

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 635 Building Plan Changes  
**SPONSOR(S):** Maggard  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett	Anstead
2) Local Administration & Veterans Affairs Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Prevention Code). The Fire Prevention Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire safety officials within each local government in the state.

Current law requires local governments to enforce the Building Code and issue building permits. It is unlawful to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit. Any construction work that requires a building permit also requires plan reviews and inspections by the building official to ensure the work complies with the Building Code. If a building is subject to the Fire Prevention Code, a building permit also requires plan reviews and inspections by the local fire safety official.

If a building official or plans reviewer denies a permit application or revokes a building permit, the building official or plans reviewer must give the permit applicant a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance.

The bill provides that:

- A building official or plans reviewer, who revokes a permit or denies a permit application, may give the applicant a reason for denying or revoking the permit that is based on compliance with the Fire Prevention Code, in addition to the Building Code or a local ordinance.
- A local inspector or fire safety marshal or fire safety inspector who denies a permit application or revokes a building permit, must also give the permit applicant a reason for denying or revoking the permit, which is based on compliance the Building Code, Fire Prevention Code, or local ordinance.
- If a fire safety marshal or fire safety inspector is required to approve the plans of a commercial building or structure, and such plans have already been approved and sealed by the local building department, the local building official or inspector and the fire safety marshal or fire safety inspector do not have the discretionary authority to change the plans.
- If a fire safety marshal or fire safety inspector is not required to approve the plans of a building or structure, and such plans have already been approved and sealed by the local building department, the local building official or inspector does not have the discretionary authority to change the plans.

The bill does not appear to have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they desired.<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 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>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 (Building Commission) was statutorily created to implement the Building Code. The Building 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, 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>5</sup>

#### **Building Code Administrators, Inspectors, and Plans Examiners**

Building code administrators, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate. The BCAIB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.<sup>6</sup>

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.<sup>7</sup>

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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 Jan. 4, 2022).

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

<sup>3</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 4, 2022).

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

<sup>5</sup> Ss. 553.73, and 553.74, F.S.

<sup>6</sup> See Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.

<sup>7</sup> S. 468.603(2), F.S.

A building code inspector (inspector) is a local government employee or a person contracted by a local government who inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories for which the inspector has been licensed. The inspector categories are:<sup>8</sup>

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with the Building Code. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories for which the examiner is licensed. The plans examiner categories are:<sup>9</sup>

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

### **Florida Fire Prevention Code**

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.<sup>10</sup> Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Prevention Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Prevention Code every three years.<sup>11</sup> When adopting the Fire Prevention Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:<sup>12</sup>

- NFPA's Fire Code (1);
- Life Safety Code (101); and

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<sup>8</sup> S. 468.603(4) and (5), F.S.

<sup>9</sup> S. 468.603(8), F.S.

<sup>10</sup> S. 633.104, F.S.

<sup>11</sup> S. 633.202, F.S.

<sup>12</sup> S. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by

- Guide on Alternative Approaches to Life Safety (101A).

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.<sup>13</sup>

The most recent Fire Prevention Code is the 7th edition, which is referred to as the 2020 Florida Fire Prevention Code. The 7th edition of the Fire Prevention Code took effect on December 31, 2020.<sup>14</sup>

### **The Building Code and the Fire Prevention Code**

The Building Code and the Fire Prevention Code work parallel, but are independent of each other. The Building Commission updates and adopts the Building Code, which must reference the Fire Prevention Code. However, the Fire Prevention Code is adopted, modified, interpreted, and maintained by DFS. The Building Commission may not adopt a fire prevention or life safety code, and nothing in the Building Code may affect the statutory powers, duties, and responsibilities of any local fire safety official or DFS.<sup>15</sup>

Conflicting requirements between the Building Code and the Fire Prevention Code must be resolved by agreement between the Building Commission and the State Fire Marshal. The agreement must be in favor of the requirement that offers the greatest degree of life safety or alternatives that would provide an equivalent degree of life safety and an equivalent method of construction.<sup>16</sup>

If the Building Commission and State Fire Marshal are unable to agree on a resolution, the question must be referred to a mediator, mutually agreeable to both parties, to resolve the conflict in favor of the provision that offers the greatest life safety, or alternatives that would provide an equivalent degree of life safety and an equivalent method of construction.<sup>17</sup>

### **Fire Safety Enforcement by Local Governments**

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Building Code.<sup>18</sup> These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.<sup>19</sup>

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.<sup>20</sup>

Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector to conduct all fire safety inspections required by law.<sup>21</sup>

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partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on Jan. 4, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> Division of State Fire Marshal, *Florida Fire Prevention Code (FFPC)*, <https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm> (last visited Jan. 4, 2022).

