

1                                   A bill to be entitled  
2           An act relating to open and expired building permits;  
3           amending s. 489.129, F.S.; authorizing the  
4           Construction Industry Licensing Board to take  
5           specified actions against any certificateholder or  
6           registrant if a contractor, a financially responsible  
7           officer, or certain business organization is found  
8           guilty of failing to properly close any permit or  
9           satisfy any applicable permit requirement; creating s.  
10          553.7905, F.S.; requiring a building permit to be  
11          considered an open permit if it is issued for any  
12          portion of construction of any commercial,  
13          residential, or mixed-use project that has not  
14          received final inspection approval and that has not  
15          complied with other requirements of the permit at  
16          issue within a specified period; requiring an open  
17          permit that expires without receiving final inspection  
18          approval and complying with other requirements of the  
19          permit at issue to be considered an expired permit;  
20          specifying conditions under which a permit is a closed  
21          permit; authorizing uncompleted permitted projects to  
22          be transferred, or sold, and completed by a new owner  
23          in accordance with procedures or requirements of a  
24          local governmental jurisdiction; authorizing open or  
25          expired permits to be closed by or on behalf of the

26 | current property owner by complying with certain  
27 | requirements; providing applicability; prohibiting the  
28 | permitting authority from denying issuance of permits  
29 | to, issuing notices of violation to, or fining,  
30 | penalizing, sanctioning, or assessing fees against a  
31 | subsequent arms-length purchaser of the subject  
32 | property for value solely because a building permit  
33 | was not properly closed within certain periods;  
34 | requiring the permitting authority to continue to have  
35 | all rights and remedies against the property owner and  
36 | contractor identified on the permit; requiring the  
37 | Florida Building Commission to adopt rules and amend  
38 | the applicable Florida Building Code to enact  
39 | procedures designed to encourage property owners and  
40 | contractors to close permits properly; authorizing  
41 | individual trade permits or certain other permit types  
42 | to be closed under certain circumstances; providing  
43 | applicability; authorizing local boards or  
44 | governmental jurisdictions to adopt stricter standards  
45 | to govern the closure of building permits under  
46 | certain circumstances; authorizing the owner of a home  
47 | for sale to assume the role of an owner-builder in  
48 | order to resolve an open permit for a substantially  
49 | completed project under certain circumstances;  
50 | prohibiting such owner from being required to continue

51 to reside in the home for a specified period;  
52 authorizing a local building official to refuse to  
53 accept new permit applications from any contractor who  
54 holds expired or inactive permits under a specified  
55 circumstance; authorizing a contractor to hold an  
56 unlimited number of active permits; providing that  
57 provisions in the Florida Building Code authorizing  
58 permits to be administratively closed by the local  
59 building official are not applicable to a permit  
60 subject to regulation by an agency not specifically  
61 enforcing the Florida Building Code, except where the  
62 local building official has regulatory authority over  
63 other areas related to the permit; requiring the local  
64 building department to provide to the property owner a  
65 certain mandatory written notice when issuing a  
66 building permit, subject to certain requirements;  
67 authorizing a governmental entity to charge only one  
68 search fee for searching for and identifying certain  
69 open or unexpired building permits in an amount  
70 commensurate with research and time costs incurred by  
71 the jurisdiction; requiring, for a permit issued after  
72 a certain date, the local building department to send  
73 a written notice to the current property owner within  
74 a specified period after issuance of such permit if  
75 the permit has not been properly closed within that

76 period; providing requirements for the notice;  
 77 providing that failure to receive written notice does  
 78 not relieve the contractor or property owner from  
 79 taking the necessary actions to legally close a  
 80 permit; providing construction; providing an effective  
 81 date.

82

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

84

85 Section 1. Paragraph (o) of subsection (1) of section  
 86 489.129, Florida Statutes, is amended to read:

87 489.129 Disciplinary proceedings.—

88 (1) The board may take any of the following actions  
 89 against any certificateholder or registrant: place on probation  
 90 or reprimand the licensee, revoke, suspend, or deny the issuance  
 91 or renewal of the certificate or registration, require financial  
 92 restitution to a consumer for financial harm directly related to  
 93 a violation of a provision of this part, impose an  
 94 administrative fine not to exceed \$10,000 per violation, require  
 95 continuing education, or assess costs associated with  
 96 investigation and prosecution, if the contractor, financially  
 97 responsible officer, or business organization for which the  
 98 contractor is a primary qualifying agent, a financially  
 99 responsible officer, or a secondary qualifying agent responsible  
 100 under s. 489.1195 is found guilty of any of the following acts:

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101 (o) Proceeding on any job without obtaining applicable  
102 local building department permits and inspections, or failing to  
103 properly close any permit or satisfy any applicable permit  
104 requirement.

