

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: CS/CS/CS/SB 1146

INTRODUCER: Rules Committee; Appropriations Committee; Community Affairs Committee; and Senator Brodeur and others

SUBJECT: Florida Building Code

DATE: April 21, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>
3.	<u>Hackett</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1146 amends the Florida Building Codes Act adding several new provisions. Specifically, the bill:

- Allows a substantially affected person to petition the Florida Building Commission (commission) for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Florida Building Code (building code), and establishes a process for such.
- Allows the commission to issue an “errata to the code” to correct demonstrated errors in provisions contained within the building code.
- Requires the commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law.
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.
- Prohibits a local government from restricting the ability of a property owner to obtain a building permit to demolish and replace any single-family residential dwelling located in a coastal high hazard area, moderate flood zone, or special flood hazard area under certain circumstances.
- Expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

- Provides that a local government may use excess funds generated by building code enforcement for the construction of a building or structure that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners.
- Provides that a municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes.

The bill makes several changes to current law pertaining to private building inspectors, known as "private providers" by:

- Expressly authorizing private providers to conduct virtual building inspections.
- Allowing private provides to submit various inspection forms, records, and reports electronically to local building departments and utilize electronic signatures.
- Allowing private providers to conduct "single-trade inspections," as defined in the bill.
- Creating a "qualified private provider" registration process and providing that a qualified private provider, as defined in the bill, does not need to include information other than the services to be performed in their written notice to the local building official that a private provider has been contracted to perform inspections.
- Authorizing a private provider to conduct emergency inspection services without first notifying the local building official.

The bill amends the Community Planning Act to prohibit local governments from regulating specific "building design elements" for single-family or two-family residential dwellings, with certain exceptions.

The bill also allows the owner of an onsite sewage treatment and disposal system, or the owner's contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health.

Finally, the bill prohibits the Department of Health from requiring assisted living facilities to comply with rules relating to swimming pool lifeguards.

The bill may have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.¹ The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

¹ Ch. 2011-139, Laws of Fla.

It is the intent of the Community Planning Act that local governments manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.²

Local comprehensive plans must include “principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.”³ Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.⁴ Plans may include optional elements,⁵ but must include the following nine elements:

- Capital improvements;⁶
- Future land use plan;⁷
- Intergovernmental coordination;⁸
- Conservation;⁹
- Transportation;¹⁰
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;¹¹
- Recreation and open space;¹²
- Housing;¹³ and
- Coastal management (for coastal local governments).¹⁴

All local government land development regulations must be consistent with the local comprehensive plan.¹⁵ Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.¹⁶ However, plans cannot require any special district to undertake a public facility project which would impair the district’s bond covenants or agreements.¹⁷

Land Development Regulations

The comprehensive plan is implemented through enactment by local government of land development regulations. Land development regulations are ordinances that regulate any aspect

² Section 163.3161(4), F.S.

³ Section 163.3177(1), F.S.

⁴ Section 163.3177(1)(d), F.S.

⁵ Section 163.3177(1)(a), F.S.

⁶ Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by local governments annually. *See* s. 163.3177(3)(b), F.S.

⁷ Section 163.3177(6)(a), F.S.

⁸ Section 163.3177(6)(h), F.S.

⁹ Section 163.3177(6)(d), F.S.

¹⁰ Section 163.3177(6)(b), F.S.

¹¹ Section 163.3177(6)(c), F.S.

¹² Section 163.3177(6)(e), F.S.

¹³ Section 163.3177(6)(f), F.S.

¹⁴ Section 163.3177(6)(g), F.S.

¹⁵ Section 163.3194(1)(b), F.S.

¹⁶ *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.

¹⁷ Section 189.081(1)(b), F.S.

of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.¹⁸

Counties and municipalities are required to adopt or amend land development regulations within one year after submitting its comprehensive or revised comprehensive plan for review.¹⁹ Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities must include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Some local governments in Florida have adopted land development regulations that place restrictions on the design of new single- and two- family buildings such as the:

- External paint color;²⁰
- Architectural style of:
 - Windows;
 - Doors, including garage doors;
 - Front porches; and
 - Roofs.²¹
- Exterior building material;²² and
- Location of windows and garage doors.²³

¹⁸ Sections 163.3164(26) & 163.3202(1), F.S.

¹⁹ Section 163.3202(1), F.S.

²⁰ Osceola County Land Development Code, Ch. 3, Art. 3.2.2, available at https://library.municode.com/fl/osceola_county/codes/land_development_code?nodeId=LAND_DEVELOPMENT_CODE_CH3PESIST_ART3.2DIDEST (last visited Mar. 18, 2021); Code of the City of Orlando, Ch. 58, Part 3, s. 58.517; Orange County Code, Ch. 38, Art. VIII, Division 8, available at [Mini TOC: Chapter 58 - ZONING DISTRICTS AND USES | Code of Ordinances | Orlando, FL | Municode Library](#) (last visited Mar. 18, 2021).

²¹ Osceola County Land Development Code, s. Ch. 3, Article 3.2.2., *supra* n. 20; Code of the City of Orlando, Ch. 58, Part 3, Section 58.517, *supra* n. 20; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, s. 58-67, available at [ARTICLE III. - ZONING | Code of Ordinances | Winter Park, FL | Municode Library](#); Orange County Code, Ch. 38, Art. VIII, Division 8, available at [Mini TOC: ARTICLE VIII. - P-D PLANNED DEVELOPMENT DISTRICT | Code of Ordinances | Orange County, FL | Municode Library](#) (all last visited Mar. 18, 2021).

²² Orange County Code, Ch. 38, Art. VIII, Division 8, *supra* n. 20; City of Winter Park Code of Ordinances, Ch. 58, Art. 3, s. 58-67, *supra* n. 21 (both last visited Mar. 18, 2021).

²³ Code of the City of Orlando, Ch. 58, Part 3, s. 58.517, *supra* n. 20 (last visited Mar. 18, 2021).

