

DS 2022-002 American Council of Engineering Companies of Florida (“ACEC-FL”)

Summary of Issue:

Petitioner seeks clarification about whether statutory provisions in chapter 553, Florida Statutes, permit an appropriately qualified entity to perform threshold inspections and provide private provider services for the same threshold building.

Relevant Provisions:

553.791(1)(k): “Local building official” means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

553.791(1)(n): “Private provider” means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term “private provider” also includes a person who holds a standard certificate under part XII of chapter 468.

553.791(2)(a): “Notwithstanding any other 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... The fee owner may elect to use a private provider to provide 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 to use a private provider to also provide required building inspections.”

553.791(3): A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person’s licensure or certification under chapter 468, chapter 471, or chapter 481, including single-trade inspections. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider’s firm.

553.79(5): (a) During new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified, the enforcing agency shall require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to and approved by the enforcing agency before the issuance of a building permit for the construction of a threshold building. The purpose of the structural

inspection plan is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record. The contractor's contractual or statutory obligations are not relieved by any action of the special inspector. The special inspector shall determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency. A fee simple title owner of a building, which does not meet the minimum size, height, occupancy, occupancy classification, or number-of-stories criteria which would result in classification as a threshold building under s. 553.71(12), may designate such building as a threshold building, subject to more than the minimum number of inspections required by the Florida Building Code.

(b) The fee owner of a threshold building shall select and pay all costs of employing a special inspector, but the special inspector shall be responsible to the enforcement agency. The inspector shall be a person certified, licensed, or registered under chapter 471 as an engineer or under chapter 481 as an architect.

553.71(5): "Local enforcement agency" means an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

553.71(9): "Special inspector" means a licensed architect or registered engineer who is certified under chapter 471 or chapter 481 to conduct inspections of threshold buildings.

#### Petitioner's Question:

Pursuant to Sections 553.79 and 553.791, Florida Statutes, may a qualified private entity perform both private provider services and required threshold inspections on the same threshold building?

#### Staff's Suggested Answer:

Yes; section 553.79(5)(a) Florida Statutes, does not prohibit an entity from both performing special inspections on a threshold building and private provider services for that building. A special inspector does not "serve as a surrogate" for carrying out the responsibilities of the building official merely by providing private provider services, since the local enforcing agency possesses and retains various oversight responsibilities and powers with respect to both special inspections and private provider services.

As long as an entity has the appropriate qualifications to offer private provider services and to perform threshold inspections, the provisions of section 553.79(5), Florida Statutes, do not prohibit that entity from performing both private provider services and threshold inspections on the same building.