105  
106 For the purposes of this subsection, construction is considered  
107 to be commenced when the contract is executed and the contractor  
108 has accepted funds from the customer or lender. A contractor  
109 does not commit a violation of this subsection when the  
110 contractor relies on a building code interpretation rendered by  
111 a building official or person authorized by s. 553.80 to enforce  
112 the building code, absent a finding of fraud or deceit in the  
113 practice of contracting, or gross negligence, repeated  
114 negligence, or negligence resulting in a significant danger to  
115 life or property on the part of the building official, in a  
116 proceeding under chapter 120.

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

119 553.7905 Open and expired permits; procedures for closing;  
120 notices to owners applying for permits.-

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

126 following periods:

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

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

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

132 2. If an inspection has not been performed on the project,  
133 2 years after the date of issuance of the permit.

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

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

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

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

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

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

149 (b) An open or expired permit may be closed by or on  
150 behalf of the current property owner, regardless of whether the

151 property owner is the same owner who originally applied for the  
152 permit or is a subsequent owner, by complying with the  
153 requirements for closing permits pursuant to a mutual agreement  
154 between the current property owner and the local building  
155 department that issued the permit or, absent such an agreement,  
156 by complying with the following requirements:

157 1. The property owner may retain the original contractor  
158 who obtained the permit or hire a different contractor licensed  
159 in this state who possesses any license required for the  
160 performance of any work necessary to satisfy conditions of the  
161 permit at issue, in order to close the open or expired permit;  
162 reactivate the permit if it is expired; or satisfy any  
163 requirement of the permit at issue not yet satisfied, including  
164 correction of any code violation in accordance with the code in  
165 effect when the application for the permit was filed and  
166 obtaining any necessary inspection. The state license of  
167 whichever contractor performs these functions must be current  
168 and active. The contractor and the owner must comply with the  
169 local building department's change of contractor process, after  
170 which the contractor may not be liable for any existing defect  
171 or existing work failing to comply with any applicable code,  
172 rule, regulation, ordinance, requirement of the permit at issue,  
173 or law other than the work actually performed by the contractor.  
174 The property owner and the permitholder under the original open  
175 or expired permit remain liable, within the period of any

176 applicable statute of limitations or repose and as provided by  
177 applicable law, for any defect in the work or for failure to  
178 comply with any applicable code, rule, regulation, ordinance,  
179 permit requirement, or law. To the extent required by chapter  
180 489, the owner or the contractor may hire licensed  
181 subcontractors in the scope of the permitted work who may  
182 perform the functions of the contractor as outlined in this  
183 subsection to the extent of work covered by the subcontractor's  
184 license. All work required to properly close an open or expired  
185 permit under this section shall be performed in accordance with  
186 the building code in effect on the date of filing of the  
187 application for the open or expired permit.

188 2.a. As an alternative to the procedure in subparagraph  
189 1., the property owner may hire an engineer or architect who  
190 possesses a current and active license in this state; is  
191 experienced in designing, supervising, or inspecting work of the  
192 nature covered by the open or expired permit at issue; and has  
193 at least 3 years of experience in performing field inspections  
194 regarding such work, in order to inspect the construction work  
195 subject to the open or expired building permit, direct any  
196 repair necessary to comply with all the requirements of the  
197 permit at issue, and then confirm compliance therewith by  
198 submitting an affidavit bearing the seal of the engineer or  
199 architect to the issuing local building department. The  
200 affidavit must be substantially in the following form:



201  
 202 I, ...(specify name)..., possess a current and active  
 203 ...(specify engineering or architectural)... license  
 204 within the State of Florida. I am experienced in  
 205 designing, supervising, or inspecting work of the  
 206 nature covered by the open or expired permit at the  
 207 real property located at ...(specify address).... I  
 208 have at least three years of experience in performing  
 209 field inspections as to such work. I have inspected  
 210 the construction work subject to the open or expired  
 211 building permit number ...(specify number)..., and I  
 212 confirm that the construction work complies with all  
 213 known requirements of the permit at issue.

