

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 423 Building Inspection Services
SPONSOR(S): Regulatory Reform Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Local Administration & Veterans Affairs Subcommittee	17 Y, 0 N	Mwakyanjala	Miller
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. Current law requires local governments to enforce the Building Code and issue building permits.

A building official is a local government employee who supervises building code activities, including plans review and inspection. A building inspector inspects construction to determine compliance with the Building Code, and a plans examiner reviews plans to determine design compliance with the Building Code.

Building officials, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) housed within the Department of Business and Professional Regulation (DBPR).

Current law also allows property owners and contractors to hire building officials, engineers, and architects, referred to as private providers, to review plans, perform inspections and prepare certificates of completion.

Relating to building officials, building inspectors, and plans reviewers, the bill:

- Provides that a person may sit for the building inspector or plans examiner licensure test by completing a 4-year internship with a private provider or a private provider's firm, while under the direct supervision of a licensed building official, engineer, or architect.
- Requires the BCAIB to create a rule allowing partial completion of an internship program to be transferred to any other authorized internship.
- Prohibits the BCAIB from issuing a provisional license with a special condition or requirement that such licensee be employed by a municipality, county, or other local government agency.

Relating to private providers, the bill:

- Provides that if a person uses a private provider, the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor.
- Defines "reasonable administrative fee."
- Provides that if a notice of deficiency is not issued within two business days of receiving a request for a certificate of occupancy from a private provider:
 - A certificate is "automatically" granted, instead of "deemed" granted;
 - The building permit is closed; and
 - Local building officials must provide the permit applicant with a written certificate of occupancy within 10 days.

The bill does not appear to have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Building Code

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.¹

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, 2002.² The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.³

Chapter 553, part IV, 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.⁴

The Florida Building 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. The Commission reviews several International Codes published by the International Code Council,⁵ the National Electric Code, 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.⁶

Local Enforcement of the Florida Building Code

The Legislature intends that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions to protect the public's health, safety, and welfare.⁷

Every local government must enforce the Building Code and issue building permits.⁸ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may be directed, by resolution or regulation, to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹

¹ The 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 Nov. 11, 2021).

² *Id.*; DBPR, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited on Nov. 11, 2021).

³ *Id.*

⁴ See s. 553.72(1), F.S.

⁵ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Dec. 13, 2021).

⁶ Ss. 553.73, and 553.74, F.S.

⁷ S. 553.72, F.S.

⁸ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

⁹ See ss. 125.56(4)(a), 553.79(1), F.S.

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.¹⁰ Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.¹¹

Building Code Administrators, Inspectors, and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subject to confirmation by the Senate.¹²

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.¹³

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories under which the inspector has been licensed. The inspector categories are:¹⁴

- Building inspector
- Coastal construction inspector
- Commercial electrical inspector
- Residential electrical inspector
- Mechanical inspector
- Plumbing inspector
- **Residential inspector**
- Electrical inspector

In 2020, the Legislature renamed the “**one and two family dwelling inspector**” category as the “**residential inspector**” category and expanded the scope of practice to include inspecting one-family, two-family, or three-family residences, and accessory use structures in connection therewith, for compliance with the building, plumbing, mechanical, accessibility, and electrical codes.¹⁵

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories under which the plans examiner has been licensed. The plans examiner categories are:¹⁶

- Building plans examiner
- Plumbing plans examiner
- Mechanical plans examiner

¹⁰ S. 110, Seventh edition of the Florida Building Code (Building).

¹¹ Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%9320Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Nov. 11, 2021).

¹² S. 468.605, F.S.

¹³ S. 468.603(2), F.S.

¹⁴ See s. 468.603(5), F.S.

¹⁵ Ch. 2020-160, s. 19, Laws of Fla., *codified* at s. 468.603(5)(f), F.S.

¹⁶ See s. 468.603(8), F.S.

