

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1036

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Florida Building Code Enforcement

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Fav/CS
2.			IT	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1036 prohibits a local government from carrying forward a code enforcement operating budget balance greater than its average cost for enforcing the Florida Building Code for the preceding four fiscal years. The bill also requires a local government to use any excess enforcement operating budget funds to rebate or reduce code enforcement fees. A local government which had established specified Building Inspections Advisory Boards as of January 1, 2019 may be exempt from these requirements. The bill also prohibits charging surcharges or similar fees not directly related to enforcing the Florida Building Code.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act." The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.¹ The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to

¹ Section 553.72(1), F.S.

jurisdiction.² The Florida Building Commission develops and maintains the Florida Building Code.³

Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.⁴ The FFPC operates in conjunction with the Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.⁵

Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.⁶ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.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 enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹ A local enforcement agency must post each type of building permit application on its website.¹⁰

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.¹¹ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,¹² including certain required building, electrical, plumbing, mechanical, and gas inspections.¹³

² *Id.*

³ Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

⁴ Section 633.202(1), F.S.

⁵ *See* ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

⁶ Section 553.72(2), F.S.

⁷ *See* ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1), F.S.

⁸ Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited February 26, 2019). Section 553.79(1)(b), F.S. requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

⁹ *See* ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

¹⁰ Section 553.79(1)(b), F.S.

¹¹ Section 468.603(2), F.S.

¹² Section 553.79(2), F.S.

¹³ Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited February 26, 2019).

Local Government Building Code Permitting Fees

Determination and Usage

A local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code.¹⁴ The local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida Building Code.¹⁵ The basis for the fee structure must relate to the level of service provided by the local government.¹⁶ The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.¹⁷ Fees charged must be consistently applied.¹⁸ The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.¹⁹

Fiscal Tracking and Accountability

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.²⁰ Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.²¹

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2017. For that year, 63 counties reported building permit fee revenues totaling \$265,162,945; while 310 municipalities reported revenues totaling \$478,299,301.²²

¹⁴ See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

¹⁵ 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. See s. 553.80(7)(a), F.S.

¹⁶ Section 553.80(7), F.S.

¹⁷ *Id.* Section 553.721, F.S., authorizes a surcharge at the rate of one percent of permit fees in order for the Department of Business and Professional Regulation to administer and carry out code enforcement activities.

¹⁸ *Id.*

¹⁹ Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

²⁰ Section 553.80(7)(b), F.S.

²¹ Section 553.80(7), F.S.

²² Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited April 3, 2019).

III. Effect of Proposed Changes:

Section 1 amends s. 553.80, F.S., to prohibit a local government from carrying forward an amount of funds generated by code enforcement that exceeds a four year rolling average of its operating budget for code enforcement. The bill defines “operating budget” as not including reserve amounts. A local government which had 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 four year average may continue to carry such excess funds upon the recommendation of the advisory board.

The bill also requires a local government to use any excess funds it is prohibited from carrying forward to rebate and reduce fees. Charging surcharges or other similar fees not directly related to enforcing the Florida Building Code is prohibited.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may result in a reduction in permitting fees to the extent local governments are levying fees in excess of the amount necessary to cover authorized expenses.

C. **Government Sector Impact:**

The bill may require local governments to reduce fees and provide rebates to fee-payers.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 553.80 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 9, 2019:

- Provides that the limit on the amount of Florida Building Code enforcement fee funds a local government can carry forward may not exceed a 4-year average of its code enforcement operating budget.
- Provides a grandfathering exception to the carry forward funds limitation for local governments which had specified Building Inspection Advisory Boards as of January 1, 2019.
- Limits the usage of any carry forward code enforcement fee funds to a rebate or reduction of fees.
- Prohibits the charging of surcharges or fees not related to enforcing the Florida Building Code.

B. **Amendments:**

None.