214  
 215 Signed:

216  
 217 ...(affix licensing seal)...  
 218

219 b. If any of the permitted work includes construction  
 220 outside the engineer's or architect's area of expertise, the  
 221 property owner, engineer, or architect may hire an engineer or  
 222 architect licensed in the scope of the permitted work who may  
 223 direct any necessary repair to comply with all requirements of  
 224 the permit at issue. The engineer or architect hired by the  
 225 property owner, engineer, or architect must confirm compliance

226 by submitting to the local building department issuing the  
227 permit a signed and sealed affidavit attesting to compliance  
228 with all requirements of the permit at issue. The local building  
229 department issuing the permit shall accept the affidavit or  
230 affidavits referenced in sub-subparagraph a. as satisfaction of  
231 all requirements of the permit at issue and shall thereafter  
232 close the building permit, unless it conducts its own final  
233 inspections within 7 business days after receipt of the  
234 affidavit or affidavits. If the local building department  
235 conducts its own final inspection and discovers conditions  
236 constituting code or permit violations within the scope of work  
237 covered by the permit, the conditions must be repaired to the  
238 local building department's satisfaction as a condition to  
239 closing the permit. All work required to properly close an open  
240 or expired permit under this section shall be performed in  
241 accordance with the building code in effect on the date of  
242 filing the application for the open or expired permit.

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

245 (6) (a) The permitting authority may not deny issuance of a  
246 building permit to; issue a notice of violation to; or fine,  
247 penalize, sanction, or assess fees against a subsequent arms-  
248 length purchaser of the subject property for value solely  
249 because a building permit was not properly closed within one of  
250 the following periods:

251 1. Five years after expiration of the date of recordation  
252 of the notice of commencement or last amendment thereto.

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

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

261 (7) (a) An individual trade permit or any other permit type  
262 as determined by the local building official as defined in s.  
263 553.791(1)(g) may be closed when no apparent safety hazard  
264 exists, and for which no code violation has been previously  
265 documented, after 6 years after issuance of the permit. This  
266 paragraph does not apply to a building permit for a building  
267 project still under construction with a legally granted permit  
268 extension.

269 (b) A local board or governmental jurisdiction may adopt  
270 stricter standards to govern the closure of a building permit if  
271 the stricter standards apply only prospectively and not  
272 retroactively to previously issued permits, regardless of  
273 whether the permits remain open or have expired, and if the  
274 stricter standards do not change the requirements of paragraph  
275 (4) (b) and do not supersede this section.

276       (8) As an alternative to the requirements of paragraph  
277       (4) (b) on real property consisting of single or multiple family  
278       dwelling up to and including four units, with the approval of  
279       the local building official, the owner of a home for sale may  
280       assume the role of an owner-builder in order to resolve an open  
281       permit for a substantially completed project when the project is  
282       abandoned or otherwise not completed by the licensed contractor  
283       who obtained the permit. The owner may not be required to  
284       continue to reside in the home for 1 year.

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

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

292       (10) Provisions in the Florida Building Code authorizing  
293       permits to be administratively closed by the local building  
294       official are not applicable to a permit subject to regulation by  
295       an agency not specifically enforcing the Florida Building Code,  
296       except where the local building official has regulatory  
297       authority over other areas related to the permit, such as zoning  
298       or other land development code provisions. The regulations not  
299       subject to such provisions in the Florida Building Code include,  
300       but are not limited to, local zoning and land use rules, local

301 stormwater management rules, local platting and subdivision  
302 requirements, rules implemented by the Department of Health,  
303 rules implemented by the Department of Business and Professional  
304 Regulation, local utility standards, and provisions of the  
305 National Flood Insurance Program Community Rating System.

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

311  
312 IMPORTANT NOTICE REGARDING COMPLYING WITH THE  
313 INSPECTION AND APPROVAL PROCESS FOR ALL BUILDING  
314 PERMITS

315  
316 You are receiving a building permit authorizing the  
317 construction referenced in the application that was  
318 submitted to this local building department by you or  
319 on your behalf. The permit is issued with conditions,  
320 including required building inspections and assurances  
321 that the construction complies with the design  
322 submitted with the permit application and any other  
323 conditions referenced in the permit. It is critical  
324 that you ensure that all necessary building  
325 inspections are passed before the expiration of any

326 notice of commencement or amendment thereto, as these  
327 inspections are important to ensure that construction  
328 has been performed in a safe and proper manner. If you  
329 have any questions regarding these procedures, please  
330 call the local building department. Your failure to  
331 comply may also result in unsafe conditions arising  
332 from your construction.

333  
334 (12) The applicable governmental entity may charge only  
335 one search fee for searching for and identifying open or  
336 unexpired building permits for any unit or subunit assigned by a  
337 municipality or county to a particular tax parcel identification  
338 number, in an amount commensurate with research and time costs  
339 incurred by the jurisdiction.

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

349 (14) This act does not prevent a local governmental entity  
350 from enforcing any provision of a local land development code or

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351 | other local ordinance to the extent not inconsistent with this  
352 | section or prevent a local governmental entity from enacting a  
353 | provision that adds more requirements to the process of closing  
354 | out open or expired permits.

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