), Florida
23 Statutes. Recommended code provisions and the legislative
24 changes required for implementation shall be attached as
25 appendices to the annual report.

26 Section 2. Section 604.50, Florida Statutes, is
27 amended to read:

28 604.50 Nonresidential farm buildings.--Notwithstanding
29 any other law to the contrary, any nonresidential farm
30 building located on a farm is exempt from the Florida Building
31 Code and any county or municipal building code. For purposes

1 of this section "nonresidential farm building" means any
2 building or support structure used by a farm operation which
3 ~~located on a farm that~~ is not used as a residential dwelling
4 and is located on land classified as agricultural land under
5 s. 193.461. Farm is as defined in s. 823.14.

6 Section 3. Section 553.791, Florida Statutes, is
7 created to read:

8 553.791 Alternative plans review and inspection.--

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

10 (a) "Applicable codes" means the Florida Building Code
11 and any local technical amendments to the Florida Building
12 Code but does not include the applicable minimum fire
13 prevention and fire safety codes adopted pursuant to chapter
14 633.

15 (b) "Request for certificate of occupancy or
16 certificate of completion" means a properly completed and
17 executed application for a certificate of occupancy or
18 certificate of completion, the certificate of compliance from
19 the private provider required pursuant to subsection (10), any
20 applicable fees, and those documents required by the local
21 building official to determine that the fee owner has secured
22 all other government approvals required by law.

23 (c) "Building" means any construction, erection,
24 alteration, demolition, addition to, or substantial
25 improvement of any structure for which permitting by a local
26 law enforcement agency is required.

27 (d) "Building code inspection services" means those
28 services described in s. 468.603(6) and (7) involving the
29 review of building plans to determine compliance with
30 applicable codes and those inspections required by law of each
31 phase of construction for which permitting by a local

1 enforcement agency is required to determine compliance with
2 applicable codes.

3 (e) "Duly authorized representative" means an agent of
4 the private provider identified in the permit application who
5 reviews plans or performs inspections as provided by this
6 section and who is licensed as an engineer under chapter 471
7 or as an architect under chapter 481, or who holds a standard
8 certificate under part XII of chapter 468.

9 (f) "Local building official" means the individual
10 within the governing jurisdiction responsible for direct
11 regulatory administration or supervision of plan review,
12 enforcement and inspection of any construction, erection,
13 alteration, demolition, addition to, or substantial
14 improvement of any structure for which permitting is required
15 to indicate compliance with applicable codes and includes any
16 duly authorized designee of such person.

17 (g) "Permit application" means a properly completed
18 and submitted application for the requested building or
19 construction permit, the plans reviewed by the private
20 provider, the affidavit from the private provider required
21 pursuant to subsection (5), any applicable fees, and those
22 documents required by the local building official to determine
23 that the fee owner has secured all other government approvals
24 required by law.

25 (h) "Private provider" means a person licensed as an
26 engineer under chapter 471 or as an architect under chapter
27 481, or a person who holds a standard certificate under part
28 XII of chapter 468.

29 (2) Notwithstanding any other provision of law, the
30 fee owner of a building may use a private provider to provide
31 building code inspection services with regard to such building

1 and may make payment directly to the private provider for the
2 provision of these services. All such services shall be the
3 subject of a written contract between the private provider, or
4 the provider's firm, and the fee owner. Notwithstanding any
5 other provision of law, the fee owner may elect to use a
6 private provider to provide both plans review and required
7 building inspections or to use the local enforcement agency
8 for one or both of these purposes.

9 (3) A private provider and any duly authorized
10 representative may perform only building code inspection
11 services that are within the disciplines covered by that
12 person's licensure or certification under chapter 481, chapter
13 471, or chapter 468. A private provider may not provide
14 building code inspection services pursuant to this section
15 upon any building designed or constructed by the private
16 provider or the provider's firm.

