A bill to be entitled
An act relating to open and expired building permits;
amending s. 489.129, F.S.; authorizing the
Construction Industry Licensing Board to take
specified actions against any certificateholder or
registrant if a contractor, a financially responsible
officer, or certain business organization is found
guilty of failing to properly close any permit or
satisfy any applicable permit requirement; creating s.
553.7905, F.S.; requiring a building permit to be
considered an open permit if it is issued for any
portion of construction of any commercial,
residential, or mixed-use project that has not
received final inspection approval and that has not
complied with other requirements of the permit at
issue within a specified period; requiring an open
permit that expires without receiving final inspection
approval and complying with other requirements of the
permit at issue to be considered an expired permit;
specifying conditions under which a permit is a closed
permit; authorizing uncompleted permitted projects to
be transferred, or sold, and completed by a new owner
in accordance with procedures or requirements of a
local governmental jurisdiction; authorizing open or
expired permits to be closed by or on behalf of the
current property owner by complying with certain
requirements; providing applicability; prohibiting the
permitting authority from denying issuance of permits
to, issuing notices of violation to, or fining,
penalizing, sanctioning, or assessing fees against a
subsequent arms-length purchaser of the subject
property for value solely because a building permit
was not properly closed within certain periods;
requiring the permitting authority to continue to have
all rights and remedies against the property owner and
contractor identified on the permit; requiring the
Florida Building Commission to adopt rules and amend
the applicable Florida Building Code to enact
procedures designed to encourage property owners and
contractors to close permits properly; authorizing
individual trade permits or certain other permit types
to be closed under certain circumstances; providing
applicability; authorizing local boards or
governmental jurisdictions to adopt stricter standards
to govern the closure of building permits under
certain circumstances; authorizing the owner of a home
for sale to assume the role of an owner-builder in
order to resolve an open permit for a substantially
completed project under certain circumstances;
prohibiting such owner from being required to continue
to reside in the home for a specified period;
authorizing a local building official to refuse to
accept new permit applications from any contractor who
holds expired or inactive permits under a specified
circumstance; authorizing a contractor to hold an
unlimited number of active permits; providing that
provisions in the Florida Building Code authorizing
permits to be administratively closed by the local
building official are not applicable to a permit
subject to regulation by an agency not specifically
enforcing the Florida Building Code, except where the
local building official has regulatory authority over
other areas related to the permit; requiring the local
building department to provide to the property owner a
certain mandatory written notice when issuing a
building permit, subject to certain requirements;
authorizing a governmental entity to charge only one
search fee for searching for and identifying certain
open or unexpired building permits in an amount
commensurate with research and time costs incurred by
the jurisdiction; requiring, for a permit issued after
a certain date, the local building department to send
a written notice to the current property owner within
a specified period after issuance of such permit if
the permit has not been properly closed within that
period; providing requirements for the notice; providing that failure to receive written notice does not relieve the contractor or property owner from taking the necessary actions to legally close a permit; providing construction; providing an effective date.

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

Section 1. Paragraph (o) of subsection (1) of section 489.129, Florida Statutes, is amended to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate or registration, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed $10,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:
(o) Proceeding on any job without obtaining applicable local building department permits and inspections, or failing to properly close any permit or satisfy any applicable permit requirement.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender. A contractor does not commit a violation of this subsection when the contractor relies on a building code interpretation rendered by a building official or person authorized by s. 553.80 to enforce the building code, absent a finding of fraud or deceit in the practice of contracting, or gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property on the part of the building official, in a proceeding under chapter 120.

Section 2. Section 553.7905, Florida Statutes, is created to read:

553.7905 Open and expired permits; procedures for closing; notices to owners applying for permits.—

(1) A building permit shall be considered an open permit if it is issued for any portion of construction of any commercial, residential, or mixed-use project that has not received final inspection approval and that has not complied with other requirements of the permit at issue within one of the
following periods:

(a) One year after the expiration of the notice of commencement or last amendment thereto.

(b) In the absence of a notice of commencement:

1. One year after the last inspection conducted under the permit.

2. If an inspection has not been performed on the project, 2 years after the date of issuance of the permit.

(2) If an open permit expires without receiving final inspection approval and complying with other requirements of the permit at issue, the open permit shall be considered an expired permit as provided in s. 105.4 of the Florida Building Code.

