

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/CS/SB 1788

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee and Senator Boyd

SUBJECT: Construction Permits

DATE: March 31, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1788 makes various amendments to the Florida Building Codes Act and related statutes.

The bill requires local governments to review additional information for an application for a development permit or development order within a certain time-period.

The bill requires local enforcement agencies to:

- Post each building permit application, including a list of any required attachments, such as drawings or plans, on their websites;
- Allow applicants to submit completed building permit applications electronically including any required payments and attachments, such as plans;
- Post the current status of every received building permit application on their website; and
- Post their procedures for reviewing, processing, and approving building permit applications on their websites.

The bill requires government entities which enforce the Florida Building Code Act that fail to meet current established deadlines for reviewing single-family residential building permit applications to reduce the fees and surcharges for such permits for every business day that the deadline is not met, except under certain circumstances.

The bill requires government entities that deny a building permit application for a single-family residential dwelling to allow the applicant 10 business days to correct the application. The bill prohibits government entities from requiring a copy of a contractor's contract with owners, subcontractors, or suppliers in order to obtain a building permit for projects on commercial property. This does not apply to projects for improvements owned or leased by a government entity.

The bill takes effect October 1, 2021.

## **II. Present Situation:**

### **The Community Planning Act**

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,<sup>1</sup> also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.<sup>2</sup> The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The Community Planning Act intends that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.<sup>3</sup> A housing element is required as part of every comprehensive plan in the state. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."<sup>4</sup>

Municipalities established after the effective date of the Community Planning Act must adopt a comprehensive plan within three years after the date of incorporation.<sup>5</sup> The county comprehensive plan controls until a municipal comprehensive plan is adopted.<sup>6</sup>

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, which are consistent with and implement their adopted comprehensive plan.<sup>7</sup>

### ***Issuing Development Orders and Permits***

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited

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<sup>1</sup> See ch. 85-55, s. 1, Laws of Fla.

<sup>2</sup> See ch. 2011-139, s. 17, Laws of Fla.

<sup>3</sup> Section 163.3161(4), F.S.

<sup>4</sup> Section 163.3177(6)(f)1.g., F.S.

<sup>5</sup> Section 163.3167(3), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 163.3202, F.S.

to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.<sup>8</sup> A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.<sup>9</sup>

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.<sup>10</sup>

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.<sup>11</sup> If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant can request the county or municipality proceed to process the application for approval or denial.<sup>12</sup> If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.<sup>13</sup>

Prior to 2019, no specified timeframes were provided in statute for reviewing an application for a development permit, development order, or additional information requested by a county or municipality.<sup>14</sup>

In 2019, the Legislature imposed requirements and time limits for a county or municipality to review an application for a development permit or development order, not including building permit applications, and provided procedures for addressing deficiencies in an application.<sup>15</sup>

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specify the deficiencies within 30 days after receiving the application.<sup>16</sup> If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information.<sup>17</sup>

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.<sup>18</sup>

Current law specifies how long an applicant has to submit additional information to a local government. However, current law does not specify how long a local government has to review the additional information and determine if the application is complete or still deficient.

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<sup>8</sup> Section 163.3164(16), F.S.

<sup>9</sup> See ss. 125.022, 163.3164(15), and 166.033, F.S.

<sup>10</sup> Sections 125.022(1) and 166.033(1), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Sections 125.022(2) and 166.033(2), F.S.

<sup>14</sup> Sections 125.022(1) and 166.033(1), F.S. (2018).

<sup>15</sup> See House Analysis of 2019 House Bill 7103 (Jul. 1, 2019).

<sup>16</sup> Sections 125.022(1) and (2), and 166.033 (1) and (2), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

## 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.<sup>19</sup>

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.<sup>20</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>21</sup>

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>22</sup>

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,<sup>23</sup> 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.<sup>24</sup>

### *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.<sup>25</sup> Every local government must enforce the Building Code and issue building permits.<sup>26</sup>

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<sup>19</sup> 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](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited March 30, 2021).