Regulation of Building Design Elements – Other States

Some states now prohibit local governments from adopting regulations that require specific building design elements for single-family and two-family dwellings unless certain conditions exist. For example, a North Carolina law prohibits cities and counties from adopting regulations that require building design elements or a minimum square footage for single-family and two-family dwellings.²⁴ The North Carolina law defines “building design elements” as exterior building color, type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; number and types of rooms; and interior layout of rooms. The phrase does not include a single and two-family dwelling’s height, bulk, orientation, and location of a structure.²⁵

The Florida Building Code and Florida Building Commission

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida’s minimum standards were met. Local governments could choose from four separate model codes. The state’s role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.²⁶

In 1992, Hurricane Andrew demonstrated that Florida’s system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission’s recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (building code), and that first edition replaced all local codes on March 1, 2002.²⁷ The current edition of the building code is the seventh edition, which is referred to as the 2020 Building Code.²⁸

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act” (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The building code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.²⁹

²⁴ See General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015, available at <https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf> and R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, *Analysis of S.L. 2015-86* (last updated 10/12/2015), available at <https://www.ncleg.gov/Legislation/Bills/Summaries/2015/S25> (both last visited Mar. 18, 2021).

²⁵ *Id.*

²⁶ Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).

²⁷ *Id.*; Department of Business and Professional Regulation (DBPR), *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited Feb. 15, 2021).

²⁸ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Feb. 26, 2021).

²⁹ See s. 553.72(1), F.S.

The main purpose of the building code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.³⁰

The Florida Building Commission

The Florida Building Commission (commission) was statutorily created to implement the building code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the building code.³¹

The commission reviews several International Codes published by the International Code Council, the National Electric Code (NEC), and other nationally adopted model codes to determine if the building code needs to be updated and adopts an updated building code every three years.³²

The commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.³³ TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.³⁴

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.³⁵

Every local government must enforce the building code and issue building permits.³⁶ 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 government enforcing agency or from such persons that may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.³⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.³⁸ A building official is a local government employee or a person contracted by a local government who supervises building code activities,

³⁰ Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 26, 2021).

³¹ Sections 553.73, and 553.74, F.S.

³² *Id.*

³³ DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Feb. 26, 2021).

³⁴ Section 553.73(3), F.S.; Fla. Admin. Code R. 61G20-2.001.

³⁵ Section 553.72, F.S.

³⁶ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

³⁷ See Sections 125.56(4)(a) and 553.79(1), F.S.

³⁸ Section 202 of the Building Code, Sixth Edition.

including plan review, enforcement, and inspection to ensure work complies with the building code.³⁹

Amendments to the Building Code

The commission and local governments may adopt technical and administrative amendments to the building code. A technical amendment to the building code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the building code.⁴⁰ All amendments adopted by the commission require a 75 percent supermajority vote of approval.⁴¹

The commission may approve technical amendments to the building code once each year for statewide or regional application upon a finding that the amendment:⁴²

- Is needed in order to accommodate the specific needs of the state;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the building code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the building code.

In order to adopt a technical amendment to the building code, the commission must meet the following requirements:⁴³

- The proposed amendment has been published on the commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- The proposed amendment includes a fiscal impact statement that documents the costs and benefits of the proposed amendment;
- In order for a TAC to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before any consideration by the commission; and
- A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with ch. 120, F.S.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the building code so the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.⁴⁴

³⁹ Section 468.603(2), F.S.

⁴⁰ Section 553.73, F.S.; Fla. Admin. Code R. 61G20-2.002.

⁴¹ Fla. Admin. Code R. 61G20-2.002(13).

⁴² Section 553.73(9), F.S.

⁴³ Section 553.73(3) and (9), F.S.

⁴⁴ Section 553.73(7), F.S.

However, for certain amendments the commission may adopt amendments at any time and only has to follow the rule adopting procedures in ch. 120, F.S. The commission may adopt amendments using the rule adoption procedure to address the following:⁴⁵

- Conflicts within the updated building code;
- Conflicts between the updated building code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;
- Adoption of an updated edition of the NEC if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhancement of the construction requirements relating to wind resistance or the prevention of water intrusion.

Local Amendments to the Building Code

Local governments may adopt amendments to the building code that are more stringent than the building code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the building code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the building code.⁴⁶

Current law allows local governments to adopt technical amendments to the building code every six months if:⁴⁷

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the building code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the building code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the commission.

⁴⁵ Section 553.73(8), F.S.; Fla. Admin. Code R. 61G20-2.002(2).

⁴⁶ Section 553.73(4), F.S.

⁴⁷ *Id.*

A technical amendment adopted by a local government takes effect 30 days after the commission receives the amendment and publishes the amendment on its website.⁴⁸

The commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the commission decides to review a local amendment, it must send the amendment to the applicable TAC for review.⁴⁹

The TAC must then make a recommendation to the commission about whether the local amendment complies with the requirements of current law. The commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.⁵⁰

Each county and municipality that adopts technical amendments to the building code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.⁵¹

A local government or the substantially affected party may appeal the compliance review board's decision to the commission within 14 days of the board's decision. The commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.⁵²

The commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.⁵³

Interpretations of the Building Code

The commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the building code, and give binding interpretations of the building code.⁵⁴

A substantially affected person, state agency, or a local government may petition the commission in writing for a declaratory statement relating to interpretations of the building code, or the enforcement or administration of the building code by local governments. The commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition.

⁴⁸ Section 553.73(4), F.S.; Fla. Admin. Code R. 61G20-2.003.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Section 553.73(4), F.S.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Section 553.775, F.S.

Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.⁵⁵

A substantially affected person may also petition the commission to review a local building official's interpretation of the building code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.⁵⁶

A substantially affected person may petition the commission to review a local building official's interpretation of the building code if:⁵⁷

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the commission on a form adopted by the commission which contains:
 - The name and address of the local government and the local building official;
 - The name, address, and phone number of the substantially affected person, and an explanation of how they are substantially affected by the building official's interpretation;
 - A statement of the provisions of the building code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
 - The local building official's response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the building code, the commission must provide copies to a panel, and publish the petition and the local building official's response on the commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The commission must coordinate with the Building Officials Association of Florida⁵⁸ to designate the panel.⁵⁹

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the commission's website. The panel must issue a determination within 21 days of the petition being filed with the commission. The determination is binding upon all parties and all jurisdictions in Florida.⁶⁰ The determination must be published on the commission's website and the Florida Administrative Register.⁶¹

⁵⁵ Sections 553.775(3), 120.565, and 120.68, F.S.

⁵⁶ Section 553.775(3), F.S.

