

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 447 Building Permits

SPONSOR(S): Commerce Committee, Business & Professions Subcommittee, Diamond and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	14 Y, 0 N, As CS	Brackett	Anstead
2) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Darden	Miller
3) Commerce Committee	22 Y, 0 N, As CS	Brackett	Hamon

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 must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. Local governments have the power to inspect all buildings, structures, and facilities within their respective jurisdictions to protect of the public's health, safety, and welfare. Under current law, local governments must enforce the Florida Building Code, issue building permits, review building plans, and perform building inspections.

The bill provides that local governments may:

- Send written notice, by mail or e-mail, to the owner of the property listed on a building permit, and the contractor who was issued the permit, that a building permit is about to expire. If the local government decides to send the notice, it must send the notice no less than 30 days before the permit expires.
- Close a building permit 6 years after the issuance of the permit, and even in the absence of a final inspection, if the local enforcement agency determines that there are no apparent safety hazards.

The bill provides that local governments may not:

- Penalize an arms-length purchaser of property solely because a previous owner failed to close a building permit for the property.
- Deny a contractor a permit solely because the contractor has expired building permits.

The bill also:

- Provides that a contractor who takes over a job from a previous contractor is not liable for any defects in the work performed by the previous contractor.
- Provide that a local government must close a permit in accordance with the building code in effect when the building department received the permit application regardless of whether the permit has expired.
- Excludes a property owner, who is performing construction contracting on a residential property under the owner-builder exemption, from the requirement to reside on the property for at least a year if the owner is closing a permit where the contractor substantially completed the work related to the permit.
- Provides that local governments may only charge a person one search fee for identifying the building permits for units or sub-units that are assigned to one parcel of property. Such fee shall be commensurate with the research and the time costs incurred by the local government.

The bill does not have a fiscal impact on the state or local governments.

The bill provides for an effective date of October 1, 2019.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0447d.COM

DATE: 4/15/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Building Code and Building Permits – Current Situation

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, and that first edition replaced all local codes effective as of March 1, 2002.² The current edition of the Florida Building Code is the sixth edition, which is referred to as the 2017 Florida Building Code.³

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 Florida 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 Florida Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Florida Building Code needs to be updated and adopts an updated Florida Building Code every three years.⁵

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.⁶

Every local government must enforce the Florida Building Code and issue building permits.⁷ 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

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 Mar. 14, 2019).

² *Id.* and Dept. of Business and Professional Regulation, *Overview of the Florida Building Code*, <http://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab4.pdf> (last visited Mar. 14, 2019).

³ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Mar. 14, 2019).

⁴ See S. 553.72(1), F.S.

⁵ Ss. 553.73, 553.74, F.S.

⁶ S. 553.72, F.S.

⁷ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

persons as 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.⁸

Building Permits

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity. A building official is a local government employee or a person contracted by a local government who supervises building code activities, including plan review, enforcement, and inspection.⁹

A local government entity that issues building permits must post each type of building permit application on its website. Completed applications must be submitted electronically to the local enforcement agency building department, which must provide accepted methods of electronic submission.¹⁰

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the local government. The forms may be in a format prescribed by the authority issuing the permit and may include any information required by the authority issuing the permit, but at a minimum, the application must include the following information:

- 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; and
- The number or identifying symbol assigned to the building permit by the issuing authority.¹¹

A building permit becomes invalid if:

- work authorized by the permit is not commenced within 6 months after issuance of the permit or
- work authorized by the permit is suspended or abandoned for a period of 6 months after the time the work commenced.

A permit may also become null and void, expired, or may be revoked due to a lack of progress or abandonment. If this happens, then work must be halted until a new permit has been obtained.¹²

Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the edition of the Florida Building Code that is in effect when the local government received the application for the building permit. The Florida Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections. The Florida Building Code also requires a final inspection to be performed after work is complete to ensure the project complies with the Florida Building Code. In addition to required inspections, a local building official may require other inspections of any work to ensure it complies with the Florida Building Code.¹³ Generally speaking, a permit that passes the required inspections is considered completed or closed.¹⁴

Any construction work that requires a building permit must be performed in compliance with the edition of the Florida Building Code that is in effect when the local government received the application for the permit. If the local government received the application for the permit before the Florida Building Code took effect, then the work must comply with the minimum building code in effect when the local government received the application. If work is halted or abandoned, and the permit expires or

⁸ See ss. 125.56(4)(a), 553.79(1), F.S.

