

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 267 Residential Building Permits  
**SPONSOR(S):** Regulatory Reform & Economic Development Subcommittee, Esposito  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 684

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 6 N, As CS	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

The Florida Building Code (Building Code) must be applied and enforced uniformly and consistently across the state. Local governments are required to enforce the Building Code and are responsible for issuing building permits. Current law provides standards and timeframes for local governments to follow for the issuance of building permits.

The bill:

- Requires a local government to:
  - Determine if a building permit application is complete within 5 business days of receiving the application, previously set at 10 days.
  - Determine if a building permit application is sufficient within 10 business days of receiving a completed application, previously set at 45 days.
  - Approve, approve with conditions, or deny a complete and sufficient permit application within the following timeframes:
    - 30 business days for applicants using local government review, previously set at 120 days;
    - 15 business days for applicants using a private provider, previously set at 120 days; and
    - 10 business days for applicants for a permit under an already-approved master plan permit, previously set at 120 days.
  - Provide an opportunity for a virtual meeting, instead of just an in-person meeting, before a second request for additional information may be made.
- Provides that a local government can request additional information from an applicant two times, unless the applicant agrees otherwise, previously set at three times.

In Florida law, "plat" means a map or delineated representation of the subdivision of lands, and is generally required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. Some local governments allow a developer to commence construction after a preliminary plat has been issued, but before the plat is finalized.

The bill:

- Requires certain local governments to create a process to expedite the issuance of building permits based on a preliminary plat and to issue the number or percentage of building permits requested by an applicant, under certain circumstances.
- Provides that vested rights may be formed in a preliminary plat, under certain circumstances.
- Allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the preliminary plat before the final plat is approved.
- Requires all local governments to create a master building permit process.

The bill may have an indeterminate fiscal impact on state and local government.

The bill provides an effective date of July 1, 2024.

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

STORAGE NAME: h0267.RRS

DATE: 12/18/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation – Building Permits**

##### **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>1</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's commission 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>2</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>3</sup>

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>4</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>5</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>6</sup>

##### **Use of Building Code Enforcement Fees**

A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.<sup>7</sup> Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Building Code.<sup>8</sup> Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building

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<sup>1</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 Mar. 23, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Mar. 21, 2023).

<sup>4</sup> See s. 553.72(1), F.S.

<sup>5</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 Mar. 23, 2023).

<sup>6</sup> S. 553.73(7)(a), F.S.

<sup>7</sup> S. 553.80 F.S.

<sup>8</sup> *Id.*

plans, building inspections, re-inspections, building permit processing, and fire inspections.<sup>9</sup> Local governments must post all building permit and inspection fee schedules on their website.<sup>10</sup>

Local governments are only allowed to collect building permit fees that are sufficient to cover their costs in enforcing the Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances must be carried forward to future years for allowable activities or must be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget, not including reserve amounts, for enforcing the Building Code for the previous 4 fiscal years.<sup>11</sup>

## DBPR Surcharges

Current law requires all local governments to assess and collect a 1% 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 DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.<sup>12</sup>

Current law also requires all local governments to assess and collect a separate 1.5% 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 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>13</sup>

Local government building departments are permitted to retain 10% 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 Building Code.<sup>14</sup>

## Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. Delays in the completion of a construction project may:<sup>15</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.

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<sup>9</sup> S. 553.80 (7)(a)1., F.S.

<sup>10</sup> Ss.125.56 (4)(c) F.S., and 166.222(2), F.S.

<sup>11</sup> S. 553.80(7)(a), F.S.

<sup>12</sup> S. 553.721, F.S.

<sup>13</sup> S. 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. s. 489.1401(2), F.S.

<sup>14</sup> Ss. 468.631, and 553.721, F.S.

<sup>15</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 Dec. 7, 2023); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).

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>16</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; and
- Encourage economic development by having an efficient permit system.

## Building Permit Application Review

### *Time-Period to Review*

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>17</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; and
- Lot grading and site alteration associated with the permit application.

When a local government receives an application for one of the above building permits, it must:<sup>18</sup>

- **Complete Application** – 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.
- **Sufficiency of Application** – Notify the applicant within **45 days** of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;
  - 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 within 30 days or request that the local government act on the application without the additional information.
- **Approve or Deny Application** – 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.