17 (4) A fee owner using a private provider to provide
18 building code inspection services shall notify the local
19 building official at the time of permit application on a form
20 to be adopted by the commission. This notice shall include the
21 following information:

22 (a) The services to be performed by a private
23 provider, whether plans review, required building inspections,
24 or both;

25 (b) The name, firm, address, telephone number, and
26 facsimile number of each private provider who is performing or
27 will perform such services, their professional license or
28 certification number, qualification statements or resumes,
29 and, if required by the local building official, a certificate
30 of insurance demonstrating that professional liability
31 insurance coverage is in place for the provider's firm, the

1 provider, and any duly authorized representative, in the
2 amounts required by this section; and

3 (c) An acknowledgment from the fee owner in
4 substantially the following form:

5
6 I have elected to use one or more private
7 provider to provide building code plan review
8 and/or inspection services on the building that
9 is the subject of the enclosed permit
10 application, as authorized by section 553.791,
11 Florida Statutes. I understand that the local
12 building official may not review the plans
13 submitted or perform the required building
14 inspections to determine compliance with the
15 applicable codes, except to the extent
16 specified in such law. Instead, plans review or
17 required building inspections will be performed
18 by licensed or certified personnel identified
19 in the application. The law requires minimum
20 insurance requirements for such personnel, but
21 I understand that I may require more insurance
22 to protect my interests. By executing this
23 form, I acknowledge that I have made inquiry
24 regarding the competence of the licensed or
25 certified personnel and the level of their
26 insurance and am satisfied that my interests
27 are adequately protected. I agree to indemnify,
28 defend, and hold harmless the local government,
29 the local building official, and their building
30 code enforcement personnel from any and all
31 claims arising from my use of these licensed or

1 certified personnel to perform building code
2 inspection services with respect to the
3 building that is the subject of the enclosed
4 permit application.

5
6 The fee owner must, within 1 business day, update the notice
7 if the fee owner makes any changes to the listed private
8 provider or the services to be provided by those providers.

9 (5) A private provider performing plans review under
10 this section shall review construction plans to determine
11 compliance with the applicable codes. Upon determining that
12 the plans reviewed comply with the applicable codes, the
13 private provider shall prepare an affidavit or affidavits on a
14 form adopted by the commission, certifying, under oath, that
15 the following is true and correct to the best of the private
16 provider's knowledge and belief:

17 (a) The plans were reviewed by the affiant, who is
18 duly authorized to perform plans review pursuant to this
19 section and holds the appropriate license or certificate; and

20 (b) The plans comply with the applicable codes.

21 (6)(a) Upon receipt of a permit application, the local
22 building official has 30 business days after receipt either to
23 issue the requested permit or to provide a written notice to
24 the permit applicant identifying the specific plan features
25 that do not comply with the applicable codes, as well as the
26 specific code chapters and sections. If the local building
27 official does not provide a written notice of the plan
28 deficiencies within the prescribed 30-day period, the permit
29 application shall be deemed approved as a matter of law and
30 the permit shall be issued by the local building official on
31 the next business day.

1 (b) If the local business official provides a written
2 notice of plan deficiencies to the permit applicant within the
3 prescribed 30-day period, this 30-day period shall be tolled
4 pending resolution of the matter. To resolve the plan
5 deficiencies, the permit applicant may elect either to dispute
6 the deficiencies pursuant to subsection (12) or to submit
7 revisions to correct the deficiencies.

8 (c) If the permit applicant submits revisions, the
9 local building official has the remainder of the tolled 30-day
10 period, plus 5 business days, either to issue the requested
11 permit or to provide a second written notice to the permit
12 applicant stating which of the previously identified plan
13 features remain in noncompliance with the applicable codes,
14 with specific reference to the relevant code chapters and
15 sections. If the local building official does not provide the
16 second written notice within the prescribed time period, the
17 permit shall be issued by the local building official on the
18 next business day.

19 (d) If the local building official provides a second
20 written notice of plan deficiencies to the permit applicant
21 within the prescribed time period, the permit applicant may
22 elect either to dispute the deficiencies pursuant to
23 subsection (12) or to submit additional revisions to correct
24 the deficiencies. For all revisions submitted after the first
25 revision, the local building official has an additional 5
26 business days either to issue the requested permit or to
27 provide a written notice to the permit applicant stating which
28 of the previously identified plan features remain in
29 noncompliance with the applicable codes, with specific
30 reference to the relevant code chapters and sections.