<sup>20</sup> *Id.*; DBPR, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited March 30, 2021).

<sup>21</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited March 30, 2021).

<sup>22</sup> *See* s. 553.72(1), F.S.

<sup>23</sup> 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 March 30, 2021).

<sup>24</sup> Sections 553.73, and 553.74, F.S.

<sup>25</sup> Section 553.72, F.S.

<sup>26</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

State universities, Florida College System institutions, and public school districts enforce the Building Code for their building projects, including conducting plan review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plan examiners, and may elect to use a local government's building department to review plans and perform inspections.<sup>27</sup>

Current law also provides that state agencies may enforce the Building Code if current law specifically authorizes them to do so, unless they have delegated responsibility to another public entity.<sup>28</sup> Current law provides that:<sup>29</sup>

- The Department of Corrections, the Department of Juvenile Justice, and the Department of Management Services (DMS) enforces the construction regulations relating to correctional facilities under their jurisdiction;
- The DMS enforces the construction regulations for the Governor's Mansion and its grounds, the Capitol, and the Capitol complex;
- The DBPR enforces the construction regulations relating to elevator equipment under their jurisdiction;
- The Turnpike Enterprise, which is part of the Department of Transportation, enforces the construction regulations for toll collection facilities under its jurisdiction;
- The Department of Children and Families (DCF) in conjunction with the Agency for Health Care Administration (AHCA) enforces construction regulations relating to secure mental health treatment facilities under the DCF's jurisdiction; and
- The AHCA also reviews plans and surveys construction of hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care Facilities for the developmentally disabled.

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such 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.<sup>30</sup> A building permit is not valid until the fees for the permit have been paid.<sup>31</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>32</sup> A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.<sup>33</sup> Any construction work that requires a building permit also requires plans and inspections by the building official to ensure the work complies with the Building Code.<sup>34</sup>

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<sup>27</sup> Section 553.80(6), F.S.

<sup>28</sup> Sections 255.31(1), and 553.80(1), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> *See* ss. 125.56(4)(a), and 553.79(1), F.S.

<sup>31</sup> Section 109.1 of the Seventh edition of the Florida Building Code (Building).

<sup>32</sup> Section 468.603(2), F.S.; Section 202 of the Seventh edition of the Florida Building Code (Building).

<sup>33</sup> Section 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).

<sup>34</sup> Sections 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).

Each government entity may provide a schedule of reasonable fees in order to defer the costs of inspection and enforcement of the Building Code. The basis for a local government's fee structure must relate to the level of service provided by the local government. Fees charged must be consistently applied. Each local government must post its permit and inspection fee schedule and a utilization report<sup>35</sup> on its website.<sup>36</sup>

A local government's permit and inspection fees must be used solely for carrying out that local government's responsibilities in enforcing the Building Code. This includes:<sup>37</sup>

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

### ***DBPR Surcharges***

Current law requires all local governments to assess and collect a 1 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to the DBPR to fund the activities of the Florida Building Commission, the DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.<sup>38</sup>

Current law also requires all local governments to assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code.

The local governments collect the assessment and remit the surcharge fees to the DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.<sup>39</sup>

Local government building departments are permitted to retain 10 percent of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.<sup>40</sup>

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<sup>35</sup> The utilization report must include the local government's direct and indirect costs for enforcing the Building. Section 553.80(7), F.S.

<sup>36</sup> Sections 125.56(2) and (4), 166.222, and 553.80(7), F.S.

<sup>37</sup> Section 553.80(7), F.S.

<sup>38</sup> Section 553.721, F.S.

<sup>39</sup> Section 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. Section 489.1401(2), F.S.

<sup>40</sup> Sections 468.631, and 553.721, F.S.

### ***Building Permit Delays***

Any delays in obtaining a building permit can delay the completion of a construction. Delays in the completion of a construction project may:<sup>41</sup>

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:<sup>42</sup>

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue by creating local construction jobs and other indirect jobs; and
- Encourage economic development by having an efficient permit system.

