

**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 Committee on Rules

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BILL: CS/SB 902

INTRODUCER: Rules Committee and Senators Perry, Hutson, and Bracy

SUBJECT: Building Permits

DATE: April 18, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<b>Favorable</b>
3.	<u>Toman</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 902 establishes processes and related procedures for property owners and local governments to close open and expired building permits. Specifically, the bill:

- Allows local governments to provide written notice to a property owner and contractor no less than 30 days before a building permit is set to expire.
- Creates a procedure for property owners to close open or expired building permits by retaining the original contractor or a different contractor to perform the work necessary and obtain the inspections required to close the permit.
- Clarifies that a subsequent contractor is only liable for the work she or he performs when working to close a permit.
- Allows the owner of a residential property to close a permit by assuming the role of an owner-builder upon approval from the local enforcement agency (LEA).
- Provides a LEA may close a building permit after 6 years, if the agency determines that no apparent safety hazards exist.
- Prohibits a LEA from penalizing or denying issuance of a building permit to a subsequent arms-length purchaser solely because a previous owner applied for a permit which was not closed.
- Prohibits a LEA from denying issuance of a building permit to a contractor solely because the contractor is listed on other building permits that are not closed.
- Limits a LEA to only charge one search fee for identifying building permits for a particular tax parcel.

- Establishes that the prevailing Florida Building Code used for compliance when closing open or expired permits is the Code in effect at the time of the permit application.

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.<sup>1</sup> The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>2</sup> The Florida Building Commission develops and maintains the Florida Building Code.<sup>3</sup>

### 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.<sup>4</sup> Authorized state and local government agencies enforce the Florida Building Code and issue building permits.<sup>5</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>6</sup> 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.<sup>7</sup> A local building department or enforcement agency must post each type of building permit application on its website.<sup>8</sup> Each application must be inscribed with the date of application and the Florida Building Code in effect as of that date.<sup>9</sup> 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.<sup>10</sup>

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

<sup>2</sup> *Id.*

<sup>3</sup> 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.

<sup>4</sup> Section 553.72(2), F.S.

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

<sup>6</sup> 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).

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

<sup>8</sup> Section 553.79(1)(b), F.S.

<sup>9</sup> Section 105.3., 2017 Florida Building Code.

<sup>10</sup> Section 553.79(10), F.S.

### 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.<sup>11</sup> In addition, a permit becomes *invalid* if no work starts within six months 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> Work shall be considered to be in *active progress* when the permit has received an approved inspection within 180 days.<sup>15</sup> The fee for renewal, reissuance, and extension of a permit is set forth by the administrative authority.<sup>16</sup>

### 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.<sup>17</sup> 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),<sup>18</sup> the standard contract<sup>19</sup> and the "As Is" residential contracts for sale and purchase<sup>20</sup> 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"

<sup>11</sup> Section 105.3.2, 2017 Florida Building Code.

<sup>12</sup> Section 105.4.1, 2017 Florida Building Code.

<sup>13</sup> Section 105.4.1.1, 2017 Florida Building Code.

<sup>14</sup> Section 105.4.1.2, 2017 Florida Building Code.

<sup>15</sup> Section 105.4.1.3, 2017 Florida Building Code.

<sup>16</sup> Section 105.4.1.4, 2017 Florida Building Code.

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

<sup>18</sup> 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).

<sup>19</sup> 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](https://www.floridarealtors.org/LegalCenter/HotTopics/upload/FloridaRealtors-FloridaBar-5_032217_Watermarked-3.pdf) (last visited Mar. 20, 2019).

<sup>20</sup> 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).

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.

### **Construction Work Performed by Owners of Property**

Sections 489.103(7) and 489.503(6), F.S., exempt construction work and electrical contracting work, respectively, from licensure requirements if the work is performed by owners of property acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors. To qualify for the exemption, an owner must appear and sign the building permit application and must satisfy all local permitting requirements.

### **Contractor Liability**

When a contractor contracts for a project they are liable for the work they perform. During the progress of the work the contractor has a duty to exercise due care, and while the contractor is in control of the project site, the contractor is liable for harm resulting from defects, hidden or otherwise.<sup>21</sup>

According to the Department of Business and Professional Regulation (DBPR), a substitute contractor is expected to be competent to assess, contract for, and repair a situation that was left behind by the previous contractor so that a project can be completed in accordance with the Florida Building Code.<sup>22</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 125.56, F.S., to provide that a county that issues building permits may send a written notice of expiration to the owner of a property and the contractor listed on the permit no less than 30 days before a permit is set to expire. The section also limits a county to charging a person only one search fee, commensurate with its costs, for identifying building permits assigned to a particular tax parcel.

**Section 2** amends s. 166.222, F.S., to limit a municipality to charging a person only one search fee, commensurate with its costs, for identifying building permits assigned to a particular tax parcel.