<sup>15</sup> S. 553.73(1), F.S.; Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).

<sup>16</sup> S. 553.73(1), F.S. Similar provisions apply if a local building official and local fire safety official cannot agree. See s. 553.73(11), F.S.

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

<sup>18</sup> Ss. 633.108 and 633.208, F.S.

<sup>19</sup> Ss. 633.208 and 633.214(4), F.S.

<sup>20</sup> S. 633.118, F.S.

<sup>21</sup> S. 633.216(1), F.S.

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A fire safety inspector is a person who is officially assigned the duties of conducting fire safety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities. Fire safety inspectors are certified and regulated by the State Fire Marshal and are separate from building officials, inspectors, and plans examiners who are regulated by the BCAIB.<sup>22</sup>

## Building Permits

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>23</sup> Every local government must enforce the Building Code and issue building permits.<sup>24</sup>

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>25</sup> A building permit is not valid until the fees for the permit have been paid.<sup>26</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>27</sup> Any construction work that requires a building permit also requires plan reviews and inspections by the building official to ensure the work complies with the Building Code.<sup>28</sup>

### *Building Plans*

To obtain a permit an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency.<sup>29</sup> A local enforcement agency that issues building permits must post each type of building permit application on its website.<sup>30</sup>

An application for a permit must include building plans. A local enforcing agency may not issue a permit until the building official or plans examiner has reviewed the building plans and determined that they comply with the Building Code.<sup>31</sup>

A building official or plans examiner does not review building plans to determine if they comply with the Fire Prevention Code. If the building or structure is subject to the Fire Prevention Code, the local fire safety official must also review the building plans to ensure they comply with the Fire Prevention Code.<sup>32</sup>

A local enforcing agency may not issue the permit until the local fire safety official has approved the plans. However, if the building or structure is not subject to the Fire Prevention Code, the local enforcing agency may not require the local fire safety inspector to review the plans.<sup>33</sup>

When the building official issues the permit, the building official must also approve the plans by writing or stamping, "Reviewed for Code Compliance" on the plans. The local building official must keep one

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<sup>22</sup> Ss. 633.102(12) and 633.216, F.S.

<sup>23</sup> S. 553.72, F.S.

<sup>24</sup> Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>25</sup> See ss. 125.56(4)(a) and 553.79(1), F.S.

<sup>26</sup> S. 109.1 of the Seventh edition of the Florida Building Code (Building).

<sup>27</sup> S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).

<sup>28</sup> Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).

<sup>29</sup> S. 713.135(5) and (6), F.S.

<sup>30</sup> Ss. 125.56(4)(b) and 553.79(1), F.S.

<sup>31</sup> S. 553.79(2), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

set of plans and another set must be returned to the applicant, who must keep the set at the work site.<sup>34</sup>

Construction work must be in accordance with the approved plans, and any changes made during construction that are not in compliance with the approved plans must be resubmitted for approval as an amended set of construction documents.<sup>35</sup>

If the local building official or plans examiner finds that building plans do not comply with the Building Code, the local building official or inspector must identify the specific plan features that do not comply with the Building Code, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information to the permit applicant.<sup>36</sup>

If a building official or plans reviewer denies a permit application or revokes a building permit, the building official or plans reviewer must give the permit applicant a reason for denying or revoking the permit. The reason must be based on compliance with the Building Code or a local ordinance. Failing to provide a reason for denying or revoking a building permit, which is based on compliance with the Building Code or a local ordinance, is grounds for discipline against the building official or plans reviewer's license.<sup>37</sup>

Current law does not require a building inspector or local fire safety inspector, who denies a permit application or revokes a permit, to give the permit applicant a reason for denying or revoking the permit. However, building inspectors and local fire safety inspectors generally do not deny building permit applications or revoke building permits because that is generally done by the building official.<sup>38</sup>