### ***List of Required Items for Applications and Electronic Submission of Applications – Current Situation***

A local enforcement agency is an 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 Building Code.<sup>43</sup>

Current law requires local enforcement agencies to post each type of building permit on their website.<sup>44</sup> Current law also requires local enforcement agencies to allow applicants to submit applications electronically, except owners who are acting as contractor under the owner-builder exemption.<sup>45</sup> Accepted methods of electronic submission include, but are not limited to:<sup>46</sup>

- E-mail submission of applications in PDF format;

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<sup>41</sup> City of Austin Development Services Department, *A Program for Expedited Permitting*, [http://austintexas.gov/sites/default/files/files/8-9-2016\\_Report\\_on\\_Expedited\\_Permitting\\_Program.pdf](http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf) (last visited March 30, 2021); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).

<sup>42</sup> *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) <https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf> (last visited March 30, 2021).

<sup>43</sup> Section 553.71(5), F.S.

<sup>44</sup> Sections 125.56(4)(b), and 553.79(1)(b), F.S.

<sup>45</sup> Current law requires property owners who are acting as a contractor under the owner-builder exemption to personally appear at a local enforcement agency to sign the building permit. Sections 489.103(7), and 489.503(7), F.S.

<sup>46</sup> Sections 125.56(4)(b), and 553.79(1)(b), F.S.

- Submission of applications through an electronic fill-in form available on the building department's website; or
- Through a third-party submission management software.

However, it is not clear if current law requires local enforcement agencies to:

- Post a list or identify other items required as part of the application for each type of building permit on their websites;
- Allow applicants to electronically submit items required as part of a building permit application including payments, attachments, or drawings; or
- Post the status of building permit applications on their websites.

Some local governments list the items required as part of an application, allow applicants to electronically submit items required as part of an application, and post the status of building permit applications on their websites, while others do not.<sup>47</sup>

Some in the building and development community suggest that posting a list containing all the required information for each type of building permit and the status of every received application saves time by reducing phone calls and emails to building department staff. It may also reduce the number of applications that are denied due to misunderstanding about what materials and information must be provided.<sup>48</sup>

Allowing applicants to submit applications electronically, including all required items, may save time and money for builders and developers by shortening the turn-around time for processing most building permits, and by preventing them from having to travel to and from a building department during business hours to drop off the required items.<sup>49</sup>

It is also suggested that such regulatory changes help building departments by reducing the cost of printing documents, eliminating archiving costs, easing the burden of managing paper documents, and consolidates the plan review process by having documents stored on a network server that is available to multiple departments and employees.<sup>50</sup>

Building departments note that the cost to post the list of required items and the status of received building permit applications, and the cost to transition from paper documents to

<sup>47</sup> City of Miramar, *Building, Permits & Inspections*, <https://www.miramarfl.gov/150/Building-Permits-Inspections> (last visited March 30, 2021); City of Orlando, *Permits & Inspections*, <https://www.orlando.gov/Building-Development/Permits-Inspections> (last visited March 30, 2021); Union County, *Building Department*, <https://unioncounty-fl.gov/building-department/> (last visited March 30, 2021); City of Crestview, *Building Permits & Inspections*, <http://www.cityofcrestview.org/161/Building-Permits-Inspections> (last visited March 30, 2021).

<sup>48</sup> Ryan Meres, *Seven Keys to Alleviating Permitting Pain*, *Builder* (Jul. 23, 2015) [https://www.builderonline.com/building/regulation-policy/seven-keys-to-alleviating-permitting-pain\\_o](https://www.builderonline.com/building/regulation-policy/seven-keys-to-alleviating-permitting-pain_o) (last visited March 30, 2021); E-Gov Link, *How to Streamline your Local Government Permitting Process*, (Aug. 28, 2019) <https://www2.egovlink.com/how-to-streamline-your-local-government-permitting-process/> (last visited March 30, 2021).