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<sup>16</sup> *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) <https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf> (last visited Dec. 7, 2023).

<sup>17</sup> S. 553.792(2), F.S.

<sup>18</sup> S. 553.792(1), F.S.

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>19</sup>

### **Additional Information Standards<sup>20</sup>**

A local government may only make **three** requests for additional information. However, an applicant may agree in writing to waive the limitation that local governments may only make three requests for additional information for such permits.

If a local government makes a request for additional information from an applicant for one the above building permits, and the applicant provides the information within **30 days** of receiving the request, the local government must<sup>21</sup>:

- **First Request** – Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies **within 15 days** of receiving the information from the applicant, if the request is the local government's **first request**.
- **Second Request** – Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies **within 10 days** of receiving the information from the applicant, if the request is the local government's **second request**.
- **Third Request** – Deem the application complete and approve the application, approve the application with conditions, or deny the application **within 10 days** of receiving the information from the applicant, if the request is the local government's **third request**.

Prior to making a third request for information the local government must **offer to meet** with the permit applicant to attempt to resolve outstanding issues.

If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, shall proceed to process the application for approval, approval with conditions, or denial.

### *Fee Reductions for Failure to Meet Timeframes*

If a local government fails to meet these deadlines it must reduce the building permit fee by 10% for each **business day** that it fails to meet the deadline. However, these time limitations do not apply when a law, agency rule, or local ordinance specifies different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.

If any permit fees are refunded because a local government fails to meet an established deadline for reviewing a building permit application, the Department of Business and Professional Regulation (DBPR) surcharges for funding the Commission, the Florida Building Code Administrators and Inspectors Board (BCAIB), and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit fees after the refund.<sup>22</sup>

### **Time-Period to Review Single-Family Residential Dwelling Building Permit Applications**

Single-family residential dwelling permits must be issued within:

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<sup>19</sup> S. 553.792(1)(a), F.S.

<sup>20</sup> S. 553.792(1)(b), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> S. 553.79(16)(d), F.S.

- **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>23</sup>
- If the local enforcing agency does not issue a building permit for a single-family residential dwelling, within **30 business days** after receiving the permit application, it must reduce the building permit fee by 10% for each **business day** that it fails to meet the deadline. Each 10% reduction is based on the original amount of the building permit fee.
- The enforcing agency does not have to reduce the building permit fee if it provides notice to the applicant, by e-mail or United States Postal Service, within **30 business days** after receiving the permit application, that specifically states the reasons the permit application fails to satisfy the Building Code or the enforcing agency's laws or ordinances.<sup>24</sup>
- After receiving the written notice, the applicant has **10 business days** to correct the specifications written by the local enforcing agency and submit revisions to correct the permit application.
- If the applicant submits the revisions within 10 business days, the local enforcing agency has **10 business days** after receiving such revisions to approve or deny the building permit unless the applicant agrees to a longer permit in writing.<sup>25</sup>

If a government entity fails to approve or deny the single-family residential dwelling building permit within **10 business days** of receiving the applicant's revisions, it must:<sup>26</sup>

- reduce the permit fee by 20% of the original permit fee for the first business day that it fails to meet the deadline; and
- an additional 10% of the original permit fee for each business day that it fails to meet the deadline, for up to five business days.

A government entity does not have to reduce the fee for a single-family residential dwelling building permit, if:<sup>27</sup>

- it provides written notice to the applicant, by email or USPS mail within **30 business days** of receiving the application; and
- The written notice specifically states how the application fails to satisfy the Building Code or the government entity's laws or ordinances, and that the applicant has **10 business days** after receiving the notice to remedy the deficiencies in their application or it will be denied.<sup>28</sup>

A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within **15 business days** after receipt of the application unless the permit application fails to satisfy the Building Code or the enforcing agency's laws or ordinances.<sup>28</sup>

## **Effect of the Bill – Building Permits**

### **Building Permit Application Review**

The bill removes a provision in Ch. 533, the Building Code, which requires single-family residential dwelling permits to be issued within 30 days unless the application does not conform to the Building Code or local laws or ordinances. However, the bill incorporates the time period to review single-family residential dwellings into the general section related to building permit applications.<sup>29</sup>

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<sup>23</sup> S. 553.79(16), F.S.