⁹ S. 468.603(2), F.S.; S. 202 of the Florida Building Code (Building), Sixth Edition.

¹⁰ Ss. 125.56(4)(b) and 553.79(1)(b), F.S.

¹¹ S. 713.135, F.S.

¹² S. 105.4, of the Florida Building Code (Building), Sixth Edition.

¹³ Ss. 107, 110.1, and 110.3 of the Florida Building Code (Building). Sixth Edition;

¹⁴ 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 Mar. 15, 2019).

becomes invalid or null and void, then a new permit is required to complete the work. The remaining work performed under the new permit must be in accordance with the edition of the Florida Building Code that is in effect when the local government received the application for the new permit.¹⁵

Real Estate Disclosure Agreement Forms

Florida's real estate industry has developed standardized forms for many real property transactions that are used by owners, real estate agents, and attorneys. It is common for a seller of real property to complete a property disclosure form prior to the sale of the property to disclose all known facts that materially affect the value of the property being sold and that are not readily observable or known by the buyer. A recent addition to the seller's property disclosure form includes questions pertaining to active or open permits on the property that have not been closed by a final inspection.¹⁶

Created jointly by the Florida Bar and Florida Realtors, the FAR/BAR Standard Contract and the FAR/BAR 'AS IS' Contract are accepted forms used for transactions of varied configurations and complexities. The forms outline responsibilities and obligations of parties in real estate transaction closings related to inspection periods, seller disclosures, and building permits. Under paragraph 12 of the Standard Contract, if the buyer gives notice of permit issues, the seller is obligated to resolve open or expired permits and obtain permits for any unpermitted improvements up to a certain dollar amount.¹⁷ Under paragraph 12 of the "As Is" Contract, the seller must assist the buyer with closing permits but is not obligated to spend money for this purpose.¹⁸

In response to the disclosure requirements pertaining to open or expired permits on the seller's disclosure form and the FAR/BAR forms, title companies, closing agents, and real estate attorneys research properties to determine if open or expired permits exist. Without resolution of such permits, closings may be delayed or canceled.

Complications From Expired Permits

News reports indicate that homeowners are experiencing problems with obtaining new building permits and selling their homes based on the existence of expired permits. Some homeowners have discovered expired permits that are 20 or 30 years old. Many times the permits expire because the required inspections have not been completed even though the work is completed. These expired permits can prevent the homeowner from selling their homes, obtaining new permits to do additional construction, or subject the owner to possible fines.¹⁹

At least one county has addressed the problem. Orange County instituted a policy of giving notice to all contractors and homeowners that their permit was about to expire. According to news reports, the number of Orange County building permits that expired dropped from nearly 2,500 in 2017 to 229 in the first nine months of 2018. County officials attribute the drop in expired permits to the notices given to owners and contractors.²⁰

¹⁵ S. 105 of the Florida Building Code (Building), Sixth Edition; The City of Fort Myers, *Building, Permitting, & Inspections Division*, <https://www.cityftmyers.com/174/Building-Permitting-Inspections-Division> (last visited on Apr. 11, 2019).

¹⁶ Northeast Florida Association of Realtors, Inc., *Seller's Property Disclosure*, https://www.nefar.com/filebin/pdbdb/11/728_11.pdf (last visited Mar. 13, 2019).

¹⁷ Florida Realtors, *Residential Contract For Sale And Purchase*, https://www.floridarealtors.org/LegalCenter/HotTopics/upload/FloridaRealtors-FloridaBar-5_032217_Watermarked-3.pdf (last visited Mar. 13, 2019);

¹⁸ Florida Realtors, "AS IS" Residential Contract For Sale And Purchase, <https://www.needtosellmyhousefast.com/wp-content/uploads/2014/08/Florida-FAR-BAR-AS-IS-Residential-Contract-For-Sale-and-Purchase.pdf> (last visited Mar. 13, 2019).