<sup>49</sup> Building Officials Association of Florida, Florida Engineering Society, AIA Florida, *Building Department Guide to Creating and Processing Electronic Construction Documents*, [http://www.aiafla.org/upload\\_documents/BuildingDepartmentGuidetoCreatingandProcessingElectronicDocuments.pdf](http://www.aiafla.org/upload_documents/BuildingDepartmentGuidetoCreatingandProcessingElectronicDocuments.pdf) (last visited March 30, 2021); See The Florida Channel, *1/27/ 2021 House Regulatory Reform Subcommittee*, <https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/> (last visited March 30, 2021).

<sup>50</sup> *Id.*



electronic documents is expensive and it is not easy or quick.<sup>51</sup> Additionally, a building department may have to devote limited resources to updating the list of required items and the status of received building permit applications.<sup>52</sup>

### ***Time-Period to Review Building Permit Applications***

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:<sup>53</sup>

- Accessory structure;
- Alarm permit;
- Nonresidential buildings less than 25,000 square feet;
- Electric;
- Irrigation permit;
- Landscaping;
- Mechanical;
- Plumbing;
- Residential units other than a single family unit;
- Multifamily residential not exceeding 50 units;
- Roofing;
- Signs;
- Site-plan approvals and subdivision plats not requiring public hearings or public notice;
- Lot grading and site alteration associated with the permit application set forth in this subsection;
- Master building permits; and
- Single-family residential buildings.

When a local government receives an application for one of the above building permits, except master building permits and single-family residential buildings, it must.<sup>54</sup>

- Inform the applicant within 10 days of receiving the application, what information, if any, is needed to complete the application;
  - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within 45 days of the application being deemed complete if additional information is necessary to determine the sufficiency of the application; and
  - If additional information is needed the local government must specify what additional information is necessary.
  - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.

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<sup>51</sup> *Id.*; The Community Development Director for the City of Auburndale testified that the cost for them to purchase the software necessary for the switch to electronic documents cost \$90,000. See The Florida Channel, *supra* note 49.

<sup>52</sup> The Massachusetts Association of Regional Planning Agencies, *A Best Practices for Streamlined Local Permitting*, (Nov. 30, 2007), [http://www.pvpc.org/sites/default/files/BEST%20PRACTICES%20GUIDE\\_0.pdf](http://www.pvpc.org/sites/default/files/BEST%20PRACTICES%20GUIDE_0.pdf) (last visited Feb. 24, 2021).

<sup>53</sup> Section 553.792(2), F.S.

<sup>54</sup> Section 553.792(1), F.S.

- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.
  - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

These time-periods do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.<sup>55</sup>

If a local government receives a complete master building permit application, it must approve or deny the application within 120 days of receiving the completed application, unless the applicant agrees to a longer period.<sup>56</sup>

If any government entity with authority to enforce the Building Code receives an application for a building permit for single-family residential dwelling, it must issue the permit within 30 business days of receiving the application, unless the application fails to satisfy the Building Code or the enforcing agency's laws or ordinances, or unusual circumstances require a longer time-period for processing the application.<sup>57</sup>

Current law provides time-periods for when government entities must review certain building permit applications. However, current law does not provide any penalty if a government entity fails to comply with the deadlines established by current law.

### **Required Information in Building Permit Application**

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:<sup>58</sup>

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

In addition to the information that must be in the application, a government entity may require that any additional information be included in the application.<sup>59</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> Section 553.794(5)(c), F.S. A master building permit is intended for builders who expect to construct identical single- or two- family dwellings or townhomes. Once a builder obtains a master building permit, he or she is not required to obtain a new permit for single- or two-family dwellings or townhome as long as the dwelling or townhome is built to the specifications in the master building permit. *See* s. 553.794, F.S.

<sup>57</sup> Section 553.79(14), F.S.

