

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 407 Residential Building Permits
SPONSOR(S): Community & Military Affairs Subcommittee; Perry and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N, As CS	Duncan	Hoagland
2) Economic Affairs Committee		Duncan	Tinker

SUMMARY ANALYSIS

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

Section 553.79(1), F.S., provides that it is unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons delegated the authority to issue permits, upon the payment of fees adopted by the enforcing agency.

The bill adds subsection (17) to s. 553.79, F.S., to provide that a local enforcement agency, and any local building code administrator, inspector, or other official or entity, may not require, as a condition of issuance of a one- or two-family residential building permit, the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.

The provision does not apply to building permits being sought for a substantial improvement; a change of occupancy; a conversion from residential to nonresidential or mixed-use; and an historic building. The bill clarifies that a local enforcing agency, or any local building code administrator, inspector, or other official or entity, from citing or inspecting under certain circumstances.

Subsection (17) of s. 553.79, F.S., is repealed when the Secretary of State receives written certification from the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code, which substantially incorporates these provisions as part of the code and the amendment has taken effect.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

Section 553.79(1), F.S., provides that it is unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons delegated the authority to issue permits, upon the payment of fees adopted by the enforcing agency.

A “local enforcement agency” means the agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for the design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.¹

It is the responsibility of the building code administrator or building official to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems within the boundaries of their governmental jurisdiction, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code.²

It is the responsibility of the building code inspector to conduct inspections of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems, when permitting is required, to ensure compliance with Florida Building Code and any applicable local technical amendment to the Florida Building Code.³

“Substantial improvement” means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred.⁴

Effect of Proposed Changes

The bill adds subsection (17) to s. 553.79, F.S. to provide that a local enforcement agency, and any local building code administrator, inspector, or other official or entity, may not require, as a condition of issuance of a one- or two-family residential building permit, the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.

This provision does not apply to a building permit sought for:

- A substantial improvement as defined in s. 161.54, F.S.
- A change of occupancy as defined in the Florida Building Code.

¹ Section 553.71(5), F.S.

² Section 468.604(1), F.S.

³ Section 468.604(2), F.S.

⁴ Section 161.54(12), F.S.

- A conversion from residential to nonresidential or mixed-use pursuant to s. 553.507(2), F.S., or as defined in the Florida Building Code.
- A historic building as defined in the Florida Building Code.

Relative to the prohibition established in subsection (17), the provision does not prohibit a local enforcing agency, and any local building code administrator, inspector, or other official or entity, from:

- Citing any violation inadvertently observed in plain view during the ordinary course of an inspection conducted as a condition of issuing a one- or two-family residential building permit.
- Inspecting a physically nonadjacent portion of a building, structure, or real property that is directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the one- or two-family residential building permit is being sought.
- Inspecting any portion of a building, structure, or real property for which the owner or other person having control of the building, structure, or real property has voluntarily consented to the inspection of that portion of the building, structure, or real property.
- Inspecting any portion of a building, structure, or real property pursuant to an inspection warrant⁵ issued in accordance with ss. 933.20 – 933.30, F.S.

Subsection (17) of s. 553.79, F.S., is repealed when the Secretary of State receives written certification from the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code, which substantially incorporates the provisions in subsection (17) as part of the code and the amendment has taken effect.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1: Creates subsection (17) of s. 553.79, F.S., prohibiting local enforcement agency or local building code administrator, inspector, or others from, as a condition of issuance of a one- or two-family residential building permit, inspecting any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building or parcel for which the permit is sought; providing the application of the provision; and providing the circumstances for the repeal of the provision.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁵ "Inspection warrant" means an order in writing, in the name of the people, signed by a person competent to issue search warrants and directed to a state or local official, commanding him or her to conduct an inspection required or authorized by state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards. Section 933.20, F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Community & Military Affairs Subcommittee adopted a “strike everything after the enacting clause” amendment to HB 407. The amendment:

- Specifies the type of building permits the provision applies to as one- or two-family residential building permits.
- Changes the phrase “not directly related to” to “not directly impacted by.”
- Specifies that the provision does not apply to building permits being sought for a substantial improvement; a change of occupancy; a conversion from residential to nonresidential or mixed-use; and an historic building.
- Clarifies that a local enforcing agency, or any local building code administrator, inspector, or other official or entity, is not prohibited from citing or inspecting buildings, structures, or real properties under certain circumstances.
- Includes a provision that repeals subsection (17) when the Secretary of State receives written certification from the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code, which substantially incorporates the provisions in subsection (17) as part of the code and the amendment has taken effect.
- Changes the bill’s effective date to from July 1, 2011 to July 1, 2012.