¹⁹ Antony Clark, *Expired permits cause complications*, Gainesville Sun (Oct. 25, 2015) <https://www.gainesville.com/news/20151025/expired-permits-cause-complications> (last visited on Apr. 12, 2019); Mike DeForest, *Work done on your home may have failed inspection without you knowing it*, (November 7, 2018) <https://www.clickorlando.com/news/investigators/homeowners-hindered-by-failed-inspections-expired-permits> (last visited Mar. 15, 2019).

²⁰ Mike DeForest *supra* note 21.

Florida Building Code and Building Permits – Effect of the Bill

The bill provides that local governments may:

- Provide written notice that a building permit is about to expire or become null and void or invalid to the owner of the property listed on the permit and the contractor who has been issued the permit by e-mail or United States Postal Service no less than 30 days before the permit will expire, become null and void or invalid.
 - If the local government decides to send, the notice it must identify the permit that is about to expire become null and void or invalid and the date the permit will expire, become null and void or invalid.

The bill also allows a local government to close a building permit without doing a final inspection if:

- The local enforcement agency issued the permit 6 years ago, and
- The local enforcement agency determines there are no apparent safety hazards.

Thus, a permit that has been expired for 6 years or more may be closed without a final inspection if the local enforcement agency determines that there are no apparent safety hazards. The phrase “no apparent safety hazards” is not defined. The bill does define the term "close" to mean that the requirements of the permit have been satisfied.

The bill provides that local governments may not:

- Penalize an arms-length purchaser of property solely because a previous owner failed to close a building permit for the property.
 - The local government still has all rights and remedies against the owner and contractor listed on the permit.

The bill allows a local enforcement agency to close a permit in accordance with the Florida Building Code in effect on the date of the permit application regardless of how old the permit is or whether it is expired. The bill specifically adds the following to s. 553.79, F.S.:

(15)(b) The requirements to close a permit under this subsection shall be based on the Florida Building Code in effect at the time the local enforcement agency receives the application for the permit, unless the contractor has sought and received approval from the local enforcement agency for an alternative material, design, or method of construction.

This will allow contractors and owners to complete projects with expired, null and void, or invalid permits without having to obtain new permits, which would require work to be performed in accordance with the Florida Building Code existing and in effect on the date of the application for the new permit..

Local Government Fees – Current Situation

Each local government entity may provide a schedule of reasonable inspection fees in order to cover the costs of inspection and enforcement of the Florida Building Code.²¹ A local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida 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.²²

²¹ Ss. 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).

²² *See* s. 553.80(7), F.S.

Local Government Fees – Effect of the Bill

The bill provides that local governments may only charge a person one search fee for identifying the building permits for units or sub-units that are assigned to one parcel of property. Such fee shall be commensurate with the research and the time costs incurred by the local government.

Contractors – Current Situation

The Legislature has determined that it is “necessary in the interest of the public health, safety, and welfare” to regulate the construction, electrical, and alarm system industry.²³ Construction contracting essentially means building or altering a structure for compensation. Electrical contracting essentially means performing any electrical work such as working on electrical wiring, fixtures, appliances, apparatus, and conduits for compensation. Alarm system contracting essentially means working on alarm systems such as installing, repairing, replacing, or servicing alarm systems for compensation.

Chapter 489, F.S., outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers contracting regulated by the Electrical Contractors’ Licensing Board (ECLB). Both boards are housed in the DBPR.

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline. Electrical contractors and alarm system contractors are certified or registered by the ECLB. The ECLB consists of 11 members who are appointed by the Governor and confirmed by the Senate. The ECLB also meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.²⁴

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.²⁵

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.²⁶ Local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction. Registered contractors must register with DBPR after obtaining a local license from the jurisdiction and comply with local and state statutory obligations.²⁷

The CILB and the ECLB are responsible for licensing, regulating, and disciplining certified contractors. The CILB and the ECLB may take action²⁸ against a certified contractor if they find the contractor is guilty of violating the law. Violations include:

- Abandoning a construction project. There is a presumption a contractor abandoned a project after 90 days if the contractor terminates the project without just cause or without proper

²³ s. 489.101, F.S.

²⁴ *See generally* Ch. 489, F.S.

²⁵ Ss. 489.105, & 489.505, F.S.

²⁶ Ss. 489.103, & 489.505, F.S.