<sup>24</sup> S. 553.79(16)(a)-(b), F.S.

<sup>25</sup> S. 553.79(16)(c), F.S.

<sup>26</sup> S. 553.79(16)(c), F.S.

<sup>27</sup> S. 553.79(16)(b), F.S.

<sup>28</sup> S. 553.79(16)(e), F.S.

<sup>29</sup> See, s. 553.792, F.S.

The bill reduces current timelines and revises procedures for applying for and obtaining a building permit. The new procedures set out below apply to the following building permit applications:

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

#### *Timelines to Approve or Deny a Completed and Sufficient Building Permit Application*

The bill reduces the time that a local government has to approve, approve with conditions, or deny a building permit application following receipt of a **completed and sufficient** application to the following timelines, unless the applicant waives such limitation in writing:

- For an applicant using local government plans review to obtain a building permit:
  - Within **30 business days** after receiving a complete and sufficient application (**currently 120 days, or 30 days for single-family residential dwellings**).
- For an applicant using a private provider to obtain a building permit:
  - Within **15 business days** after receiving a complete and sufficient application (**currently 120 days, or 30 days for single-family residential dwellings**).
- For an applicant for a master plan permit:
  - Within **10 business days** after receiving a complete and sufficient application (**current timeframe is dependent on the local program, or 30 days for single-family residential dwellings**).
- For an applicant for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant–Disaster Recovery program administered by the Department of Economic Opportunity:
  - Within **10 business days** after receipt of the application, unless the permit application fails to satisfy the Building Code or the enforcing agency's laws or ordinances (**currently 15 days**).

If the local government does not approve, approve with conditions, or deny the completed and sufficient application within the required timeframes, the application is **deemed or determined to be approved**.

The bill requires a local government to maintain a policy on its website containing procedures and expectations for processing of any building permits and development orders required by law to be expedited.

#### *Timelines to Determine a Complete and Sufficient Application*

The bill reduces the time that a local government has to provide timely written notice to the applicant about what information, if any, is needed before the application is deemed or determined to be:

- **Completed:**
  - Local government has 5 business days to review an application and determine if it has been properly completed (from 10 days).
- **Sufficient:**

- Local government has 10 business days to review a completed application to determine whether more information is needed or whether the application is sufficient (from 45 days).

The bill reduces the amount of times that a local government may request additional information from the applicant when reviewing an application for sufficiency for a building permit, to **two times**, from three times.

If the local government requests additional information for a second time, such request must be within **10 business days** of receiving additional information after the first request, and the local government must determine the sufficiency of the application within **10 business days** of receiving the requested additional information.

The bill allows a local government to offer to **meet virtually**, instead of only in person, with the applicant to attempt to resolve outstanding issues before a second request for additional information is made.

If the applicant believes a request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the bill requires the local government, at the applicant's written request, to approve the application, approve the application with conditions, or deny the application within **10 business days** after receipt of such. The local government must provide the applicant with sufficient reason for a denial.

### **Use of Building Code Enforcement Fees**

The bill clarifies that local governments may use fees, and any related fines or investment earnings, they have collected for enforcing the Building Code to upgrade technology hardware and software systems used to enforce the Building Code.

### **Current Situation – Plats**

In Florida law, “plat” means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable state requirements and of any local ordinances.<sup>30</sup> Generally, platting is required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. These smaller areas become the residential lots, streets and parks of a new residential subdivision.<sup>31</sup>

State law establishes consistent minimum requirements for the establishment of plats, and local governing bodies have the power to regulate and control the platting of lands.<sup>32</sup> Prior to approval by the appropriate governing body, the plat must be reviewed for conformity with state and local law and sealed by a professional surveyor and mapper who is either employed by or under contract to the local governing body.<sup>33</sup>

Before a plat is offered for recording with the clerk of the circuit court, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation.

Jurisdiction over plat approval is as follows:<sup>34</sup>

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<sup>30</sup> S. 177.031(14), F.S.

<sup>31</sup> Harry W. Carls, Florida Condo & HOA Law Blog, May 17, 2018, *Why is a Plat so Important?*, <https://www.floridacondoalawblog.com/2018/05/17/why-is-a-plat-so-important/> (last visited Dec. 7, 2023).

<sup>32</sup> S. 177.011, F.S.