31

1 (7) A private provider performing required inspections
2 under this section shall inspect each phase of construction as
3 required by the applicable codes. The private provider shall
4 be permitted to send a duly authorized representative to the
5 building site to perform the required inspections, provided
6 that all required reports and certifications are prepared by
7 and bear the signature of the private provider. The
8 contractor's contractual or statutory obligations are not
9 relieved by any action of the private provider.

10 (8) A private provider performing required inspections
11 under this section shall provide notice to the local building
12 official of the date and approximate time of any such
13 inspection no later than the prior business day by 2 p.m.
14 local time, or by any later time permitted by the local
15 building official in that jurisdiction. The local building
16 official may visit the building site as often as necessary to
17 verify that the private provider is performing all required
18 inspections.

19 (9) Upon completing the required inspections at each
20 applicable phase of construction, the private provider shall
21 record such inspections on a form acceptable to the local
22 building official. These inspection records shall reflect
23 those inspections required by the applicable codes of each
24 phase of construction for which permitting by a local
25 enforcement agency is required. The private provider, before
26 leaving the project site, shall post each completed inspection
27 record, indicating pass or fail, at the site and provide the
28 record to the local building official within 2 business days.
29 Records of all required inspections completed to date shall be
30 maintained at the building site at all times and made
31 available for review by the local building official. The

1 private provider shall report to the local enforcement agency
2 any condition that poses an immediate threat to public safety
3 and welfare.

4 (10) Upon completion of all required inspections, the
5 private provider shall prepare a certificate of compliance on
6 a form acceptable to the local building official, summarizing
7 the inspections performed and including a written
8 representation, under oath, that the stated inspections have
9 been performed and that, to the best of the private provider's
10 knowledge and belief, the building construction inspected
11 complies with the approved plans and applicable codes. The
12 statement required of the private provider shall be
13 substantially in the following form:

14
15 "To the best of my knowledge and belief, the
16 building components and site improvements,
17 outlined herein and inspected under my
18 authority, have been completed in conformance
19 with the approved plans and the applicable
20 codes."

21
22 (11) Upon receipt of a request for certificate of
23 occupancy or certificate of completion and upon presentation
24 of certificate of compliance and approval of all other
25 governmental approvals required by law, the local building
26 official has 2 business days after receipt either to issue the
27 certificate of occupancy or completion or to provide a notice
28 to the applicant identifying the specific deficiencies, as
29 well as the specific code chapters and sections. If the local
30 building official does not provide notice of the deficiencies
31 within the prescribed 2-day period, the request for

1 certificate of occupancy or completion shall be deemed granted
2 and the certificate of occupancy or certificate of completion
3 shall be issued by the local building official on the next
4 business day. To resolve any identified deficiencies, the
5 applicant may elect either to dispute the deficiencies
6 pursuant to subsection (12) or to submit a corrected request
7 for certificate of occupancy or completion.

8 (12) If the local building official determines that
9 the building construction or plans do not comply with the
10 applicable codes, the building official may deny the permit or
11 request for a certificate of occupancy or completion, as
12 appropriate, or may issue a stop-work order for the project,
13 or any portion thereof, if it determines that such
14 noncompliance poses a threat to public safety and welfare,
15 subject to the following:

16 (a) The local building official shall be available to
17 meet with the private provider within 2 business days after
18 issuing a stop-work order or providing notice to the applicant
19 denying a permit or request for certificate of occupancy or
20 completion to resolve any dispute.

21 (b) If the local building official and private
22 provider are unable to resolve the dispute, the matter must be
23 referred to the local enforcement agency's board of appeals,
24 if one exists, which must consider the matter at its next
25 scheduled meeting or sooner. Any decision by the local
26 enforcement agency's board of appeals, or local building
27 official if there is no board of appeals, may be appealed to
28 the commission pursuant to s. 553.77(1)(h).