⁵⁷ *Id.*

⁵⁸ The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, <https://boaf.net/page/About> (last visited Jan. 8, 2020).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida

A party may appeal the panel's determination by filing an appeal with the commission within 30 days of the panel's determination. The commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The commission's ruling is subject to judicial review by a district court of appeal.⁶²

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building departments to continue operating during the COVID-19 pandemic, which allows contractors to keep working.⁶³

Virtual inspections can range from roofing inspections, windows and doors inspections, to A/C change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, allowing contractors to immediately request an inspection once they finish work, and allowing the contractor to remain on the jobsite.⁶⁴

Current law does not specifically prohibit building departments from performing virtual inspections, but it also does not specifically allow building departments to perform virtual inspections.

Product Evaluation and Approval

Current law requires the commission to develop and implement an approval of products for statewide use. The commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.⁶⁵ The commission approves the products in several categories for statewide use.⁶⁶

To obtain state approval, a manufacturer must demonstrate that a product complies with the applicable standards and provisions of the building code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;

Administrative Code & Florida Administrative Register, *FL Rules FAQ*, <https://www.flrules.org/Help/newHelp.asp#FAW> (last visited Jan. 15, 2020).

⁶² Sections 553.775(3) and 120.68, F.S.

⁶³ Monica Casey, Tallahassee creates virtual building inspections to save jobs and keep social distancing, WCTV.tv (Apr. 8, 2020) <https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing-569485561.html> (last visited Apr. 5, 2021).

⁶⁴ Miami Beach, Modified Procedures for Building Code Inspections During COVID-19 Emergency Period, <https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf> (last visited Apr. 5, 2021); Boca Raton, Virtual Inspections, <https://myboca.us/1846/Virtual-Inspections> (last visited Apr. 5, 2021).

⁶⁵ Section 553.842(1), F.S.; Fla. Admin. Code R. 61G20-3.001.

⁶⁶ Fla. Admin. Code R. 61G20-3.001. The categories considered by this rule are panel walls, exterior doors, roofing products, skylights, windows, shutters, structural components, and impact protective systems.

- A test report from an approved testing laboratory;
- A product evaluation report developed, signed, and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
 - The National Evaluation Service;
 - The International Association of Plumbing and Mechanical Officials Evaluation Service;
 - The International Code Council Evaluation Services;
 - Underwriters Laboratories, LLC;
 - The International Conference of Building Officials;
 - SBCCI Public Safety Testing and Evaluation Services, Inc.;
 - Intertek Testing Services NA, Inc.; or
 - The Miami-Dade County Building Code Compliance Office Product Control Division.⁶⁷

Currently, the commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the commission's rules.⁶⁸ However, the commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

Required Information in Building Permit Application

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:⁶⁹

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;
- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.⁷⁰

Private Providers

Any construction work that requires a building permit also requires plans and inspections by a local building official to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections. In addition to

⁶⁷ Section 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Mar. 29, 2021).

⁶⁸ Fla. Admin. Code R. 61G20-3.008.

⁶⁹ Section 713.135(5) and (6), F.S.

⁷⁰ *Id.*

required inspections, a local building official may require other inspections of any work to ensure it complies with the building code.⁷¹

In 2002, the Legislature created s. 553.791, F.S., allowing contractors and property owners to hire licensed building code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may not audit a private provider more than four times in a month unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.⁷²

Building Code Enforcement Fees

Each local government may provide a schedule of reasonable fees in order to cover the costs of inspection and enforcement of the building code.⁷³ A local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the building code. The basis for the fee structure must relate to the level of service provided by the local government. The fees charged must be consistently applied.⁷⁴

The fees, including any fines or investment earnings related to the fees, may only be used for the costs associated with enforcing the building code. "Enforcing the building code," includes:⁷⁵

- The direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing;
- Building code enforcement;
- Fire inspections associated with new construction; and
- Training costs associated with the enforcement of the building code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

Local governments are prohibited from using fees to cover the cost of enforcing the building code to fund.⁷⁶

⁷¹ Sections 107, 110.1, and 110.3 of the Building Code, Sixth Edition.

⁷² Sections 553.791(1), (13), and (18), F.S.

⁷³ Sections 125.56(2), 166.222, and 553.80(7), F.S. *See e.g.*, Broward County website on Impact and Concurrency Fees, available at <http://www.broward.org/Planning/Development/FAQs/Pages/Impact-and-Concurrency-Fees.aspx> (last visited Mar. 15, 2019).

⁷⁴ Sections 125.56(2) and (4), 166.222, and 553.80(7), F.S.

⁷⁵ Section 553.80(7)(a), F.S.

⁷⁶ Section 553.80(7)(b), F.S.

- Planning and zoning or other general government activities;
- Inspections of public buildings for a reduced fee or no fee;
- Public information requests, community functions, boards, and any program not directly related to enforcement of the building code; and
- Enforcement and implementation of any other local ordinance, excluding local amendments to the building code and local ordinances directly related to enforcing the building code.

Local governments are also prohibited from levying fees that would generate a total estimated annual revenue that exceeds the total estimated annual cost of its enforcement activities.⁷⁷ If any excess funds are accumulated, the local government has discretion to issue refunds or **carry forward those funds into future years**. Local governments are required to use “recognized management, accounting, and oversight practices” to ensure fees, fines, and investment earnings are maintained and used only for authorized purposes.⁷⁸

Prior to 2019, there was no limit on the amount of such funds that local governments could carry forward into future years.⁷⁹

In 2019, the Legislature limited the amount of funds generated by building code enforcement activities that local governments could carry forward.⁸⁰ Current law provides that local governments may not carry forward an amount that exceeds an amount equal to one year of their operating budget for building code enforcement activities. The amount of the operating budget is determined by averaging the local government’s operating budget for building code enforcement activities from the previous four fiscal years. A local government may not count any funds held in reserve when determining the four-year rolling average of its operating budget.⁸¹

If a local government carries forward an amount of funds that exceeds the statutory limit, it must use the excess funds to **rebate and reduce permit fees**.⁸²

However, a local government may carry forward funds that exceed the allowed statutory limit if the local government established a Building Inspections Fund Advisory Board prior to 2019, and the board recommends to carry forward such excess funds. The board must consist of five members from the construction industry stakeholder community.⁸³

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.⁸⁴ Waste from

⁷⁷ Section 553.80(7), F.S.

⁷⁸ Section 553.80(7)(c), F.S.

⁷⁹ See s. 553.80(7), F.S. (2018).

⁸⁰ See Senate Analysis of 2019 Senate Bill 1036 (April 9, 2019).

⁸¹ Section 553.80(7), F.S.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Department of Health (DOH), *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 31, 2021);

toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria breakdown the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.⁸⁵

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.⁸⁶ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁸⁷ For example, in rural areas and low-density developments, central sewer systems are not cost-effective.

