

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 447 Building Permits
SPONSOR(S): Business & Professions Subcommittee, Diamond and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 902

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			

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. The Legislature intends that 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 requires local governments to 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 is about to expire. The local government must send the notice no less than 30 days before the permit expires. The notice must identify the permit that is about to expire and the date the permit expires.

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.

The bill provides that a local government may close an expired building permit issued for the alteration, improvement, modification, or repair of a one-family or two-family dwelling, townhome, accessory structure of a one-family or two-family dwelling or townhome, individual condominium unit, or individual residential cooperative unit 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.

The bill does not have a fiscal impact on the state. The bill has an indeterminate, but likely insignificant, fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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

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

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

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 Florida Building Code. The Florida Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections. 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.¹⁰ Generally speaking, a permit that passes the required inspections is considered completed or closed.¹¹

Local Government Fees & Permits

Each local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code.¹² 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.¹³

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.¹⁴

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.¹⁵

A building permit becomes invalid if work authorized by the permit is not commenced within 6 months after issuance of the permit or if the work authorized by the permit is suspended or abandoned for a period of 6 months after the time the work commenced.¹⁶ A permit may also become null and void, expired, or may be revoked because of a lack of progress or abandonment. If this happens then work must be halted until a new permit has been obtained.

Real Estate Disclosure Agreement Forms

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 (hereinafter Building Code).

¹⁰ Ss. 107, 110.1, and 110.3, Building Code.

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%20E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Mar. 15, 2019).

¹² 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).

¹³ See s. 553.80(7), F.S.

¹⁴ Ss. 125.56(4)(b) and 553.79(1)(b), F.S.

¹⁵ S. 713.135, F.S.

¹⁶ S. 105.4, Building Code.

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.¹⁷

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.¹⁸ 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.¹⁹

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.²⁰

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.²¹

Effect of the Bill

¹⁷ 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).

¹⁸ 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);

¹⁹ 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).

²⁰ Antony Clark, *Expired permits cause complications*, Gainesville Sun (Oct. 25, 2015) <https://www.gainesville.com/news/20151025/expired-permits-cause-complications>; 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> (Mar. 15, 2019).

²¹ 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).

The bill requires local governments to 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. The local government must send the notice by e-mail or United States Postal Service no less than 30 days before the permit will expire become null and void or invalid. The notice must identify the permit that is about to expire become null and void or invalid and the date the permit will expire or become null and void or invalid.

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.

The bill provides that a local enforcement agency may close an expired, null and void, or invalid building permit issued for the alteration, improvement, modification, or repair of a one-family or two-family dwelling, townhome, accessory structure²² of a one-family or two-family dwelling or townhome, individual condominium unit, or individual residential cooperative unit if:

- The permit has been expired, null and void, or invalid 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.

B. SECTION DIRECTORY:

- Section 1: Amends s. 125.56, F.S., requiring 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. 553.79, F.S., requiring local governments to provide notice when a permit is about to expire, and providing when local enforcement agencies may close expired permits.
- Section 4: Amends s. 553.80, F.S., limiting the fee a local government may charge for certain permit searches.
- Section 5: 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:

²² 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).

1. Revenues:

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

2. Expenditures:

Indeterminate. There could be possible costs from the additional notice requirements.

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.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to provide permit notices. This may result in additional expenditures to comply with the statute. However, an exemption may apply because the fiscal impact is likely to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill, HB 1139, and CS/HB 127 create a new s. 166.222(2), F.S., with different text. Both this bill and CS/HB 127 create a new s. 125.56(4)(c), F.S., with 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.

The staff analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.