²⁷ Ss. 489.117, 489.131, 489.513, & 489.537, F.S.

²⁸ The CILB and the ECLB may place a contractor on probation, reprimand him or her, revoke or suspend the contractor’s certificate or registration, or deny the issuance of a renewal certificate or registration. The CILB and the ECLB may also require financial restitution to a consumer for financial harm directly related to a violation, require continuing education, or assess costs associated with investigation and prosecution. Ss. 489.129(1), 489.533(1), F.S.

notification to the owner, or the contractor fails to perform work without just cause for 90 consecutive days; or

- Proceeding on a job without obtaining applicable local building department permits and inspections.²⁹

Additionally, the CILB may take action against a certified construction contractor if they find the contractor is guilty of receiving money totaling more than 10 percent of a contract price for repair, restoration, improvement, or construction to residential real property and fails to:

- Apply for any necessary permits within 30 days after the payment is made; or
- Start the work within 90 days after the date all necessary permits are issued.³⁰

Local governments may deny, suspend, or revoke the ability of a certified contractor to obtain a building permit if the local government determines:

- The contractor is guilty of fraud or a willful building code violation within the jurisdiction of the local government; or
- The contractor is guilty of fraud or a willful building code violation in another jurisdiction within the past 12 months and such fraud or violation would have also been fraud or violation within the local government's jurisdiction.³¹

A local government may also deny issuance of, or may suspend an outstanding building permit if the contractor fails to provide proof of public liability and property damage insurance and workers' compensation insurance.³²

Contractors – Effect of the Bill

The bill provides that local governments may not deny a contractor a permit solely because the contractor has expired, invalid, or null and void building permits.

Owner-Builder Exemption From Licensing Requirements – Current Situation

In order to perform construction, electrical, or alarm system contracting a person must be licensed as a contractor, be an employee of such contractor, or fall under one of the exemptions to licensure.³³ One of the exemptions is the owner-builder exemption. The owner-builder exemption allows an owner of a property to act as a contractor for:³⁴

- Building or improving farm outbuildings, one or two-family residences, and improving commercial buildings at a cost that does not exceed \$75,000. The building or residence must be for the owner's use and may not be sold or leased within 1 year of the owner completing the construction.
- Repairing or replacing shingles on one-family, two-family, or three-family residences when the property has been damaged by a natural disaster for which the Governor has declared a national emergency. The residence must be for the use of the of the owner or the owner's tenant and may not be sold within 1 year of the construction; and
- Installing, uninstalling, or replacing solar panels on one-family, two-family, or three-family residences, when the local enforcement agency is participating in a "United States Department of Energy SunShot Initiative: Rooftop Solar Challenge."³⁵

²⁹ Ss. 489.129(1)(o), & 489.533(1), F.S.

³⁰ S. 489.126(2)-(3), F.S.

³¹ Ss. 489.113(4), 489.131(3), 489.516(3), & 489.537(3), F.S.

³² *Id.*

³³ Ss. 489.113(2) & 489.103, F.S.

³⁴ Ss. 489.103(7), & 489.503(7), F.S.

³⁵ The U.S. Department of Energy (DOE) SunShot Initiative is a program designed to reduce the costs of solar energy by 75%. The program is a collaboration of private companies, universities, state and local governments, nonprofits, and national laboratories. DOE, *DOE Pursues Sunshot Initiative to Achieve Cost Competitive Solar Energy by 2020*, Feb. 4, 2011,

The owner-builder exemption does not exempt any person who is employed by or has a contract with the owner from the licensure requirements to perform construction, electrical contracting, or alarm system contracting.³⁶

To obtain an owner-builder permit, an owner must personally appear and sign the building permit application for the work and must satisfy all local permitting agency requirements proving that the owner has a complete understanding of the owner's obligations under the law. The local permitting agency is also required to provide the owner with a disclosure statement providing the owner's obligations under the law.³⁷

If an owner violates any of the provisions of the owner-builder exemption, the local permitting agency must:

- Withhold final approval of the permit for the work;
- Revoke the permit; or
- Pursue an action against the owner for performing unlicensed activity.³⁸

Owner-Builder Exemption From Licensing Requirements – Effect of the Bill

The bill excludes a property owner, who is performing construction contracting on a residential property under the owner-builder exemption, from the requirement to reside on the property for at least a year, if:

- The owner is closing a permit where the contractor substantially completed the work related to the permit;
- The residential property is a one-family or two-family dwelling, townhome, accessory structure³⁹ of a one-family or two-family dwelling or townhome, individual condominium unit, or individual residential cooperative unit; and
- The property owner obtains the local government's approval prior to qualifying under the owner-builder exemption.