Permitting and official inspection of OSTDSs is administered by the Environmental Health Section of the Department of Health (DOH) in each county.⁸⁸ The section permits, regulates, and inspects the construction of new systems, repairs and modifications to existing systems, existing system approvals, and abandonments of systems.⁸⁹ Much like other construction projects, installation, repair, alteration, modification, abandonment, and replacement of OSTDSs requires a permit.⁹⁰ Before an OSTDS is covered with earth, put into service, or repaired, the county DOH must inspect the system for compliance with statutory requirements and the DOH rules.⁹¹ Chapter 2020-150, L.O.F., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

Assisted Living Facilities

An assisted living facility is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.⁹² A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.⁹³ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.⁹⁴

Environmental Protection Agency (EPA), *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Mar. 31, 2021).

⁸⁵ *Id.*

⁸⁶ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 24, 2021).

⁸⁷ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited Mar. 24, 2021). The report begins on page 56 of the PDF.

⁸⁸ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Apr. 12, 2021).

⁸⁹ *Id.*

⁹⁰ Fla. Admin. Code R. 64E-6.003(1).

⁹¹ Fla. Admin. Code R. 64E-6.003.

⁹² Section 429.02(5), F.S. An assisted living facility does not include an adult family-care home or a non-transient public lodging establishment.

⁹³ Section 429.02(16), F.S.

⁹⁴ Section 429.02(1), F.S.

Assisted living facilities are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S., Florida Administrative Code Rule 59A-36. In addition to a standard license, an assisted living facility may have one or more specialty licenses that allow the assisted living facility to provide additional care. These specialty licenses include limited nursing services,⁹⁵ limited mental health services, and extended congregate care services.⁹⁶

Current law requires rules governing assisted living facilities to promote a safe and sanitary environment that is residential and non-institutional in design or nature.⁹⁷ Current law also requires that rules set requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions that are not in conflict with ch. 553, F.S., governing building construction standards. Current law also requires the AHCA to develop key quality-of-care standards for assisted living facilities with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.⁹⁸ Rules must also address moratoriums, classification of deficiencies, the levying of penalties and the use of income from fees and fines.⁹⁹

Public Pools

The DOH is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from the DOH must be obtained. If the DOH determines that the public swimming pool is, or is reasonably expected to be, operated in compliance with state laws and rules, the DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. The DOH is authorized to establish a schedule of fees for plan approval and permitting.¹⁰⁰ Operating permits must be renewed annually and may be transferred from one name or owner to another.¹⁰¹

A public swimming pool includes “a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee, and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.”¹⁰²

⁹⁵ Section 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed as a nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.).

⁹⁶ Section 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an assisted living facility. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.

⁹⁷ Section 429.41(1), F.S.

⁹⁸ Section 429.41(5), F.S. The Agency for Health Care Administration (AHCA) reviews the key quality-of-care standards for compliance during an abbreviated biennial licensure inspection (s. 429.41(5), F.S.).

⁹⁹ Section 429.41(1)(f), F.S.

¹⁰⁰ Section 514.033, F.S.

¹⁰¹ Section 514.031(2) and (3), F.S.

¹⁰² *Id.*

All public pools must be equipped with the following safety features:¹⁰³

- Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices;¹⁰⁴
- A shepherd’s hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd’s hook on each of the longer sides of the pool¹⁰⁵;
- At least one 18-inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool;
- Safety equipment shall be mounted in a conspicuous place and be readily available for use; and
- Lighting if the pool is used during nighttime.

Lifeguards

A “lifeguard” is a person responsible for the safety of the users of a public swimming pool. Lifeguards are not required at a public pool unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures.¹⁰⁶

However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs.¹⁰⁷

Pools in Assisted Living Facilities

Current law gives the DOH the authority to adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities.¹⁰⁸ The DOH’s rules require a group care facility, with a pool, to provide direct supervision by an adult employee when in use or when the area is occupied by minors and other residents that cannot swim. The adult employee providing supervision must have completed a community water safety course by the American Red Cross, Y.M.C.A., or other approved aquatic training program.¹⁰⁹

Group care facilities include public or private schools, assisted living facilities, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, home for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, or boarding schools.¹¹⁰

¹⁰³ Fla. Admin. Code R. 64E-9.008(3) and (7).

¹⁰⁴ Federal law requires public pools and spas to have a drain cover and a secondary anti-entrapment device in order to avoid suction entrapment. 15 U.S.C. s. 106.

¹⁰⁵ Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from the requirement to have shepherd’s hook and lifesaving ring requirement. *Id.*

¹⁰⁶ Section 514.071, F.S.; Fla. Admin. Code R. 64E-9.008(2).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Fla. Admin. Code R. 64E-12.011(3).

¹¹⁰ Section 381.006(16), F.S.

On July 6, 2018, the DOH opened up its rules relating to group care facilities, including the rule relating to pools in group care facilities, in order to update the rules by incorporating technical changes for consistency with changes in industry standards, reduce surplus language, and increase clarity. On March 11, 2020, the DOH held a workshop to receive comments on the possible rule updates.¹¹¹ The proposed rule requires assisted living facilities with pools, spas, or open water hazards to implement and maintain a written policy pertaining to the use of water safety barriers, water safety devices and equipment, and cardiopulmonary resuscitation. The policy must be available for review by the DOH.¹¹²

The proposed rule provides that if an assisted living facility has a pool, spa, or open water hazard that is not considered a public swimming pool, the facility must have direct supervision by an adult employee when in use or when the area is occupied by minors and other residents or visitors that cannot swim. The individual responsible for supervision during water activities or near water hazards must be knowledgeable of:¹¹³

- The written policy;
- The correct use of water safety devices and equipment;
- The correct use of any water safety barriers; and
- Cardiopulmonary resuscitation procedures.

The proposed rule also provides that an assisted living facility with a pool or spa that is not considered a public swimming pool, must have a residential swimming pool barrier that meets the standards of the building code, and be equipped with water safety devices including a shepherd's hook not less than 16 feet in length and an 18-inch diameter lifesaving ring.¹¹⁴

Federal Emergency Management Agency Flood Maps

The Federal Emergency Management Agency (FEMA) is an agency within the United States Department of Homeland Security. The FEMA coordinates responses to disasters within the United States. The FEMA provides resources and assistance to local and state authorities when a disaster overwhelms local response capacities.