<sup>58</sup> Sections 713.135(5), and (6), F.S.

<sup>59</sup> *Id.*

According to testimony offered during the meeting of the Florida House of Representatives Regulatory Reform Subcommittee, many local governments use the cost of construction as a factor<sup>60</sup> for determining the amount of a fee for a building permit.<sup>61</sup> Some local governments are requiring contractors to include their contracts with private owners in order to obtain building permits so that the local government can determine the contract's construction cost and construction value.<sup>62</sup> Although these contracts may contain private proprietary information, when local governments request them they may become public documents.<sup>63</sup>

### III. Effect of Proposed Changes:

#### Issuing Development Orders and Permits (Sections 1 and 3)

**Sections 1 and 2** amend ss. 125.022 and 166.033, F.S., respectively, to require that if a county or municipality makes a request for additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or the municipality must:

- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within 30 days of receiving the information, if the request is the county or municipality's first request.
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within 10 days of receiving the additional information, if the request is the county or municipality's second request.
- Deem the application complete within ten days of receiving the additional information or proceed to process the application for approval or denial unless the applicant waived the county or municipality's time limitations in writing, if the request is the county or municipality's third request.

#### List of Items Required for Applications and Electronic Submission of Applications (Sections 2 and 4)

**Sections 2 and 4** amend ss. 125.56 and 553.79, F.S., respectively, requires local enforcement agencies to:

<sup>60</sup> The International Code Council has created two equations to help jurisdictions determine their permit fee schedules. Two factors of the factors in the equations are the valuation of the construction cost of the project, and the value of all the construction in the jurisdiction in the previous year. See International Code Council, *Building Valuation Data – February 2020*, <https://www.iccsafe.org/wp-content/uploads/BVD-BSJ-FEB20.pdf> (last visited March 30, 2021).

<sup>61</sup> City of Miami, *City of Miami Building Permit Fee Schedule*, <https://www.miamigov.com/Services/Building-Permitting/City-of-Miami-Building-Permit-Fee-Schedule> (last visited March 30, 2021); St. Lucie County, *Building Permit Fees*, <https://www.stlucieco.gov/Home/ShowDocument?id=1330> (last visited March 30, 2021); City of Seminole, *City of Seminole Permit Fee Schedule*, [https://www.myseminole.com/Building/Docs/Permit\\_Fees.pdf](https://www.myseminole.com/Building/Docs/Permit_Fees.pdf) (last visited March 30, 2021).

<sup>62</sup> See The Florida Channel, *1/27/2021 House Regulatory Reform Subcommittee*, <https://thefloridachannel.org/videos/1-27-21-house-regulatory-reform-subcommittee/> (last visited March 30, 2021).

<sup>63</sup> Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record made or received in connection with official business of any public body, including counties, municipalities, and districts. Current law does not contain an exemption from Florida's public records laws for proprietary business information included in a building permit application. See generally, ch. 119, F.S.

- Post each type of building permit application on their website, including a list of all required attachments, drawings, and any other requirements that are required for each type of application;
- Post the status of received building permit applications online, and update the status; and
  - A local enforcement agency does not have to post the status of a received building permit application if it has issued a permit for the application.
- Allow building permit applicants to electronically submit applications, including all attachments, payments, drawings, and any other requirements that are required as part of the application.
  - Applications, including attachments, payments, drawings, and any other requirements or parts that are required as part of the application, may also be submitted in person at the discretion of the building official.

These sections also requires that a county or local enforcement agency post its procedures for processing, reviewing, and approving submitted building permit applications on its website.

#### **Time-Period to Review Building Permit Applications (Sections 4, 5 and 6)**

**Section 4** and **5** amend ss. 553.79 and 553.792, F.S., respectively, to require that, if a government entity with authority to enforce the Building Code fails to approve an application for a single-family residential dwelling building permit within 30 business days of receiving the application, the government entity must reduce the building permit fee by 10 percent of the original permit fee for each business day that the enforcing agency fails to meet the deadline.