The bill also restates current law allowing an owner-builder to close building permits.

Contractor Liability – Current Situation

When a contractor contracts for a project they are liable for any of the work they perform. During the progress of the work the contractor has a duty to exercise due care, and while the contractor is in control of the project site, the contractor is liable for harm resulting from defects, hidden or otherwise.⁴⁰

When a contractor completes the work and the owner of the property accepts the work, the contractor is no longer liable for any patent defects. A patent defect is a defect that would have been obvious to the owner had the owner exercised reasonable care. The rationale being that when the owner accepts the contractor's work the owner takes possession of the work and deprives the contractor of all opportunity to correct a patent defect. However, a contractor continues to remain liable for latent

<https://www.energy.gov/eere/solar/articles/doe-pursues-sunshot-initiative-achieve-cost-competitive-solar-energy-2020> (last visited Apr. 8, 2019).

³⁶ Ss. 489.103(7), & 489.503(7), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ According to FEMA, an "accessory structure" is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. Examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings. FEMA, *Accessory Structures* <https://www.fema.gov/accessory-structures> (last visited Mar. 14, 2019).

⁴⁰ *Slavin v. Kay*, 108 So. 2d 462, 467 (Fla. 1958).

defects after the owner accepts the contractor's work.⁴¹ A latent defect is a hidden flaw or imperfection that cannot be discovered by reasonable inspection.⁴²

A contractor who takes over a project from a previous contractor is liable for his or her work and the previous contractor's work. According to DBPR, this is because a substitute contractor is expected to be competent to assess, contract for, and repair the situation that was left behind by the previous contractor so the project can be completed in accordance with the building code.⁴³ The new contractor takes over and is responsible for the project.

Since a contractor who takes over a project from a previous contractor assumes liability for the previous contractor's work, members of the construction industry advise caution when taking over jobs where the previous contractor completed a significant portion of the contract that may not be visible or readily identifiable. This is especially true if the new contractor believes portions of the previous contractor's work may be deficient. Members of the industry recommend a contractor take steps to protect themselves from liability for a previous contractor's work such as:

- Ensuring that the contract for the work includes any specific repairs that are required because of deficient work performed by the previous contractor;
- Hiring a design professional to inspect and certify the previous contractor's work;
- Including language in the contract that allow mandatory time extensions for delays caused by repairs required to correct deficient work; and
- Including language in the contract that limits the contractor's liability for work that he or she performs and not the work performed by the previous contractor.⁴⁴

Contractor Liability – Effect of the Bill

The bill provides that if a property owner hires a new contractor to close a permit, the new contractor that takes over the job from a previous contractor is not liable for any defects in the work performed by the previous contractor and shall only be liable for the work the new contractor performs.

B. SECTION DIRECTORY:

- Section 1: Amends s. 125.56, F.S., allowing each county that imposes inspection fees to provide notice when a permit is about to expire, and limiting the fee it may charge for a certain permit searches.
- Section 2: Amends s. 166.222, F.S., limiting the fee a municipality that imposes inspection fees may charge for a certain permit searches.
- Section 3. Amends s. 489.103, F.S., expanding the owner-builder exemption to the licensure requirements for construction contractor licensure.
- Section 4. Amends s. 489.503, F.S., expanding the owner-builder exemption to the licensure requirements for electrical and alarm system contractors.
- Section 5: Amends s. 553.79, F.S., allowing local governments to provide notice when a permit is about to expire, limiting when a local government can penalize a property owner, limiting

⁴¹ *Id.*; *McIntosh v. Progressive Design and Engineering, Inc.*, 166 So. 3d 823, 828-29 (Fla. 4th DCA 2015); *Florida Dept. of Transp. v. Capeletti Bros., Inc.*, 743 So. 2d 150, 152 (Fla. 3rd DCA 1999); *Brady v. State Paving Corp.*, 693 SO. 2d 612, 613 (Fla. 4th DCA 1997).

