

House Bill No. 567

An act relating to alternative plans review and inspection; amending s. 553.791, F.S.; clarifying a definition; expanding authorization to use private providers to provide building code inspection services; including fee owner contractors within such authorization; revising notice requirements for using private providers; revising procedures for issuing permits; providing requirements for representatives of private providers; providing for waiver of certain inspection records requirements under certain circumstances; requiring issuance of stop-work orders to be pursuant to law; providing for establishment of a registration system for private providers and authorized representatives of private providers for licensure compliance purposes; preserving authority to issue emergency stop-work orders; revising insurance requirements for private providers; providing a definition; authorizing performance audits by local building code enforcement agencies of private providers; specifying conditions for proceeding with building work; amending s. 468.621, F.S.; revising a ground for taking certain disciplinary actions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) of subsection (1), subsections (2) and (4), paragraph (a) of subsection (6), and subsections (7), (9), (11), (12), (14), (15), and (17) of section 553.791, Florida Statutes, are amended to read:

553.791 Alternative plans review and inspection.—

(1) As used in this section, the term:

(f) “Permit application” means a properly completed and submitted application for:

~~1.~~ the requested building or construction permit, including:-

~~1.2.~~ The plans reviewed by the private provider.

~~2.3.~~ The affidavit from the private provider required pursuant to subsection (5).

~~3.4.~~ Any applicable fees.

~~4.5.~~ Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(2) Notwithstanding any other provision of law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner’s contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly

to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner. The fee owner may elect to use a private provider to provide ~~either~~ plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor who desires to use a private provider to use the private provider to also provide both plans review and required building inspections inspection services.

(4) A fee owner ~~or the fee owner's contractor~~ using a private provider to provide building code inspection services shall notify the local building official at the time of permit application, or no less than 7 business days prior to the first scheduled inspection by the local building official or building code enforcement agency for a private provider performing required inspections of construction under this section, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change, update the notice to reflect such changes. In addition, the fee owner or the fee owner's contractor shall post at the project site, prior to the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.

(6)(a) No more than ~~Within~~ 30 business days after receipt of a permit application and the affidavit from the private provider required pursuant to subsection (5), the local building official shall issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30-day period, the permit application shall be deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(7) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. The private provider shall be permitted to send a duly authorized representative to the building site to perform the required inspections, provided all required reports and certifications are prepared by and bear the signature of the private provider. The duly authorized representative must be an employee of the private provider entitled to receive unemployment compensation benefits under chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(9) Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, shall post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is posted at the project site and all such inspection records are submitted with the certificate of compliance. Records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(11) No more than ~~Within~~ 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the

certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (12) or to submit a corrected request for a certificate of occupancy or certificate of completion.

(12) If the local building official determines that the building construction or plans do not comply with the applicable codes, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof as provided by law, if the official determines that such non-compliance poses a threat to public safety and welfare, subject to the following:

(a) The local building official shall be available to meet with the private provider within 2 business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion.

(b) If the local building official and private provider are unable to resolve the dispute, the matter shall be referred to the local enforcement agency's board of appeals, if one exists, which shall consider the matter at its next scheduled meeting or sooner. Any decisions by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter pursuant to s. 553.77(1)(h).

(c) Notwithstanding any provision of this section, any decisions regarding the issuance of a building permit, certificate of occupancy, or certificate of completion may be reviewed by the local enforcement agency's board of appeals, if one exists. Any decision by the local enforcement agency's board of appeals, or local building official if there is no board of appeals, may be appealed to the commission as provided by this chapter pursuant to s. 553.77(1)(h), which shall consider the matter at the commission's next scheduled meeting.

(14)(a) No local enforcement agency, local building official, or local government may adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1)(g) and the insurance requirements of subsection (15).

(c) Nothing in this section limits the authority of the local building official to issue a stop-work order for a building project or any portion of such

order, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(15) A private provider may perform building code inspection services on a building project under this section only if the private provider maintains insurance for professional and comprehensive general liability covering with minimum policy limits of \$1 million per occurrence relating to all services performed as a private provider. Such insurance shall have minimum policy limits of \$1 million per occurrence and \$2 million in the aggregate for any project with a construction cost of \$5 million or less and \$2 million per occurrence and \$4 million in the aggregate for any project with a construction cost of over \$5 million. Nothing in this section limits the ability of a fee owner to require additional insurance or higher policy limits. For these purposes, the term "construction cost" means the total cost of building construction as stated in the building permit application. If the private provider chooses to secure claims-made coverage to fulfill this requirement, the private provider must also maintain, including tail coverage for a minimum of 5 years subsequent to the performance of building code inspection services. The insurance required under this subsection shall be written only by insurers authorized to do business in this state with a minimum A.M. Best's rating of A. Before providing building code inspection services within a local building official's jurisdiction, a private provider must provide to the local building official a certificate of insurance evidencing that the coverages required under this subsection are in force.

(17) Each local building code enforcement agency may ~~shall develop and maintain a process to~~ audit the performance of building code inspection services by private providers operating within the local jurisdiction. Work on a building or structure may proceed after inspection and approval by a private provider if the provider has given notice of the inspection pursuant to subsection (8) and, subsequent to such inspection and approval, the work may not be delayed for completion of an inspection audit by the local building code enforcement agency.

Section 2. Paragraph (i) of subsection (1) of section 468.621, Florida Statutes, is amended to read:

468.621 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(i) Failing to lawfully execute the duties and responsibilities specified in this part and ss. 553.73, 553.781, ~~and 553.79,~~ and 553.791.

Section 3. This act shall take effect October 1, 2005.

Approved by the Governor June 13, 2005.

Filed in Office Secretary of State June 13, 2005.