

**PETITION FOR DECLARATORY STATEMENT BEFORE THE FLORIDA BUILDING
COMMISSION**

January 7, 2022

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Statute on which the Declaratory Statement is sought:

Section 553.79, *Florida Statutes*. Attached as Exhibit "A" hereto.
Section 553.791, *Florida Statutes*. Attached as Exhibit "B" hereto.

Background:

ACEC-FL is an organization comprised of professional engineers that represents the professional and business interests of professional engineers, in private practice in Florida, and their companies. Since its creation in 1973, ACEC-FL is considered as one of the preeminent advocates for consulting engineers within the state of Florida. As such, ACEC-FL has a duty to its members to protect their members' interests.

On or about December 31, 2020, the City of Gainesville Department of Sustainable Development Building Division (the "City") issued a Building Division Administrative Policy

purporting to interpret Section 110.8 of the Florida Building Code and Sections 553.79 and 553.791, *Florida Statutes*. The policy interprets those provisions of the Florida Building Code and the Florida Statutes as disallowing a private entity from providing both private provider services and required threshold inspections on the same threshold building. This Commission has previously determined in its Final Order regarding Binding Interpretation 217 that "the City's determination regarding the interplay between the threshold building requirements and the private provider provisions is based almost exclusively on an analysis of the applicable statutory provisions." This Commission further determined that the Florida Building Code "does not address the topic of private providers and the services they may offer" and therefore "in order to address the issues that ACEC-FL has raised in a coherent, comprehensive, and logical fashion, it would necessarily entail an analysis of applicable statutory provisions, which would lay outside the scope of the binding interpretation process."

Accordingly, ACEC-FL enters this Petition for Declaratory Statement on behalf of its members, whose substantial interest in contracting with owners to perform private provider services and threshold inspection services are affected by Section 553.79, *Florida Statutes* and Section 553.791, *Florida Statutes*. Specifically, ACEC-FL has been, and will continue to be, substantially affected by the apparent lack of clarity regarding a qualified private entities ability to perform both private provider services and required threshold inspections on the same threshold building.

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?

Summary of Petitioner's Argument:

ACEC-FL respectfully believes the answer to the question outlined above is "YES." Pursuant to Section 553.791(1)(n), a private provider is a person licensed as a building code administrator under part XII of Chapter 468, *Florida Statutes*, as an engineer under Chapter 471, *Florida Statutes*, or as an architect under Chapter 481, *Florida Statutes*. The only limitations placed on a person meeting the definition of a private provider stated above are: (i) that person may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification; and (2) that person may not provide building code inspection services as a private provider upon any building designed or constructed by that person or that person's firm. § 553.791(3), *Florida Statutes*; see also generally § 553.791, *Florida Statutes*. There is nothing in Section 553.791 which prohibits a threshold inspector from providing private provider services. Further, nothing in Section 553.79, *Florida Statutes*, or Section 110.8 of the Florida Building Code prevents a private provider from performing threshold inspection services. The City's policy referenced above cites Section 553.79(5)(a) which states that the special inspector may not serve as a surrogate in carrying out the responsibilities of the building official. However, the private provider is not a "surrogate in carrying out the responsibilities of the building official." Section 553.791, *Florida Statutes*, outlines responsibilities for the building official which are separate and distinct from those of the private provider.

Additionally, Section 553.791(16)(a), *Florida Statutes*, provides that "[a] local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by [Section 553.791, *Florida Statutes*]." Accordingly, the adoption or enforcement by a local enforcement agency, local building official, or local government of any law, rule, procedure,

policy, qualification, or standard which prohibits a qualified private entity from performing both private provider services and required threshold inspections on the same threshold building would necessarily be more stringent than the qualifications and standards set forth in Section 553.791, *Florida Statutes* which do not otherwise restrict such a practice.

Therefore, the answer to the question posed by this Petition for Declaratory Statement is "YES." A qualified private entity may perform both private provider services and required threshold inspections on the same threshold building and may do so free from restrictions other than those specifically contained within Section 553.79 and 553.791, *Florida Statutes*.

**WRIGHT, FULFORD, MOORHEAD
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/s/ Andrew Peeler

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Exhibit "A"

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Florida Statutes Annotated
Title XXXIII. Regulation of Trade, Commerce, Investments, and Solicitations (Chapters 494-560)
Chapter 553. Building Construction Standards (Refs & Annos)
Part IV. Florida Building Code (Refs & Annos)

West's F.S.A. § 553.79

553.79. Permits; applications; issuance; inspections

Effective: October 1, 2021
Currentness

(1)(a) After the effective date of the Florida Building Code adopted as herein provided, it shall be unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building within this state without first obtaining a permit therefor from the appropriate enforcing agency or from such persons as may, by appropriate resolution or regulation of the authorized state or local enforcing agency, be delegated authority to issue such permits, upon the payment of such reasonable fees adopted by the enforcing agency. The enforcing agency is empowered to revoke any such permit upon a determination by the agency that the construction, erection, alteration, modification, repair, or demolition of the building for which the permit was issued is in violation of, or not in conformity with, the provisions of the Florida Building Code. Whenever a permit required under this section is denied or revoked because the plan, or the construction, erection, alteration, modification, repair, or demolition of a building, is found by the local enforcing agency to be not in compliance with the Florida Building Code, the local enforcing agency shall identify the specific plan or project features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the permit applicant. A plans reviewer or building code administrator who is responsible for issuing a denial, revocation, or modification request but fails to provide to the permit applicant a reason for denying, revoking, or requesting a modification, based on compliance with the Florida Building Code or local ordinance, is subject to disciplinary action against his or her license pursuant to s. 468.621(1)(i). Installation, replacement, removal, or metering of any load management control device is exempt from and shall not be subject to the permit process and fees otherwise required by this section.