<sup>33</sup> S. 177.081(1), F.S.

<sup>34</sup> S. 177.071(1), F.S.



- When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.
- When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.
- When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

Every plat of a subdivision offered for recording must have certain information, including providing:<sup>35</sup>

- The name of the plat in bold legible letters, and the name of the subdivision, professional surveyor and mapper or legal entity, and street and mailing address on each sheet.
- The section, township, and range immediately under the name of the plat on each sheet included, along with the name of the city, town, village, county, and state in which the land being platted is situated.
- The dedications and approvals by the surveyor and mapper and local governing body, and the circuit court clerk's certificate and the professional surveyor and mapper's seal and statement.
- All section lines and quarter section lines occurring within the subdivision. If the description is by metes and bounds, all information called for, such as the point of commencement, course bearings and distances, and the point of beginning. If the platted lands are in a land grant or are not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses.
- Location, width, and names of all streets, waterways, or other rights-of-way.
- Location and width of proposed easements and existing easements identified in the title opinion or property information report must be shown on the plat or in the notes or legend, and their intended use.
- All lots numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.
- Sufficient survey data to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat.
- Designated park and recreation parcels.
- All interior excepted parcels clearly indicated and labeled "Not a part of this plat."
- The purpose of all areas dedicated clearly indicated or stated on the plat.
- That all platted utility easements must provide that such easements are also easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services interferes with the facilities and services of an electric, telephone, gas, or other public utility.

## **Preliminary Plat Approval**

Many local governments around the state have a process to approve a preliminary plat before approving a final plat. Generally, a preliminary plat is a technical, graphic representation of a proposed development, including plans for streets, utilities, drainage, easements, and lot lines, for a proposed subdivision. If a preliminary plat is required, it is generally a prerequisite for a final plat approval and the submission of any property improvement plans or permit applications.<sup>36</sup>

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<sup>35</sup> S. 177.091, F.S.

<sup>36</sup> For examples, see City of Zephyrhills Code of Ordinances s. 11.03.02.01; Palm Beach County Code of Ordinances Art. 11., Ch. A.; Seminole County, SEMINOLE COUNTY PLANNING & DEVELOPMENT DIVISION, Subdivision Application, <https://www.seminolecountyfl.gov/core/fileparse.php/3307/urlt/SUBDIVISION-05-2023.ADA.pdf> (last visited Dec. 10, 2023).

Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.<sup>37</sup>

Based on a preliminary plat approval, some local governments allow a developer to commence construction before the plat is finalized. For example, the City of Jacksonville, Village of Royal Palm Beach, and the City of Tallahassee allow for a preliminary plat approval process.<sup>38</sup>

In Jacksonville, the Planning and Development Department (Department) of the City of Jacksonville, upon request of an applicant, may allow up to 50 percent of the lots within a proposed subdivision to be developed, but not occupied, based on a preliminary plat approval so long as the developer or owner meets the following conditions for construction:<sup>39</sup>

- Prior to Civil Plans submittal to the Department, the developer must submit the development proposal to Jacksonville Electric Authority (JEA) for review.
- Once JEA has granted preliminary approval, the Department will review the preliminary site plan, the preliminary and final engineering plans for the required improvements, and the sheet identifying the lots being requested for home construction prior to platting as approved by JEA. The Department reserves the right to deny authorization for development on a specific lot or lots to protect City interests.
- The developer or owner must provide a guarantee for required improvements and warranty of title.
- A Certificate of Occupancy may not be issued until the final plat is approved by JEA and the Department and recorded in the current public records of Duval County, Florida.
- Approval of the preliminary plat and required supplemental material are valid for 12 months from the date of approval. If the final plat is not submitted to and approved during the 12-month period, the conditional approvals are null and void.<sup>40</sup>

#### *Vested Rights in Property Based on a Plat*

In general, vested rights<sup>41</sup> form when a property owner or developer acquires real property rights that cannot be taken by governmental regulation.<sup>42</sup> Property owners or developers who do not have vested rights will be subject to subsequently enacted land regulations, while subsequently enacted land regulations do not apply to the property owners or developers who are determined to have vested rights.<sup>43</sup>

Florida common law provides that vested rights in a property may be established if a property owner or developer has:<sup>44</sup>

- In good faith reliance,
- Upon some act or omission of government,

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<sup>37</sup> Advance Surveying & Engineering, *An In-Depth Look At Preliminary and Final Plats*, <https://www.advsur.com/2019/07/an-in-depth-look-at-preliminary-and-final-plats/> (last visited Dec. 7, 2023).