**Section 3** amends s. 489.103(7), F.S., to expand the owner-builder exemption to licensure requirements for construction contractors to allow a property owner to complete requirements of a building permit when the contractor listed on the permit has substantially completed a project

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<sup>21</sup> See *Slavin v. Kay*, 108 So. 2d 462, 467 (Fla. 1958).

<sup>22</sup> Florida Department of Business and Professional Regulation, *2019 Agency Analysis of HB 447*, available at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=23010&yr=2019> (last visited April 17, 2019).

for one-family or two-family residences, townhomes or an individual residential condominium unit or cooperative unit. Prior to qualifying for the exemption, the owner must receive approval from the local permitting agency including the determination of substantial completion. An owner who qualifies for the exemption is not required to occupy the dwelling or unit for at least one year after the completion of the project.

**Section 4** amends s. 489.503(6), F.S., to expand the owner-builder exemption to licensure requirements for electrical and alarm systems contractors to allow a property owner to complete requirements of a building permit when the contractor listed on the permit has substantially completed a project for one-family or two-family residences, townhomes or an individual residential condominium unit or cooperative unit. Prior to qualifying for the exemption, the owner must receive approval from the local permitting agency including the determination of substantial completion. An owner who qualifies for the exemption is not required to occupy the dwelling or unit for at least one year after the completion of the project.

**Section 5** amends s. 553.79, F.S., to provide that local governments that issue building permits may send a written notice of expiration to the owner of a property and the contractor listed on the permit no less than 30 days before a permit is set to expire. The section also allows a property owner, whether or not the owner is listed on the application for a building permit, to close the permit by complying with the following requirements:

- Retain the original contractor listed on the permit or hire a different contractor to perform the work necessary to satisfy the conditions of the permit and to obtain any necessary inspections in order to close the permit.
- Assume the role of an owner-builder in accordance with ss. 489.103(7) and 489.503(6), F.S.

If hiring a contractor other than the original contractor when closing the permit, the new contractor is not liable for any defects in the work performed by the original contractor, only for the new work she or he performs. To 'close' a permit is defined to mean that the requirements of the permit have been satisfied.

If a building permit is expired and its requirements have been deemed substantially completed by the local enforcement agency, the permit may be closed without having to obtain a new building permit and the work required may be done pursuant to the building code in effect at the time the local enforcement agency received the permit application, unless the contractor has sought and received approval for an alternative material, design, or method of construction.

A local enforcement agency may close a building permit six years after the issuance of the permit, even in the absence of a final inspection, if the agency determines that no apparent safety hazards exist.

Finally, a local enforcement agency may not deny issuance of a building permit to issue a notice of violation to, or fine, penalize, sanction, or assess fees against an arms-length purchaser of a property for value solely because a building permit was applied for by a previous owner of the property. Relatedly, an agency may not deny issuance of a building permit to a contractor solely because the contractor is listed on other building permits that were not closed. The local enforcement agency shall maintain all rights and remedies against the property owner and contractor listed on the permit.

**Section 6** amends s. 553.80, F.S., to limit a local government to charging a person only one search fee, commensurate with its costs, for identifying building permits assigned to a particular tax parcel.

**Section 7** amends s. 440.103, F.S., to provide a clarifying cross-reference.

**Section 8** 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 permissive noticing authorized by the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A DBPR analysis of an earlier version of the bill indicated that the department may require additional rulemaking authority to accommodate new statutory provisions. It is unclear if the bill as amended may also necessitate rulemaking.<sup>23</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 125.56, 166.222, 440.103, 489.103, 489.503, 553.79, and 553.80.

**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 Rules on April 17, 2019:**

The committee substitute reorganizes and streamlines the bill into substantive statutory sections for clarity of intent with the following provisions:

- Allows local governments to provide written notice by USPS or e-mail to a property owner and contractor no less than 30 days before a building permit is set to expire.
- Creates a procedure for any property owner to close open and expired building permits by retaining the original contractor or a different contractor to perform the work necessary and obtain the inspections required to close the permit.
- Clarifies a subsequent contractor is only liable for the work she or he performs when working to close a permit.
- Allows the owner of a residential property to close a permit by assuming the role of an owner-builder upon approval from the local enforcement agency (LEA).
- Provides a LEA may close a building permit after 6 years, if the agency determines that no apparent safety hazards exist.
- Prohibits a LEA from penalizing or denying issuance of a building permit to a subsequent arms-length purchaser solely because a previous owner applied for a permit which was not closed.
- Prohibits a LEA from denying issuance of a building permit to a contractor solely because the contractor is listed on other building permits that are not closed.
- Limits a LEA to only charge one search fee for identifying building permits for a particular tax parcel.
- Establishes that the prevailing Florida Building Code used for compliance when closing open or expired permits is the Code in effect at the time of the permit application.

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<sup>23</sup> *Id.*

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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