⁴² Cornell Law School, *Latent Defect*, https://www.law.cornell.edu/wex/latent_defect (last visited on Apr. 11, 2019).

⁴³ Florida Department of Business and Professional Regulation, Agency Analysis of 2019 House Bill 447, p. 7 (Feb. 12, 2019).

⁴⁴ National Roofing Legal Resource Center, *What to do if you are asked to take over a job that was started by another roofing contractor*, http://www.nrlrc.net/content/membersonly/sidebar/1109_sidebar_assume_job.pdf (last visited on Apr. 11, 2019); Amy Florence, *Replacement Contractors*, *Electrical Construction & Maintenance* magazine (Mar. 1, 2005) <https://www.ecmweb.com/content/replacement-contractors> (last visited on Apr. 11, 2019).

a contractor's liability, clarifying the requirements to complete construction in accordance with the building code, and providing when local enforcement agencies may close expired permits.

Section 6: Amends s. 553.80, F.S., limiting the fee a local government may charge for certain permit searches.

Section 7: Provides an effective date of October 1, 2019.

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:

Indeterminate. There may be a negative fiscal impact from reduced permit search fees.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector from a reduction in expired building permits.

The bill may have a positive economic impact on contractors as a result of the removal of liability for a previous contractor's work when taking over a construction project. The bill could make it difficult for property owners, and regulatory entities, to resolve contractual disputes with contractors for faulty construction when there is more than one contractor who worked on the project.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DBPR,

“Releasing substitute contractors from liability for existing work will, in practice effectively, relieve the new contractor from all disciplinary liability [for the work the previous contractor performed]. A substitute contractor is expected to be competent to assess, contract for, and repair the situation that was left behind by the previous contractor so that the project is brought into compliance with code.”⁴⁵

The bill’s provision allowing a local enforcement agency to close a permit in accordance with the Florida Building Code in effect on the date of the permit application, regardless of the age of the permit, could allow old projects, which were halted or abandoned, to be completed in accordance with a building code that is no longer in effect. Potentially a 15 year-old expired permit for a project that was abandoned by a contractor could be completed in accordance with the building code that existed 15 years ago.

This bill, HB 1139, and CS/HB 127 each create a new s. 166.222(2), F.S., and each relates to a different subject and include different text. This bill and CS/HB 127 both create a new s. 125.56(4)(c), F.S., with different subjects and different text.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Business & Professions Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Requires local governments to send written notice to property owners and contractors when building permits are about to expire. The local government must send the notice no less than 30 days before a permit expires, and the notice must identify the permit that is about to expire and the date the permit expires.
- Provides that local governments may only charge a person one search fee for identifying the building permits for units or sub-units that are assigned to one parcel of property.
- Provides a local government may close an expired building permit issued for the alteration, improvement, modification, or repair of certain residential properties and accessory structures if:
 - The permit has been expired for at least 6 years; and
 - The local building official determines the building, accessory structure, or unit for which the permit was issued has no apparent safety hazards.

On April 10, 2019, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Allows local governments to send a notice to an owner and contractor that a building permit is about to expire instead of requiring such notice.
- Clarifies that the search fee for identifying building permits for units or sub-units that are assigned to one parcel of property must be commensurate with the research and time costs incurred by the local government.
- Clarifies that a building department may close an expired permit 6 years after the permit is issued instead of 6 years after the permit expires.
- Excludes a property owner, who is performing construction contracting under the owner-builder exemption, from the requirement to reside on the property for at least a year if the owner is closing a permit where the contractor substantially completed the work related to the permit.
- Provides that a contractor who takes over a job from a previous contractor is not liable for any defects in the work performed by the previous contractor.
- Allows a permit to be closed in accordance with the building code in effect when the building department received the permit application regardless of whether the permit has expired.

⁴⁵ Florida Department of Business and Professional Regulation *supra* note 38.

- Prohibits a local government from penalizing an arms-length purchaser of property solely because a previous owner failed to close a building permit for the property.
- Prohibits a local government from denying a contractor a permit solely because the contractor has expired building permits.

The staff analysis is drafted to the committee substitute as passed by the Commerce Committee.