A building inspector inspects the various stages of construction to ensure the work complies with the building plans and the Building Code. However, this is usually done after a permit is issued and work has started.<sup>39</sup>

A local fire safety inspector inspects the various stages of construction, but this is to ensure the work complies with the building plans and the Fire Prevention Code. A local fire safety inspector also reviews buildings plans, but this is to ensure they comply with the Fire Prevention Code. A local fire safety inspector is usually, but not always, separate from a local building department and generally does not deny building permit applications or revoke building permits.<sup>40</sup>

## Effect of the Bill

The bill provides that a building official or plans reviewer, who revokes a permit or denies a permit application, may give the applicant a reason for denying or revoking the permit that is based on compliance with the Fire Prevention Code, in addition to the Building Code or a local ordinance.

The bill provides that, in addition to a building official or plans reviewer, a local inspector or fire safety marshal or fire safety inspector who denies a permit application or revokes a building permit, must give the permit applicant a reason for denying or revoking the permit.

The reason must be based on compliance with the Building Code, a local ordinance, or the Fire Prevention Code. Failing to provide a reason for denying or revoking a building permit, which is based

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<sup>34</sup> S. 107.3.1 of the Seventh edition of the Florida Building Code (Building).

<sup>35</sup> S. 107.4 of the Seventh edition of the Florida Building Code (Building).

<sup>36</sup> S. 553.79(2), F.S.

<sup>37</sup> S. 553.79(1), F.S.

<sup>38</sup> See generally s. 468.603(2), F.S.; s. 105.3 of the Seventh edition of the Florida Building Code (Building).

<sup>39</sup> See s. 110 of the Seventh edition of the Florida Building Code (Building).

<sup>40</sup> City of New Port Richey, *Fire Inspection Division*, <https://www.cityofnewportrichey.org/city-departments/fire-services/fire-inspection-division/> (last visited Jan. 5, 2021); Winter Park, *Office of the Fire Marshal*, <https://wpfd.org/office-of-the-fire-marshal/> (last visited Jan. 5, 2022); City of Altamonte Springs, *Building and Fire Safety*, <https://www.altamonte.org/406/Building-and-Fire-Safety> (last visited Jan. 5, 2022).

on compliance with the Building Code or a local ordinance, is grounds for discipline against the local inspector or fire safety marshal or fire safety inspector's license.

The bill also provides that if a fire safety marshal or inspector is required to approve the plans of a commercial building or structure, and such plans have already been approved and sealed by the local building department, the local building code official or inspector and the fire safety marshal or inspector do not have the discretionary authority to change the plans. In addition, if a fire safety marshal or inspector is not required to approve the plans of a commercial or residential building or structure, and such plans have already been approved and sealed by the local building department, the local building official or inspector does not have the discretionary authority to change the plans.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 553.79, F.S., relating to permits; applications; issuance; inspections.

Section 2. Provides an effective date of July 1, 2022.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

The impact is unknown because it is unclear how often building plans are changed by building officials and local fire safety officials after the plans are approved by the local building department.

**D. FISCAL COMMENTS:**

None.

**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:**

None.

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

The term “fire safety marshal” is not used or defined in the Building Code. It is recommended that in order to prevent confusion, the bill be amended to clarify the meaning of “fire marshal.”

Because a fire safety inspector typically does not deny a building permit, the sponsor may want to clarify the language in the bill.

According to DFS,<sup>41</sup>

“There are potential safety issues related to the inability of a fire authority to make changes to the plans after the building officials have approved the plans. Construction issues cannot always be identified or addressed during the design and permitting phase of a project through a single reviewer, (the local building department) who potentially is not certified to enforce the Florida Fire Prevention Code. Limiting access for the fire authority to review the plans may cause more modifications or change orders after the issuance of a permit to ensure code compliance with the Florida Fire Prevention Code. The lack of review by a fire authority could potentially jeopardize the safety of those individuals associated with the building and be in contradiction with Chapter 633, FS.”

Based on these concerns, the sponsor may want to clarify when a fire safety inspector should review building plans and clarify the language used in the bill to express the sponsor’s true intent.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>41</sup> Florida Department of Financial Services, Agency Analysis of 2022 House Bill 635, p.3 (Jan. 4, 2022).  
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