

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 Rules

BILL: SB 902

INTRODUCER: Senator Perry

SUBJECT: Open and Expired Building Permits

DATE: April 16, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
3.	<u>Toman</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 902 provides statutory clarity with respect to open and expired building permits, institutes various disclosures, standards, and procedures to close such permits, and establishes notices for local enforcement agencies and property owners to utilize during the permit process.

Specifically, the bill creates a procedure by which a property owner, regardless of whether the owner is the same owner who originally applied for the permit or is a subsequent owner, may close an open or expired building permit. To do so, a property owner may do one of the following:

- Enter into a mutual agreement with the local enforcement agency to close an open or expired permit;
- Retain a licensed contractor to satisfy the conditions of an open or expired permit in order to close or reactivate the permit;
- Hire a licensed engineer or architect to inspect the work, direct any repairs necessary to comply with the permit, and submit an affidavit to the local enforcement agency confirming compliance with the requirements of the open or expired permit; or
- Complete the work as an owner-builder under certain circumstances to resolve an open or expired permit for a substantially completed project.

The bill requires local enforcement agencies to provide property owners, when issuing a permit, a written notice explaining the permit conditions, and requirements for applicable inspections. Additionally, the bill requires government entities to charge a single search fee to identify open or unexpired building permits.

The effective date of the bill is October 1, 2019.

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

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.⁴ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁵

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁶ 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.⁷ A local building department or enforcement agency must post each type of building permit application on its website.⁸ Each application must be inscribed with the date of application and the Florida Building Code in effect as of that date.⁹ All permits must contain a disclosure stating that there may be other permitting requirements from other governmental entities beyond the local building department or enforcement agency.¹⁰

Abandoned or Expired Permits

Section 105 of the Florida Building Code provides certain activity-related characterizations of building permits although it does not explicitly define open permits. An application for a building permit is deemed *abandoned* 180 days after the filing of the permit application unless the application has been pursued in good faith or an extension has been granted by the local building department.¹¹ In addition, a permit becomes *invalid* if no work starts within six months

¹ Section 553.72(1), F.S.

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 553.72(2), F.S.

⁵ See ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1) F.S.

⁶ Section 553.79(1)(b), F.S. requires a local code enforcement agency to post each type of building permit application on its website. Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited Mar. 20, 2019).

⁷ See ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

⁸ Section 553.79(1)(b), F.S.

⁹ Section 105.3., 2017 Florida Building Code.

¹⁰ Section 553.79(10), F.S.

¹¹ Section 105.3.2, 2017 Florida Building Code.

after issuance of the permit or if work on the project ceases for a period of six months after work has commenced on the project.¹² A new permit is required if a permit is revoked after work has commenced, becomes *null and void*, or *expires* because of a lack of progress on the project.¹³ If a new permit is not obtained within 180 days from the date the permit becomes null and void, the local enforcement agency may require the removal of all work that has been performed on the project.¹⁴ Work shall be considered to be in *active progress* when the permit has received an approved inspection within 180 days.¹⁵ The fee for renewal, reissuance, and extension of a permit is set forth by the administrative authority.¹⁶

Real Estate Disclosure Agreement Forms

Florida's real estate industry has developed standardized forms for many real property transactions for use by owners, real estate agents, and attorneys. It is common for a seller of real property to complete a property disclosure form prior to the sale of the property to disclose all known facts materially affecting the value of the property being sold and that are not readily observable or known by the buyer.¹⁷ A recent addition to the seller's property disclosure form includes questions pertaining to active or open permits on the property which have not been closed by a final inspection.

Created jointly by the Florida Bar (BAR) and Florida Realtors (FR),¹⁸ the standard contract¹⁹ and the "As Is" residential contracts for sale and purchase²⁰ are accepted forms for transactions of varied configurations and complexities. The forms outline responsibilities and obligations of the parties in a real estate transaction closing, including inspection periods, seller disclosures, and status of building permits. Under paragraph 12 of the standard contract, if the buyer gives notice of permit issues, the seller is obligated to resolve open or expired permits and obtain permits for any unpermitted improvements up to a certain dollar amount. Under paragraph 12 of the "As Is" contract, the seller must assist the buyer with closing permits but is not obligated to spend money for this purpose.

In response to the disclosure requirements pertaining to open or expired permits on the seller's disclosure form and the FR/BAR forms, title companies, closing agents, and real estate attorneys research properties to determine if open or expired permits exist. Without resolution of such permits, closings may be delayed and clarity on buyer, seller, contractor, and enforcement agency understanding and accountability for permit resolution can be compromised.

¹² Section 105.4.1, 2017 Florida Building Code.

¹³ Section 105.4.1.1, 2017 Florida Building Code.

¹⁴ Section 105.4.1.2, 2017 Florida Building Code.

¹⁵ Section 105.4.1.3, 2017 Florida Building Code.

¹⁶ Section 105.4.1.4, 2017 Florida Building Code.