The FEMA is responsible for various services related to flood insurance, floodplain management, and flood mapping. The FEMA provides flood hazard and risk data products to help set insurance rates for the National Flood Insurance Program (NFIP) and help guide local and state governments' flood mitigation actions.

¹¹¹ DOH, *Group Care Facilities*, <http://www.floridahealth.gov/environmental-health/group-care-facilities/index.html> (last visited Feb. 25, 2021). Department of State, History of Rule 64E-12.011 since Jan. 6, 2006, Florida Administrative Code and Florida Administrative Register <https://www.flrules.org/gateway/RuleNo.asp?title=COMMUNITY%20BASED%20RESIDENTIAL%20FACILITIES&ID=64E-12.011> (last visited Feb. 25, 2021).

¹¹² Email from Andrew Love, Legislative Planning Director, DOH, FW: Violations at pool inspections Re: Pool Bills - Exemption for HOAs HB 463/SB 902 (Feb. 26, 2021).

¹¹³ *Id.*

¹¹⁴ *Id.*

The National Flood Insurance Program

The NFIP is a program created by the Congress of the United States in 1968 through the National Flood Insurance Act of 1968. The NFIP aims to share the risk of flood losses through flood insurance and reduce flood damage by restricting development within floodplains. The program enables property owners in participating communities to purchase insurance protection, administered by the government, against flooding losses. Participation in the NFIP is limited to communities that adopt adequate land use and control measures with effective enforcement provisions to reduce flood damages by restricting development in areas exposed to flooding.¹¹⁵

Flood Insurance Rate Maps

The NFIP insurance rates are correlated with the unique flooding risks of a geographic area. To facilitate the allocation of insurance rates, the FEMA prepares flood insurance rate maps (FIRM). A FIRM is an official map of a community within the United States that displays the floodplains, more explicitly particular hazard areas and risk premium zones, as delineated by the FEMA.¹¹⁶

FIRMs display areas that fall within the 100-year flood boundary, special flood hazard areas, and insurance risk zones. FIRMs are used to set insurance rates against the risk of flood and whether buildings are insurable at all against flood. Furthermore, towns and municipalities use FIRMs for local land use policy and zoning.¹¹⁷

Local Government Flood Map Adoption Process

For local governments and individual homeowners to acquire property insurance and participation in the NFIP, local governments must officially adopt FIRMs by providing for such via ordinance. Local governments must also adopt updates and revisions to FIRMs made by the FEMA. Generally, the adoption process involves the FEMA issuing preliminary flood maps, a period for community review and appeal, the FEMA issuing a letter of determination, and local governments updating ordinances to reflect flood map changes. The process for adopting FIRMs is described in more detail below.¹¹⁸

Preliminary Flood Insurance Rate Maps

The FEMA prepares preliminary flood hazard data to provide the public an early look at their home or community's projected risk to flood hazards. Preliminary data may include new or revised FIRMs. Under the FEMA's Risk Mapping, Assessment, and Planning program, the FEMA with communities and other local stakeholders engage in a discovery process to obtain a comprehensive picture of the community's flooding issues, flood risk, and potential flood mitigation activities. This analysis may also include a review of more restrictive floodplain

¹¹⁵ FEMA, *Flood Insurance*, available at: <https://www.fema.gov/flood-insurance> (last visited April 16, 2021).

¹¹⁶ FEMA, *Flood Insurance Rate Map (FIRM)*, available at: <https://www.fema.gov/glossary/flood-insurance-rate-map-firm> (last visited April 16, 2021).

¹¹⁷ *Id.*

¹¹⁸ See generally *Adoption of Flood Insurance Rate Maps by Participating Communities*, FEMA 495 January 2019, available at: https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).

management criteria. Information obtained during the discovery process helps the FEMA prepare preliminary FIRMs.¹¹⁹

Local Government Flood Map Adoption Process

Next, the FEMA provides copies of a preliminary FIRM report for community review and holds meetings with various state and local officials involved in the study. The FEMA may also hold public meetings to introduce and discuss the preliminary FIRM and FIS report with community members.¹²⁰

90-day Communities Appeals Period

After the Consultation Coordination Officer (CCO) meeting, the FEMA initiates a 90-day period for communities to submit appeals about the new or modified flood hazard information shown on the FIRM. Before the appeal period is initiated, the FEMA will publish a notice of proposed flood hazard determinations in the Federal Register, notify the community's Chief Executive Officer, and publish information at least twice in a local newspaper. The appeal period provides community officials and people who own or lease property in the community an opportunity to submit scientific or technical information if they believe the flood hazard determinations are scientifically or technically incorrect.¹²¹

Letter of Final Determination

Following the 90-day appeal period, the FEMA resolves all appeals and finalizes the changes to the FIRM and FIS report. The FEMA then sends each affected community a Letter of Final Determination (LFD), which establishes the final flood hazard data and the effective date of the new FIRM and FIS report for the community.¹²²

Six-month Community Adoption Period

The LFD also initiates the six-month period during which each community must adopt or amend its floodplain management regulations to reference the date and title of the new FIRM report. The FIRM and FIS report become effective at the end of the six months. At that time, flood insurance rates will be based on the new flood data, and the community will apply any floodplain management ordinances related to the new mapping. Federally insured or regulated lenders will also use the newly effective FIRM to determine if flood insurance is required as a condition of a loan.¹²³

Community Land Use Regulation Changes

Each time the FEMA provides a community with new or revised flood hazard data, the local government must either adopt new floodplain management regulations to incorporate the data

¹¹⁹ FEMA, *Flood Map Products*, available at: <https://www.fema.gov/flood-maps/products-tools/products#gis> (last visited April 16, 2021).

¹²⁰ See generally Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019, available at: https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).

¹²¹ *Id.* at 3.

¹²² *Id.* at 4.

¹²³ *Id.*

into in a code of ordinances or amend the existing ones to reference the new FIRM report. Many communities have legally valid automatic adoption clauses to incorporate updated FIRM map reference sections.¹²⁴

If a new type of flood hazard data is added to a community's FIRM, local officials may need to enact an ordinance to meet additional requirements. This ordinance enactment could be needed when the FEMA upgrades a flood zone without Base Flood Elevations (BFEs), indicates a new Special Flood Hazard Area (SFHA), or designates a coastal high hazard area.¹²⁵

Consequences for Failing to Adopt Appropriate Floodplain Management Regulations

If a community does not adopt or amend floodplain management regulations after six months, the community will be suspended from the NFIP. Suspension from the NFIP will have the following consequences:

- Property owners are prevented from purchasing NFIP flood insurance policies, and existing policies will not be renewed.
- Federal grants or loans for development will not be available in identified flood hazard areas.
- Federal disaster assistance will not be provided to permanently repair insurable buildings in identified flood hazard areas for damage caused by a flood.
- Federal mortgage insurance or loan guarantees, such as those written by the Federal Housing Administration and the Department of Veteran Affairs, will not be provided in identified flood hazard areas.