- Electrical plans examiner

The BCAIB may also create voluntary certificates that licensed inspectors and plans examiners may obtain. A voluntary certificate is a limited certificate that allows a licensed inspector or plans examiner to inspect or examine plans for additional categories. Voluntary certificates are not available to people who are not licensed as an inspector, plans examiner, or construction contractor. The BCAIB has created the following voluntary certificates:¹⁷

- Residential pool inspector
- Commercial pool inspector
- Roofing inspector
- Modular inspector
- Modular plans examiner
- Residential plans examiner

In order to sit for the plans examiner or inspector exam a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:¹⁸

- Have 4 years of combined relevant experience;
- Have 3 years of combined postsecondary education and relevant experience;
- Have 3 years of combined technical education and relevant experience;
- Complete an approved cross-training program and have at least 2 years of experience;
- Hold a standard certificate issued by the BCAIB or a firesafety inspector license; and
 - have at least 4 years of relevant experience as an inspector or plans examiner;
 - have a minimum of 3 years of experience in firesafety inspection or firesafety plan review and have completed a training program of not less than 100 hours in the new category sought;
 - complete an approved training program of not less than 200 hours in inspection or plans review except for **one-family and two family dwelling training programs**,¹⁹ which may not be less than 500 hours; or
- Complete a 4-year internship certification program.

Internship Programs

After the recession in 2008, Florida experienced a shortage of inspectors, plans examiners, and building officials on account of many of them being laid off. In at least one county, the shortage forced the local building board to rehire retired inspectors.²⁰

¹⁷ See s. 468.609(10), F.S.; R. 61G19-6.016, F.A.C.

¹⁸ S. 468.609(2), F.S.

¹⁹ “One-family and two family dwelling” may need to be renamed to “residential” since the Legislature renamed the one-family and two-family dwelling inspector license to the residential inspector license during the 2020 Legislative Session.

²⁰ See James Sullivan, Charles Kibert, Andriel Fenner, & Shirley Morque, *Florida Construction Workforce Taskforce: Address training issues among building code inspectors to increase the number qualified inspectors*, (March 9, 2017) <http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf> (last visited Nov. 23, 2021).

In response to the shortage, during the 2017 Legislative Session, the Legislature created the 4-year internship program as an additional way to obtain licensure as a plans examiner or inspector.²¹ A person may sit for the plans examiner or inspector exam in all categories if the person is at least 18 years of age, is of good moral character, and completes an internship program. The requirements of the internship program are:²²

- Completing a 4-year internship as an inspector or plans examiner while **employed full-time by a local government**, under the direct supervision of a building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year;
- Passing an ICC administered examination in the license category sought;
- Passing the principles and practice examination before completing the internship program;
- Passing a BCAIB-approved 40-hour code training course in the license category sought before completing the internship; and
- Obtaining a favorable recommendation from the supervising building official after completion of the internship.

Current law requires the BCAIB to establish by rule that partial completion of the internship program may be **transferred between jurisdictions**.²³

Currently, the 4-year internship program only applies to a person employed full-time by a local government, and **does not apply** if the person is employed full-time with a private entity that provides building inspection and/or plans review services.

Private Providers

In 2002, section 553.791, F.S., was created to allow property owners and contractors to hire licensed building code officials, 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 building inspections are within the scope of the provider's license.

Section 553.791(1)(n), F.S., defines "private provider" as person licensed as a building official, as an engineer under chapter 471, F.S., or as an architect under chapter 481, F.S. 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.²⁴

If an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department and reduce the building permit fees accordingly.²⁵

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider but may charge a "**reasonable administrative fee**."²⁶ However, current law does not define a "reasonable administrative."

A building official may audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the

²¹ Ch. 2017-149, s. 5, Laws of Fla., *codified at* s. 468.609(2)(c)7., F.S.

²² S. 468.609(2), F.S.

²³ S. 468.609(10), F.S.

²⁴ S. 553.791(1)(n) and (3), F.S.