(3) A closed permit is a building permit in which any of the following apply:

(a) A final inspection approval has been obtained upon satisfaction of permit requirements.

(b) No work is started under the original permit within 6 months after issuance of the permit.

(c) The requirements of paragraph (4)(b) are satisfied.

(4)(a) An uncompleted permitted project may be transferred, or sold, and completed by a new owner in accordance with procedures or requirements of a local governmental jurisdiction.

(b) An open or expired permit may be closed by or on behalf of the current property owner, regardless of whether the permit expires.
property owner is the same owner who originally applied for the
permit or is a subsequent owner, by complying with the
requirements for closing permits pursuant to a mutual agreement
between the current property owner and the local building
department that issued the permit or, absent such an agreement,
by complying with the following requirements:

1. The property owner may retain the original contractor
who obtained the permit or hire a different contractor licensed
in this state who possesses any license required for the
performance of any work necessary to satisfy conditions of the
permit at issue, in order to close the open or expired permit;
reactivate the permit if it is expired; or satisfy any
requirement of the permit at issue not yet satisfied, including
correction of any code violation in accordance with the code in
effect when the application for the permit was filed and
obtaining any necessary inspection. The state license of
whichever contractor performs these functions must be current
and active. The contractor and the owner must comply with the
local building department's change of contractor process, after
which the contractor may not be liable for any existing defect
or existing work failing to comply with any applicable code,
rule, regulation, ordinance, requirement of the permit at issue,
or law other than the work actually performed by the contractor.
The property owner and the permitholder under the original open
or expired permit remain liable, within the period of any
applicable statute of limitations or repose and as provided by
applicable law, for any defect in the work or for failure to
comply with any applicable code, rule, regulation, ordinance,
permit requirement, or law. To the extent required by chapter
489, the owner or the contractor may hire licensed
subcontractors in the scope of the permitted work who may
perform the functions of the contractor as outlined in this
subsection to the extent of work covered by the subcontractor's
license. All work required to properly close an open or expired
permit under this section shall be performed in accordance with
the building code in effect on the date of filing of the
application for the open or expired permit.

2.a. As an alternative to the procedure in subparagraph
1., the property owner may hire an engineer or architect who
possesses a current and active license in this state; is
experienced in designing, supervising, or inspecting work of the
nature covered by the open or expired permit at issue; and has
at least 3 years of experience in performing field inspections
regarding such work, in order to inspect the construction work
subject to the open or expired building permit, direct any
repair necessary to comply with all the requirements of the
permit at issue, and then confirm compliance therewith by
submitting an affidavit bearing the seal of the engineer or
architect to the issuing local building department. The
affidavit must be substantially in the following form:
I, ...(specify name)..., possess a current and active ...(specify engineering or architectural)... license within the State of Florida. I am experienced in designing, supervising, or inspecting work of the nature covered by the open or expired permit at the real property located at ...(specify address).... I have at least three years of experience in performing field inspections as to such work. I have inspected the construction work subject to the open or expired building permit number ...(specify number)..., and I confirm that the construction work complies with all known requirements of the permit at issue.

Signed:

...(affix licensing seal)...

b. If any of the permitted work includes construction outside the engineer's or architect's area of expertise, the property owner, engineer, or architect may hire an engineer or architect licensed in the scope of the permitted work who may direct any necessary repair to comply with all requirements of the permit at issue. The engineer or architect hired by the property owner, engineer, or architect must confirm compliance...
by submitting to the local building department issuing the
permit a signed and sealed affidavit attesting to compliance
with all requirements of the permit at issue. The local building
department issuing the permit shall accept the affidavit or
affidavits referenced in sub-subparagraph a. as satisfaction of
all requirements of the permit at issue and shall thereafter
close the building permit, unless it conducts its own final
inspections within 7 business days after receipt of the
affidavit or affidavits. If the local building department
conducts its own final inspection and discovers conditions
constituting code or permit violations within the scope of work
covered by the permit, the conditions must be repaired to the
local building department's satisfaction as a condition to
closing the permit. All work required to properly close an open
or expired permit under this section shall be performed in
accordance with the building code in effect on the date of
filing the application for the open or expired permit.

(5) The requirements of paragraph (4)(b) apply regardless
of whether the building permit is still open or has expired.