29 (c) Notwithstanding any provision of this section to
30 the contrary, any decision regarding the issuance of a
31 building permit, certificate of occupancy, or certificate of

1 completion may be reviewed by the local enforcement agency's
2 board of appeals, if one exists. Any decision by the local
3 enforcement agency's board of appeals, or local building
4 official if there is no board of appeals, may be appealed
5 pursuant to s. 553.77(1)(h) to the commission, which must
6 consider the matter at its next scheduled meeting.

7 (13) For the purposes of this section, any notice to
8 be provided by the local building official shall be deemed to
9 be provided to the person or entity when successfully
10 transmitted to the facsimile number listed for that person or
11 entity in the permit application, or a revised permit
12 application or, if no facsimile number is stated, when
13 actually received by that person or entity.

14 (14) No local enforcement agency, local building
15 official, or local government may adopt or enforce any law,
16 rule, procedure, or standard that is more stringent than those
17 prescribed by this section.

18 (15) A private provider may perform building code
19 inspection services under this section only if the private
20 provider maintains insurance for professional and
21 comprehensive general liability with minimum policy limits of
22 \$1 million per occurrence relating to all services performed
23 as a private provider, and including tail coverage for a
24 minimum of 5 years subsequent to the performance of building
25 code inspection services.

26 (16) When performing building code inspection
27 services, an inspector is subject to the disciplinary
28 guidelines of the applicable professional board with
29 jurisdiction over his or her license or certification under
30 chapter 468, chapter 471, or chapter 481. Any complaint
31 processing, investigation, and discipline that arise out of a

1 private provider's performance of building code inspection
2 services shall be conducted by the applicable professional
3 board.

4 (17) The fee owner of a building located within the
5 jurisdiction of a local enforcement agency that the commission
6 certifies as exempt from this section may not elect to use a
7 private provider to provide building code inspection services
8 with regard to such building. The commission may certify a
9 local enforcement agency as exempt from this section if the
10 local enforcement agency demonstrates that it routinely
11 performs building code inspection services within the time
12 frames established in this section and that a majority of the
13 following local entities consent to the exemption:

14 (a) The local chapter of the Associated General
15 Contractors;

16 (b) The local chapter of the Florida Chapter of the
17 American Institute of Architects; and

18 (c) The local chapter of the Florida Home Builders
19 Association.

20
21 A certification of exemption shall be valid for a period of 1
22 year and must be renewed annually.

23 (18) Each local building code enforcement agency shall
24 develop and maintain a process to audit the performance of
25 building code inspection services by private providers
26 operating within the local jurisdiction.

27 (19) The local government, the local building
28 official, and their building code enforcement personnel are
29 immune from liability to any person or party for any action or
30 inaction by a fee owner of a building, or by a private
31 provider or its duly authorized representative, in connection

1 with building code inspection services as authorized in this
2 section.

3 Section 4. This act shall take effect October 1, 2002.

4
5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 SB 2078

8 The CS differs from the bill as filed in that it:

9 requires the Florida Building Commission to develop
10 building code provisions to facilitate rehabilitation &
11 use of existing structures;

12 narrows the definition of nonresidential farm buildings,
13 which are exempt from the requirements of the Florida
14 Building code;

15 clarifies the licensure/certification requirement for a
16 "duly authorized representative" that may perform
17 building code inspection services as an agent of a
18 private provider;

19 clarifies that a private provider or its duly authorized
20 representative may only perform building code inspection
21 services within the disciplines covered by their
22 licensure or certification, and adds building code
23 enforcement personnel to the owner's agreement to
24 indemnify and hold harmless;

25 clarifies that notice of a change in private provider
26 from the owner to the local building official must be
27 given within one business day instead of 24 hours;

28 removes a reference to a professional seal, which does
29 not exist for building code administrators and
30 inspectors licensed under Part VII of ch. 468, F.S.;

31 revises the notice of scheduled inspections from the
private provider to the local building official from one
full business day to 2:00 p.m. on the prior business
day, or at any later time permitted by the local
building official;

clarifies the nature of the audit process to be
instituted by local building departments regarding
building code inspections services performed by private
providers; and

provides immunity for local governments regarding the
owner's use of a private provider to perform building
code inspection services.