²⁵ S. 553.791(2)(b), F.S.

²⁶ *Id.*

Building Code. 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.²⁷

When a property owner or a contractor elects to use a private provider, he or she must notify the building official, on a form adopted by the Florida Building Commission, at the time of the permit application or no less than two business days before the first or next scheduled inspection.²⁸

A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider is authorized to review the plans.²⁹ Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit. Denying a permit automatically tolls the remaining 20 business days.³⁰

Before a private provider performs building inspections, he or she must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.³¹

A private provider must post records of every inspection, including the results of the inspections, electronically or on the jobsite and provide the records to the local building official within two business days of posting the records.³²

Upon completion of all required inspections, a private provider must give the building official a record of all the inspections, **a request for a certificate of occupancy**, and a sworn statement indicating compliance with the Building Code. Upon receipt, the building official has **two business days** to issue the certificate of completion or provide the permit applicant a notice of deficiencies.³³

If the local building official does not provide a notice of the deficiencies within two business days, the request for a certificate of occupancy is **deemed granted**, and the local building official **must issue the certificate of occupancy the next business day**.³⁴

Effect of the Bill

Building Code Administrators, Inspectors, and Plans Examiners

The bill corrects a scrivener's error and renames the "one-family and two-family dwelling" training program as the "residential" training program in order to conform with the use of "residential inspector" in related provisions of Florida Statutes.

The bill provides that a person may also complete the 4-year internship as a building code inspector or plans examiner while **employed full-time with a private provider or a private provider's firm**, which performs the services of a building inspector or plans examiner, while under the direct supervision of the private provider who must be licensed as a building official, engineer, or architect.

The bill also provides that the BCAIB must create a rule allowing partial completion of an internship program to be transferred between any authorized internship provider, including local jurisdictions or **private providers, or a private provider's firm**.

²⁷ S. 553.791(1), (14), and (19), F.S.

²⁸ S. 553.791(4)-(5), F.S.

²⁹ S. 553.791(6), F.S.

³⁰ S. 553.791(7), F.S.

³¹ S. 553.791(9) and (18), F.S.

³² S. 553.791(11), F.S.

³³ S. 553.791(11)-(13), F.S.

³⁴ *Id.*

The bill removes “the supervision of the licensee on a consulting or advisory basis” from the list of examples of specifically identified “special conditions or requirements” to be used by the BCAIB when issuing provisional licenses.

The BCAIB may still issue a provisional license with a special condition or requirement that the BCAIB deems necessary to protect the public safety and health. However, the bill prohibits the BCAIB from issuing a provisional license with a special condition or requirement related to employment by a municipality, county, or other local government agency.

Private Providers

The bill provides that if an owner or contractor retains a private provider for plans review or inspection services the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor.

A “reasonable administrative fee” must be based on the cost that is actually incurred by the local government, including the labor cost of the personnel providing the service, or the cost attributable to the local government for the clerical and supervisory assistance required, or both.

The bill provides that if a local building official does not provide a notice of deficiencies within two business days, the request for a certificate of occupancy is “**automatically**” granted and **considered issued** the next business day, instead of “**deemed**” granted and required to be issued by the local building official on the next business day.

The bill also provides that if a local building official does not provide a notice of deficiencies within two business days, the building permit is closed and the local building official must provide the permit applicant with the written certificate of occupancy or certificate of completion within 10 days after it has been automatically granted and considered issued.

B. SECTION DIRECTORY:

Section 1. Amends s. 468.603, F.S., relating to definitions.

Section 2. Amends s. 468.609, F.S., relating to standards for certification; additional categories of certification.

Section 3. Amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 4. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of people who qualify for licensure as a building inspector or plans examiner, which may lead to a decrease in the cost of construction because of a decrease in the time needed for inspections and plans review.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 2, 2021, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Changes “private entity” to “private provider” throughout the bill.

This analysis is drafted to the bill as amended by the Regulatory Reform Subcommittee.