¹⁷ An example of a seller's property disclosure form is available at: https://www.nefar.com/filebin/pdbdb/11/728_11.pdf (last visited March 9, 2019).

¹⁸ Florida Realtors, formerly the Florida Association of Realtors (FAR), is a trade association for the real estate industry, available at: <https://www.floridarealtors.org/AboutFar/AboutUs/index.cfm>: (last visited Mar. 20, 2019).

¹⁹ An example of the FR/BAR Standard Contract is available at: https://www.floridarealtors.org/LegalCenter/HotTopics/upload/FloridaRealtors-FloridaBar-5_032217_Watermarked-3.pdf (last visited Mar. 20, 2019).

²⁰ An example of the FR/BAR 'AS IS' Contract is available at: <https://www.needtosellmyhousefast.com/wp-content/uploads/2014/08/Florida-FAR-BAR-AS-IS-Residential-Contract-For-Sale-and-Purchase.pdf> (last visited Mar. 20, 2019).

Construction Work Performed by Owners of Property

Section 489.103(7), F.S., exempts construction work performed by owners of property acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors, from licensure requirements. To qualify for the exemption, an owner must appear and sign the building permit application and must satisfy all local permitting requirements.

III. Effect of Proposed Changes:

Section 1 creates s. 553.7905, F.S., to provide statutory clarity with respect to open and expired building permits, institute various procedures to close such permits and establish notices for local enforcement agencies and owners to utilize during the permit process.

An *open* permit is defined using a combination of comment notice information, permit issuance dates, and determinations of whether and when permit inspections or final inspections occurred. An open permit that expires without a final inspection is considered an *expired* permit as provided in the Florida Building Code. A permit is deemed *closed* when:

- A final inspection demonstrates that all permit requirements have been satisfied; or
- No work is started under the original contract within six months of permit issuance.

A current property owner and the local enforcement agency may enter into a mutual agreement to engage specified licensed contractors to fulfill closing requirements. Absent a mutual agreement, the permit may be closed by the home owner by:

- Retaining the services of the original, licensed contractor to satisfy the permit requirements, including hiring any additional subcontractors to complete work within the scope of the permit;
- Hiring an active, licensed professional engineer or architect to inspect the construction work and provide local enforcement agency sealed affidavit certifying compliance with all the requirements of the permit; or
- Acting, when selling the home, as an owner-builder to resolve certain open permit issues in single family dwellings and multifamily dwelling up to up to four units in size, and such owner is not required to reside in the home for one year.

Under the bill, a contractor hired to complete the original contractor's work is not liable for any existing defect or existing work that fails to comply with any applicable code, rule, regulation, ordinance, permit requirement, or law other than the work actually performed by the contractor.

Affidavits submitted by an engineer or architect are deemed to satisfy permit closing requirements unless the local enforcement agency conducts its own final inspection within seven business days of an affidavit receipt and discovers code or permit violations.

A local enforcement agency may not deny a building permit, issue a notice of violation, or otherwise penalize or sanction a purchaser of property for an improperly closed permit within five years of a recorded commencement notice or its last amendment. If no commencement notice was issued, the period increases to within seven years after a building permit is issued. A

local government agency's other rights and remedies against the property are not affected by the bill.

Any permit issued by a local enforcement agency, including an individual trade permit, may be closed six years after issuance of the permit if there are no documented code violations or safety hazards.

If a building permit is issued but not closed within one to three years, the local enforcement agency must send an advisory notice to the property owner regarding proper permit closing procedures. Failure to receive a notice does not relieve the property owner or contractor from closing the permit.

Additionally, the bill:

- Permits a contractor to hold an unlimited number of active permits.
- Requires local enforcement agencies to provide property owners, when issuing a permit, a written notice explaining the permit conditions, and requirements for applicable inspections.
- Limits the government entities to charging a single search fee to identify open or unexpired building permits, and requires the amount of such a fee to be commensurate with research and time costs incurred.

The bill does not prevent a local government entity from enforcing any consistent local land development codes or other local ordinances.

Section 2 provides an effective date of October 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.

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

None.

B. Private Sector Impact:

Property owners may incur additional costs to conduct searches for open and expired permits. To the extent that these searches identify such permits early on, the cost incurred may be less than the cost to resolve open or expired permits at a later date.

C. Government Sector Impact:

Local building departments and local enforcement agencies may incur costs related to the additional notice and permit disclosure requirements in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation (DBPR) states that s. 553.7095(4), F.S.,²¹ which releases substitute contractors from liability for existing work performed by a previous contractor, may relieve the substitute contractor from disciplinary liability. However, this provision requires that the substitute contractor be liable for “work actually performed by the contractor.” Additionally, the DBPR states that it may require additional rulemaking authority.

VIII. Statutes Affected:

This bill creates section 553.7905 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

²¹ Florida Department of Business and Professional Regulation, *Agency Analysis of HB 447* (Feb. 12, 2019) (on file with the Senate Committee on Innovation, Industry, and Technology).