Federally insured or regulated lending institutions, such as banks and credit unions, can make conventional loans for insurable buildings in flood hazard areas of non-participating communities.¹²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 163.3202, F.S., to prohibit local governments from adopting zoning and development regulations that relate to building design elements for single-family or two-family dwellings.

The section allows local governments to adopt and enforce regulations that require “building design elements” for single-family or two-family dwellings if:

- The dwelling is listed in the National Register of Historic Places;¹²⁷
- The dwelling is located in a National Register Historic District;
- The dwelling is designated as a historic property or located in a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;

¹²⁴ *Id.* at 5.

¹²⁵ See generally *Adoption of Flood Insurance Rate Maps by Participating Communities*, FEMA 495 January 2019, available at: https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).

¹²⁶ *Id.* at 5 – 6.

¹²⁷ Section 267.021(5), F.S., relating to historical resources, provides the term “National Register of Historic Places” means “the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.”

- The regulations are adopted pursuant to and meet the building construction standards in ch. 553, F.S.;
- The dwelling is located in a community redevelopment area, as defined in s. 163.340(10), F.S.;¹²⁸
- The regulations are required to ensure protection of coastal wildlife;
- The dwelling is located in a planned unit development or master planned community; or
- The dwelling is located within the jurisdiction of a local government that has a design review board or architectural review board.

The section defines the term “building design elements” to mean:

- External building color;
- Type or style of exterior cladding material;
- Style or material of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows or doors;
- Location and orientation of the garage;
- Number and type of rooms; and
- Interior layout of rooms.
- The term does not include a dwelling’s height, bulk, orientation, location on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The section defines “planned unit development” and “master planned community” as:

an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

The section also provides that the prohibition of zoning and development regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Section 2 amends s. 381.0065, F.S., to allow the owner of an onsite sewage treatment and disposal system (OSTDS), or the owner’s contractor, to select a private provider to provide official inspection services of such systems in lieu of the Department of Health (DOH).¹²⁹ This

¹²⁸ Under s. 163.340(10), F.S., the term “community redevelopment area” means “ a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment. For community redevelopment agencies created after July 1, 2006, a community redevelopment area may not consist of more than 80 percent of a municipality.”

¹²⁹ Chapter 2020-150, Laws of Fla., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

authorization is substantially similar to the provisions governing private building inspectors in ch. 553, F.S.

An owner or contractor using a private provider must notify the DOH two days prior to the first inspection of their intention to use a private provider. This notification must include the private provider's business information, professional license or certification number, and qualification statements or resumes. It must also include an acknowledgement form with prescribed language stating the owner's rights and liabilities to the DOH. An owner or contractor who changes the listed private providers must also update the notice given to the DOH.

The DOH must reduce permit fees based on savings to the DOH due to a private provider providing the inspection services.

The OSTDS inspection services may be performed only by a private provider, a duly authorized representative of a private provider, or a person who is:

- Certified as an environmental health professional¹³⁰ by the DOH under s. 381.0101, F.S.;
- A master septic contractor¹³¹ licensed by the Department of Business and Professional Regulations pursuant to ch. 489, F.S.;
- A professional engineer who has passed all three parts of the Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training¹³²; or
- A person working as staff under such an engineer, who has also passed all three parts of the OSTDS Accelerated Certification Training.

The DOH may audit the performance of OSTDS inspection services by private providers. Such an audit cannot occur more than four times per month unless the DOH determines that an inspected and passed OSTDS should not have passed. Audits may not delay work following a passed inspection.

Section 3 amends s. 514.0115, F.S., to prohibit the DOH from requiring assisted living facilities with pools to comply with the DOH rules relating to swimming pool lifeguards.

¹³⁰ "Environmental health professional" means a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members. Section 381.0101(1)(d), F.S.

¹³¹ "Master septic tank contractor" means a septic tank contractor whose services are unlimited in the septic tank trade who has had at least three years' experience as a Florida-registered septic tank contractor or a certified plumbing contractor who has provided septic tank contracting services for at least three years and who has the experience, knowledge, and skills to install, maintain, repair, close repairs of, and alter all types of onsite sewage treatment and disposal systems, to design onsite sewage treatment and disposal systems, where not prohibited by law, to perform and submit soil evaluations, when determined to meet site-evaluation expertise established by rule, and to use materials and items used in the installation and maintenance of all types of onsite sewage treatment and disposal systems. Section 489.551(2), F.S.

¹³² The Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training program, administered by the DOH, provides five days of training on OSTDSs and results in a special certification. The program is available to private individuals, septic tank contractors, licensed plumbers, professional engineers, and staff working under professional engineers. DOH, *Accelerated Environmental Health Professional Certification and Master Septic Tank Contractor Training Participation and Examination Guide*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/training/documents/act-part-n-exam-guide1-12-2021.pdf> (last visited Apr. 1, 2021).

Section 4 amends s. 553.73, F.S., to provide that a substantially affected person¹³³ may petition the Florida Building Commission (commission) for a non-binding advisory opinion for any local government¹³⁴ regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Florida Building Code (building code) and was not adopted in accordance with the process for adopting local amendments to the building code.

The commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the building code if the substantially affected person submits a petition to the commission. The petition must also be submitted to the local government's general counsel or administrator by certified mail, return receipt requested. The local government may respond within 14 days, and send a copy of its response to the commission. The petition must be made using a form adopted by the commission that contains at a minimum:

- The name of the local government that enacted the regulation;
- The name and address of the local government's general counsel;
- The name, address, and phone number of the substantially affected person;
- An explanation of how the person is substantially affected by the local government's regulation; and
- A statement of why the regulation is a technical amendment to the building code, and which provisions of the building code are amended by the regulation, if any.

Upon receiving a petition to review a local government's regulation, the commission must publish the petition and the local government's response on the building code information system and allow for comments to be posted by interested parties.