<sup>38</sup> City of Jacksonville Code of Ordinances s. 654-109, Village of Royal Palm Beach Code of Ordinances s. 22-22, City of Tallahassee Code of Ordinances s. 9-92.

<sup>39</sup> City of Jacksonville Code of Ordinances s. 654-139(d).

<sup>40</sup> City of Jacksonville Code of Ordinances s. 654-109(b).

<sup>41</sup> Florida courts have used the concepts of vested rights and equitable estoppel interchangeably in deciding fault in property rights cases. Equitable estoppel, in this instance, means focusing on whether it would be inequitable or fair to allow a local government to deny prior conduct or position on building or development decisions. Robert M. Rhodes and Cathy M. Sellers, *Equitable Estoppel and Vested Rights in Land Use*, The Florida Bar, II Florida Environmental and Land Use Law 8, (1994).

<sup>42</sup> *Id.*; Heeter, *Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes*, Urb.L. Ann. 63, 64-65 (1971).

<sup>43</sup> *Monroe County v. Ambrose*, 866 So.2d 707, 712 (Fla. 3d DCA 2003); Kristin Melton, de la Parte & Gilbert P.A., *When are Rights Vested in a Platted Development?*, 2016, <https://www.dgfirm.com/email/2016summer/article2.html#:~:text=Florida%20common%20law%20provides%20that,it%20would%20make%20it%20highly> (last visited Dec. 8, 2023).

<sup>44</sup> *Monroe County*, 866 So.2d at 710.

- Made such a substantial change in position or has incurred such extensive obligations and expenses,
- That it would make it highly inequitable to interfere with the acquired right.

Recordation of a final plat with the clerk of the circuit court alone is not sufficient to establish vested rights<sup>45</sup> in the land development regulations in existence at that time.<sup>46</sup> Instead, the property owner or developer must take meaningful steps towards development of the property, such as applying for development permits or expending certain monies,<sup>47</sup> to constitute a substantial change in position or be considered extensive obligations and expenses towards development of the property in reliance on some action by the local government.<sup>48</sup>

Additionally, a property owner or developer may obtain vested rights in both a local government-approved preliminary plat and a final plat, as long as expenditures or a substantial change have been made by the property owner or developer based on such preliminary plat or plat.<sup>49</sup>

### **Effect of the Bill - Plats**

The bill requires a governing body to create:

- A two-step application process for the adoption of a preliminary plat and for a final plat in order to expedite the issuance of building permits related to such plats. The application must allow an applicant to identify the percentage of planned homes, or the number of building permits, that the governing body must issue for the residential subdivision or planned community indicated in the preliminary plat.
- A master building permit process consistent with existing master building permit application requirements for applicants seeking multiple building permits for residential subdivisions or planned communities.
  - The bill provides that a master building permit issued pursuant to this requirement is valid for 3 consecutive years after its issuance or until the adoption of a new Building Code, whichever is earlier. After a new Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for 3 consecutive years.

The bill requires the governing body to issue the number or percentage of building permits requested by an applicant, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

- The governing body has approved a preliminary plat for each residential subdivision or planned community.
- The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, water, and wastewater utilities.
- The applicant holds a valid performance bond for up to 130 percent of the necessary utilities, roads, and stormwater improvements that have not been completed upon submission of the application under this section. For purposes of master planned communities,<sup>50</sup> a valid performance bond is required on a phase-by-phase basis.

By **August 15, 2024**, the bill requires a governing body of a county that has 75,000 residents or more and a governing body of a municipality that has 30,000 residents or more to create a program to

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<sup>45</sup> *Id.*

<sup>46</sup> Melton, *supra*, at 42.

<sup>47</sup> *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).

<sup>48</sup> *Id.*; Melton, *supra*, at 42.

<sup>49</sup> *The Florida Companies v. Orange County*, 411 So.2d 1008, 1011 (Fla. 5th DCA 1982)

<sup>50</sup> "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. S. 163.3203(5)(b), F.S.

expedite the process for issuing building permits for residential subdivisions or planned communities before a final plat is recorded with the clerk of the circuit court.