A government entity does not have to reduce the fee for a single-family residential dwelling building permit if it provides written notice to the applicant, by email or USPS mail within 30 business days of receiving the application. The written notice must state:

- How the application fails to satisfy the Building Code or the government entity's laws or ordinances;
- That the applicant has 10 business days after receiving the notice to submit revisions to correct the permit application; and
- Failure to correct the application within 10 business days will result in a denial of the application.

An applicant has 10 business days to address the reasons specified in the government entity's notice. If the applicant submits revisions to the government entity within 10 business days of receiving the notice, the government entity must approve or deny the permit within 10 business days of receiving the applicant's revisions.

If a local enforcing agency fails to approve or deny the permit within 10 business days of receiving the applicant's revisions, it must:

- Reduce the permit fee by 20 percent of the original permit fee for the first business day that it fails to meet the deadline; and
- An additional 10 percent of the original permit fee for each business day that it fails to meet the deadline, for up to 5 business days.

A government entity does not have to reduce the permit fee if the applicant agrees to a longer period in writing.

**Section 6** amends s. 553.794, F.S, to require that, if a local building department fails to meet building permit decision timelines, or fails to approve a master building permit application within 120 business days of receiving the application, the local building department must reduce the building permit fee by 10 percent of the original permit fee for each business day that the enforcing agency fails to meet the deadline, unless the applicant agrees to a longer time period.

If any permit and inspection fees are refunded because of the above, the DBPR surcharges for funding the Building Commission, the BCAIB, and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

#### **Required Information in Building Permit Application (Section 7)**

**Section 7** amends s. 713.135, F.S, to prohibit a government entity from requiring a contract between an owner and a contractor or a contract between a contractor and a subcontractor or material supplier as a condition to apply for or obtain a building permit for construction work on a commercial property.

However, this does not apply to any construction projects for improvements that are owned or leased by a government entity.

The bill takes effect October 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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

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

The bill may implicate this constitutional restriction, to the extent that local governments are required to expend funds (i) to accommodate the additional requirements pertaining to electronic processing and posting of building permit information; and (ii) to refund a percentage of the building permit fee under specified conditions. As currently drafted, this bill does not include a legislative finding that the bill fulfills an important state interest.

However, Article VII, s. 18(d) of the State Constitution provides that the mandate requirements do not apply to laws having an insignificant impact,<sup>64</sup> which for Fiscal Year 2020-2021 is forecast at \$2.2 million.<sup>65</sup> The fiscal impact of this bill is indeterminate. If the total cost of this legislation is less than \$2.2 million, then the mandate requirements do not apply. If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., enactment by vote of two-thirds of the membership of each house).

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may have a positive impact by decreasing the time it takes to obtain a building permit, possibly decreasing the time and cost to complete projects.

**C. Government Sector Impact:**

Local governments may need to expend funds to accommodate the additional requirements pertaining to electronic processing and posting of building permit information. The amount of permit fees to be refunded by local governments for failing to timely review a permit application is indeterminate, but likely insignificant.

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<sup>64</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021).

<sup>65</sup> Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 125.022, 125.56, 166.033, 553.79, 553.792, 553.794, and 713.135.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Governmental Oversight and Accountability on March 31, 2021:**

The committee substitute provides that the an enforcement agency’s written notice stating why a permit application fails must also state that the applicant has 10 business days after receiving the notice to submit revisions to correct the permit application and that failure to correct the application within 10 business days will result in a denial of the application.

**CS by Community Affairs on March 10, 2021:**

The committee substitute:

- Provides that when a local government makes an initial request for additional information and receives a response within 30 days, the local government must, within 30 days, review the additional information and issue a letter indicating that all required information has been submitted or specify areas that are deficient.
- Provides that if any permit and inspection fees are refunded under the provisions of the bill, the associated DBPR surcharges must be recalculated based on the amount of the permit and inspection fees after the refund.

**B. Amendments:**

None.