The commission must consider the petition, the local government's response, any comments posted on the commission's website, and any recommendation provided by a Technical Advisory Committee. The commission must issue a non-binding advisory opinion stating whether the local government's regulation is a technical amendment to the building code within 60 days of receiving the petition. The commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

This section further provides that the commission may also issue an "errata to the code," pursuant to the rule adoption procedures in chapter 120, F.S., to correct demonstrated errors in provisions contained with the building code. An "errata to the code" means a list of errors on current and previous editions of the building code. The determination of such errors and the issuance of an "errata to the code" must be approved by a 75 percent supermajority vote of the commission.

Finally, under the bill, a municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency (FEMA) for any law, ordinance, rule, or other measure that has the effect of imposing land use changes. Under this provision, the named

¹³³ A "substantially affected person" includes an owner or builder subject to the local government's regulation or an association of owners or builders who have members who are subject to the regulation.

¹³⁴ A "local government" means a county, municipality, special district, or political subdivision of the state.

local government entities may have to provide that land use changes based on a preliminary FEMA map are not effective until the FEMA map becomes effective, and is no longer considered preliminary.

Section 6 amends s. 553.79, F.S., to prohibit a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

The section also provides that a local government may not prohibit or otherwise restrict the ability of a property owner to obtain a building permit to demolish and replace any single-family residential dwelling located in a coastal high hazard area, moderate flood zone, or special flood hazard area if the lowest floor elevation of the dwelling is at or below the property's base flood elevation plus one foot, pursuant to the building code or local ordinance. Such a demolition permit may only be reviewed administratively for compliance with the building code and applicable construction regulations, and is not subject to additional land development regulation or zoning approval that requires a public hearing before the issuance of the permit. Local governments may not impose additional regulatory requirements on the replacement single-family residential dwelling which would not otherwise be applicable to a similarly situated vacant parcel, and may not penalize the owner for such demolition.¹³⁵

Section 7 amends s. 553.791, F.S., to allow private providers to conduct inspection services either virtually or in person.

This section revises the statutory provision regarding reduction of fees for utilizing private providers to expressly require local jurisdictions to reduce the permit fee by the amount of cost savings realized by the local enforcement agency based on a flat fee, percentage, or other reasonable means.

This section further allows electronic signatures to be used on several forms submitted by private providers to building code officials. "Electronic signature" is defined to mean any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record. Inspection records and affidavits attesting that plans have been reviewed for compliance may be signed physically or electronically. Such an affidavit may also be electronically submitted.

When a noncomplying item related to the building code or permitted documents is found at a work site, a deficiency notice must be posted at the job site by the private provider, the provider's representative, or the building department. The bill allows such deficiency notice to be electronically posted, in the alternative to physically posting at the jobsite

¹³⁵ Some local governments have requirements put in place prior to allowing demolition of certain buildings, such as those recorded on the Florida Master Site File (The Florida Department of State's official inventory of historical and cultural resources), those 50 years or older, or those listed on the National or Local Register (officially administered lists of historic places). Often the local governments require review by a historic architectural review board, or similar body, to determine whether actions can be taken to preserve the historic nature of the property. These review board actions may include or require public hearings to approve demolition and replacement of such buildings. See, e.g. *Demolitions, City of St. Augustine*, available at <https://www.citystaug.com/194/Demolitions> (last accessed April 20, 2021); *Demolition Application Package for Florida Master Site File Structures*, City of Sarasota, available at <https://www.sarasotafl.gov/home/showpublisheddocument?id=4705> (last accessed April 20, 2021).

This section provides that if equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the building code, a private provider may perform emergency inspection services without first notifying the local building official. The building code provides that where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.¹³⁶ A private provider must conduct the inspection within three business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within one day after the inspection is completed.

This section defines “single-trade inspections” as any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical, and provides specific examples of single-trade work. The section expressly provides that private providers are allowed to perform single-trade inspections within the disciplines covered by that person’s licensure or certification.

If an owner or contractor makes changes to the listed private providers or services to be conducted by private providers, they must update the notice of work to be performed within one business day. The bill amends the timing to allow, in the alternative, such notice to be updated two business days before the next scheduled inspection.

Further, the bill defines “qualified private providers” as those private providers who have previously performed plans review and inspection services in the local jurisdiction and has registered with the local enforcing agency by providing the local building official with the provider’s:

- Name, firm, address, telephone number, and email address;
- Professional license or certification number, qualification statements, or resumes; and
- A certificate of insurance, if required by the local building official.

This information must be submitted on an annual basis to maintain qualifying status, and must be updated within 10 business days after any change. The local jurisdiction is required to keep a registry of active qualified private providers separate from the jurisdiction’s private provider and duly authorized representative licensure registration system authorized by 553.791(16)(b), F.S.

Qualified private providers are not required to re-provide the information listed above to the local building code administrator with each notice of work to be performed as otherwise required by s. 553.971(4), F.S.

Finally, this section expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure owned by the entity.

Section 8 amends s. 553.842, F.S., to require the commission to adopt rules for approving evaluation entities in addition to the ones already approved and listed in current law.

¹³⁶ Section 105.2.1, Florida Building Code (7th ed.) 2020.

The section also clarifies that the Commission may suspend any product evaluation entity, including those listed in statute.

Section 9 amends s. 553.80, F.S., to provide that in addition to using excess funds generated from fees and fines to rebate and reduce fees, a local government may use such funds for the construction of a building or structure that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than four years.

Sections 5, 10, and 11 correct statutory references to conform to changes made by the bill.

Section 12 provides the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature;

The bill may implicate this constitutional restriction, to the extent that local governments are required to expend funds to procure or enhance technology infrastructure to accommodate electronic submission and posting of certain inspection materials and records by private providers.

However, Article VII, s. 18(d) of the State Constitution provides that the mandate requirements do not apply to laws having an insignificant impact,¹³⁷ which for Fiscal Year 2020-2021 is forecast at \$2.2 million.¹³⁸ The fiscal impact of this bill is indeterminate. If the total cost of this legislation is less than \$2.2 million, then the mandate requirements do not apply. If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in

¹³⁷ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021).

¹³⁸ Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

State Constitution (e.g., enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill may implicate the constitutional single subject rule. Article III, s. 6 of the Florida Constitution imposes a single subject restriction on laws enacted by the Legislature: “Every law shall embrace but one subject and matter properly connected therewith...” The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.