Such expedited process must include an application for an applicant to identify the percentage of planned homes, or the number of building permits, that the governing body must issue for the residential subdivision or planned community, **not to exceed 50 percent** of the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

By **December 31, 2027**, the bill requires such a governing body to update its expedited process to contain an application that allows an applicant to request an **increased percentage of up to 75 percent** of building permits for planned homes that the local governing body must issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 75 percent of the residential subdivision or planned community.

If a governing body had a program in place **before July 1, 2023**, to expedite the building permit process, the bill requires such governing body to only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

The bill allows an applicant to use a **private provider** to review a preliminary plat and to obtain a building permit for each residential building or structure.

The bill allows a governing body to work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in an application.

The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill prohibits an applicant from obtaining a final certificate of occupancy for each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

An applicant has a vested right in a preliminary plat that has been approved with conditions by a governing entity, if all of the following conditions are met:

- The applicant relies in good faith on the approved preliminary plat or any amendments, and
- The applicant commences and is continuing in good faith with the development of the property.

When vested rights in a preliminary plat have been established, a government entity may not make substantive changes to the preliminary plat without the applicant's written consent.

The bill requires an applicant to indemnify and hold harmless the governing body and its agents and employees from damages accruing and directly related to the issuance of a building permit for a residential building or structure located in the residential subdivision or planned community before the approval and recording of the final plat by the governing body. This includes damage resulting from fire, flood, construction defects, and bodily injury, but excludes infringement of vested rights.

The bill provides the following definitions:

- "Applicant" means a homebuilder or developer that files an application with the local governing body to identify the percentage of planned homes, or the number of building permits, that the local governing body must issue for the residential subdivision or planned community.
- "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.

- "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains required land boundary information.

## B. SECTION DIRECTORY:

- Section 1: Creates s. 177.073, F.S.; relating to approval of certain building permits pursuant to a preliminary plat.
- Section 2: Amends s. 553.79, F.S., relating to single-family residential permits.
- Section 3: Amends s. 553.792, F.S., relating to building permit application processes.
- Section 4: Amends s. 440.103, F.S., conforming a cross-reference.
- Section 5: Amends s. 553.80, F.S.; relating to acceptable uses of local government Building Code enforcement fees.
- Section 6: Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

For a similar bill in 2023, DBPR stated that surcharge collections pursuant to s. 553.791, F.S., and s. 468.631, F.S., could be impacted by the bill.<sup>51</sup>

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

For a similar bill in 2023, DBPR stated that this bill may reduce the amount of permit fees that could be collected by local governments in certain circumstances.<sup>52</sup>

#### 2. Expenditures:

This bill may impact local governments because they may have to hire more employees to meet the prescribed timeframes.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For a similar bill in 2023, DBPR stated that the bill may reduce the cost of permit fees paid by the private sector to local governments based on the local governments failure to meet time requirements.<sup>53</sup> On the other hand, the local jurisdiction may raise permit fees so that they can hire employees to meet the time requirements in the bill.

The streamlined permitting processes in the bill may expedite development across the state.

### D. FISCAL COMMENTS:

None.

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<sup>51</sup> Department of Business & Professional Regulation, Agency Analysis of 2023 Senate Bill 682, p. 4 (February 14, 2023).

<sup>52</sup> *Id.*, at 5.

<sup>53</sup> *Id.*

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill would require the Florida Building Commission to amend the Building Code to reflect some of the bill's changes to building permit application processing requirements.<sup>54</sup>

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 12, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provides that vested rights in a preliminary plat are formed if an applicant commences developing the property based on an approval of such preliminary plat by a local government.
- Requires an applicant for a residential building permit pursuant to a preliminary plat to indemnify and hold harmless the local government from damages directly related to the issuance of such building permit before the approval of the final plat.
- Clarifies that timeframes in the updated permitting procedures are calculated using business days.
- Clarifies that if a local government fails to timely notify an applicant of what is needed to determine a sufficient application, such application will be automatically determined to be sufficient.
- Corrects a scrivener's error.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

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<sup>54</sup> See rule impacted, r. 61G20-1.001, F.A.C.