(6)(a) The permitting authority may not deny issuance of a
building permit to; issue a notice of violation to; or fine,
penalize, sanction, or assess fees against a subsequent arms-
length purchaser of the subject property for value solely
because a building permit was not properly closed within one of
the following periods:
1. Five years after expiration of the date of recordation of the notice of commencement or last amendment thereto.

2. If a notice of commencement was not recorded, within 7 years after the building permit was issued.

   (b) The permitting authority shall continue to have all rights and remedies against the property owner and contractor identified on the permit. The Florida Building Commission shall adopt rules and amend the applicable Florida Building Code to enact procedures designed to encourage property owners and contractors to close permits properly.

   (7)(a) An individual trade permit or any other permit type as determined by the local building official as defined in s. 553.791(1)(g) may be closed when no apparent safety hazard exists, and for which no code violation has been previously documented, after 6 years after issuance of the permit. This paragraph does not apply to a building permit for a building project still under construction with a legally granted permit extension.

   (b) A local board or governmental jurisdiction may adopt stricter standards to govern the closure of a building permit if the stricter standards apply only prospectively and not retroactively to previously issued permits, regardless of whether the permits remain open or have expired, and if the stricter standards do not change the requirements of paragraph (4)(b) and do not supersede this section.
(8) As an alternative to the requirements of paragraph (4)(b) on real property consisting of single or multiple family dwellings up to and including four units, with the approval of the local building official, the owner of a home for sale may assume the role of an owner-builder in order to resolve an open permit for a substantially completed project when the project is abandoned or otherwise not completed by the licensed contractor who obtained the permit. The owner may not be required to continue to reside in the home for 1 year.

(9)(a) A local building official may refuse to accept a new building permit application from a contractor who holds expired or inactive permits in excess of a specific publicized threshold number of expired or inactive permits which is set in advance by written policy or ordinance in a local jurisdiction.

(b) A contractor may hold an unlimited number of active permits.

(10) Provisions in the Florida Building Code authorizing permits to be administratively closed by the local building official are not applicable to a permit subject to regulation by an agency not specifically enforcing the Florida Building Code, except where the local building official has regulatory authority over other areas related to the permit, such as zoning or other land development code provisions. The regulations not subject to such provisions in the Florida Building Code include, but are not limited to, local zoning and land use rules, local
stormwater management rules, local platting and subdivision
requirements, rules implemented by the Department of Health,
rules implemented by the Department of Business and Professional
Regulation, local utility standards, and provisions of the
National Flood Insurance Program Community Rating System.

(11) When issuing a building permit, the local building
department shall provide to the property owner a mandatory
written notice, which may be electronically provided if the
permit package is electronically provided, in the following
form:

IMPORTANT NOTICE REGARDING COMPLYING WITH THE
INSPECTION AND APPROVAL PROCESS FOR ALL BUILDING
PERMITS

You are receiving a building permit authorizing the
correction referenced in the application that was
submitted to this local building department by you or
on your behalf. The permit is issued with conditions,
including required building inspections and assurances
that the construction complies with the design
submitted with the permit application and any other
conditions referenced in the permit. It is critical
that you ensure that all necessary building
inspections are passed before the expiration of any
notice of commencement or amendment thereto, as these inspections are important to ensure that construction has been performed in a safe and proper manner. If you have any questions regarding these procedures, please call the local building department. Your failure to comply may also result in unsafe conditions arising from your construction.

(12) The applicable governmental entity may charge only one search fee for searching for and identifying open or unexpired building permits for any unit or subunit assigned by a municipality or county to a particular tax parcel identification number, in an amount commensurate with research and time costs incurred by the jurisdiction.

(13) For all building permits issued after July 1, 2018, the local building department must send a written notice to the current property owner within 1 year to 3 years after issuance of any building permit that has not been properly closed out within that period. The notice must advise the property owner of the need to properly close the permit upon completion of the work covered by the permit. Failure to receive written notice does not relieve the contractor or the property owner from taking the necessary actions to legally close the permit.

(14) This act does not prevent a local governmental entity from enforcing any provision of a local land development code or
other local ordinance to the extent not inconsistent with this section or prevent a local governmental entity from enacting a provision that adds more requirements to the process of closing out open or expired permits.

Section 3. This act shall take effect July 1, 2018.