The title of the bill is “An act relating to the Florida Building Code.” However, section one of the bill relates to land development regulations, section two of the bill relates to the inspection of onsite sewage treatment and disposal systems, and section three relates to the Department of Health’s lifeguard standards for pools serving assisted living facilities, which do not appear properly connected to the subject of the Florida Building Code.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing the use of private providers to inspect onsite sewage treatment and disposal systems (OSTDSs) may increase efficiencies and lower costs for OSTDS owners. Additionally, persons qualified to be a private provider under the bill will be able to offer official inspection services, increasing business opportunities.

Private providers generally will also have increased opportunities for emergency inspections, virtual inspections, and electronic submission and signature efficiencies, which will have a positive effect. To the extent that the clarification regarding fee reduction alters a local government's fee calculations, consumers utilizing private providers may experience an indeterminate impact.

Prohibiting local governments from requiring contracts between owners and builders as a condition to apply or obtain a building permit may have a positive impact by preventing certain proprietary information from becoming public.

Prohibiting certain building design elements ordinances and other regulations may lead to a decrease in the cost of construction of affected single-family or two-family dwellings.

C. Government Sector Impact:

Allowing the use of private providers to inspect OSTDSs may save government funds by lightening the burden on inspections performed by the government; however, each inspection performed by a private provider reduces the revenue received by the governmental entity that would have done the inspection. The Department of Health is currently responsible for performing these inspections; however, effective July 1, 2021, the Onsite Sewage Program will transfer to the Department of Environmental Protection.

According to Department of Business and Professional Regulation (DBPR), applicants for certification as product evaluation entities will be required to pay an initial application fee and renewals fees. The DBPR estimates no more than 75 new entities will apply for certification and estimates receiving no more than \$45,000 in new application fees and \$15,000 annually in renewal fees for such applicants.¹³⁹

The Florida Building Commission may see an increased workload related to establishing a process for accepting petitions from affected persons, issuing non-binding advisory opinions. According to the DBPR, the technology contractor for the Florida Building Commission (commission) estimates updating the building code information system to implement the nonbinding advisory opinion process will cost approximately \$60,000.¹⁴⁰

The provision allowing the commission to adopt an "errata to the code" is not anticipated to have a significant impact on the commission's processes.¹⁴¹

Local governments may need to expend funds to procure or enhance electronic infrastructure to accommodate electronic submission and posting of certain inspection materials and records by private providers.

¹³⁹ See Department of Business and Professional Regulation, *HB 401 Bill Analysis*, p. 5, (Feb. 24, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

¹⁴⁰ *Id.*

¹⁴¹ Email from the Legislative Affairs Coordinator, Department of Business and Professional Regulation, HB 401 Provision, (Mar. 30, 2021).

Local building code administrators may incur costs, most likely insignificant, related to the provision requiring maintenance of a registry of “qualified private providers.”

Local building code administrators may see a positive effect from the increased flexibility of being authorized to utilize excess funds to construct certain buildings.

Local governments may experience costs associated with repealing, amending, and defending existing ordinances, zoning codes, and regulations related to building designs prohibited by section 1.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 provides that zoning and development regulations enacted by local governments may not relate to “building design elements.” However, the term “zoning and development regulations” is not defined in the Community Planning Act. The term “land development regulations” is, however, defined in the Community Planning Act to mean ordinances enacted by governing bodies for the regulation of any aspect of development, and includes any local government zoning, rezoning, subdivision, building construction, sign regulations, or any other regulation controlling the development of land.¹⁴²

Section 2 provides that certain onsite sewage treatment and disposal system inspections may be performed by a “private provider” or a representative thereof. “Private provider” is not defined in ch. 381, F.S., and the operation of the term in the bill is unclear. An amendment may be necessary to more clearly define the professional licensing standards and requirements of a private provider.

The provision in section 3 of the bill pertaining to land use changes and preliminary FEMA flood maps (lines 428-431) would be more appropriately placed within part II of ch. 163, F.S., pertaining to land development regulations. Additionally, this provision should specifically reference “*Flood Insurance Rate Map* issued by the Federal Emergency Management Agency,” as opposed to a general reference to FEMA maps.

Current law does not expressly authorize building inspections performed by local building departments to be conducted virtually. Section 6 provides express authorization for private building inspectors, “private providers,” to conduct building inspections virtually. The sponsor may consider addressing this inconsistency.

¹⁴² Section 163.3164(25), F.S., also provides the definition does not apply in s. 163.3213, F.S., relating to administrative review of land development regulations; in that section, the term “land development regulation” means “an ordinance enacted by a local governing body for the regulation of any aspect of development, including a subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning the development of land. This term shall include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553.”

Section 7 provides that private providers may electronically post certain documents “through the use of a website or other form of electronic communication used to transmit or display information.” The bill is silent as to whether this capability must be authorized by the local building code administrator, or whether such website must be provided by the local building code administrator, as opposed to each private provider creating their own method of posting.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3202, 381.0065, 514.0115, 553.73, 553.77, 553.79, 553.791, 553.80, 553.842, 125.01, and 125.56.

IX. Additional Information:

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

CS/CS/CS by Rules on April 20, 2021:

The CS:

- Prohibits local governments from adopting zoning and development regulations that relate to “building design elements” for single-family or two-family dwellings, with certain exceptions.
- Provides that a local government may not prohibit or restrict the ability of a property owner to obtain a permit to demolish and replace any single family dwelling located in certain flood hazard areas.
- Permits local governments to utilize excess building code enforcement fees to pay for the construction of a building or structure that houses a local building code enforcement agency or is used to provide certain training.
- Allows the Florida Building Commission to issue an advisory opinion regarding the technical nature of a building code amendment within 60 days, increased from 30 days.

CS/CS by Appropriations on April 15, 2021:

The CS makes several changes to current law pertaining to private providers to allow private providers to conduct virtual inspections, perform single-trade inspections, submit certain inspection documentation and reports electronically, conduct emergency inspection services, and register as a “qualified private provider” with a local government.

The CS also provides that a municipality, county, or special district may not use preliminary maps issued by Federal Emergency Management Agency (FEMA) for any measure that imposes land use changes.

CS by Community Affairs on March 30, 2021:

The CS incorporates the provisions allowing an owner of an onsite sewage treatment and disposal system, or the owner’s contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health. It also expressly authorizes local governments and school districts to use a private provider to provide

building code inspection services for public works projects and improvements to any building or structure.

B. Amendments:

None.

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