(b) A local enforcement agency shall post each type of building permit application, including a list of all required attachments, drawings, or other requirements for each type of application, on its website. A local enforcement agency must post and update the status of every received application on its website until the issuance of the building permit. Completed applications, including payments, attachments, drawings, or other requirements or parts of the completed permit application, must be able to be submitted electronically to the appropriate building department. Accepted methods of electronic submission include, but are not limited to, e-mail submission of applications in Portable Document Format or submission of applications through an electronic fill-in form available on the building department's website or through a third-party submission management software. Completed applications, including payments, attachments, drawings, or other requirements or parts of the completed permit application, may also be submitted in person in a nonelectronic format, at the discretion of the building official.

(c) A local government that issues building permits may send a written notice of expiration, by e-mail or United States Postal Service, to the owner of the property and the contractor listed on the permit, no less than 30 days before a building permit is set to expire. The written notice must identify the permit that is set to expire and the date the permit will expire.

(d) A local enforcement agency must allow requests for inspections to be submitted electronically to the local enforcement agency's appropriate building department. Acceptable methods of electronic submission include, but are not limited to, e-mail or fill-in form available on the website of the building department or through a third-party submission management software or application that can be downloaded on a mobile device. Requests for inspections may be submitted in a nonelectronic format, at the discretion of the building official.

(e) A local enforcement agency must post its procedures for processing, reviewing, and approving submitted building permit applications on its website.

(f) A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

(2) Except as provided in subsection (8), an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building or structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found the plans to be in compliance with the Florida Building Code. If the local building code administrator or inspector finds that the plans are not in compliance with the Florida Building Code, the local building code administrator or inspector shall identify the specific plan features that do not comply with the applicable codes, identify the specific code chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency shall provide this information to the permit applicant. In addition, an enforcing agency may not issue any permit for construction, erection, alteration, modification, repair, or demolition of any building until the appropriate firesafety inspector certified pursuant to s. 633.216 has reviewed the plans and specifications required by the Florida Building Code, or local amendment thereto, for such proposal and found that the plans comply with the Florida Fire Prevention Code and the Life Safety Code. Any building or structure which is not subject to a firesafety code shall not be required to have its plans reviewed by the firesafety inspector. Any building or structure that is exempt from the local building permit process may not be required to have its plans reviewed by the local building code administrator. Industrial construction on sites where design, construction, and firesafety are supervised by appropriate design and inspection professionals and which contain adequate in-house fire departments and rescue squads is exempt, subject to local government option, from review of plans and inspections, providing owners certify that applicable codes and standards have been met and supply appropriate approved drawings to local building and firesafety inspectors. The enforcing agency shall issue a permit to construct, erect, alter, modify, repair, or demolish any building or structure when the plans and specifications for such proposal comply with the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code as determined by the local authority in accordance with this chapter and chapter 633.

(3) Except as provided in this chapter, the Florida Building Code, after the effective date of adoption pursuant to the provisions of this part, shall supersede all other building construction codes or ordinances in the state, whether at the local or state level and whether adopted by administrative regulation or by legislative enactment. However, this subsection does not apply to the construction of manufactured homes as defined by federal law. Nothing contained in this subsection shall be construed as nullifying or divesting appropriate state or local agencies of authority to make inspections or to enforce the codes within their respective areas of jurisdiction.

(4) The Florida Building Code, after the effective date of adoption pursuant to the provisions of this part, may be modified by local governments to require more stringent standards than those specified in the Florida Building Code, provided the conditions of s. 553.73(4) are met.

(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.

(c) The architect or engineer of record may act as the special inspector provided she or he is on the Board of Professional Engineers' or the Board of Architecture and Interior Design's list of persons qualified to be special inspectors. School boards may utilize employees as special inspectors provided such employees are on one of the professional licensing board's list of persons qualified to be special inspectors.

(d) The licensed architect or registered engineer serving as the special inspector shall be permitted to send her or his duly authorized representative to the job site to perform the necessary inspections provided all required written reports are prepared by and bear the seal of the special inspector and are submitted to the enforcement agency.

(6) A state or local enforcement agency may perform virtual inspections at the discretion of the enforcement agency. However, a state or local enforcement agency may not perform virtual inspections for structural inspections on a threshold building. For purposes of this subsection, the term "virtual inspection" means a form of visual inspection which uses visual or electronic aids to allow a building code administrator or an inspector, or team of inspectors, to perform an inspection without having to be physically present at the job site during the inspection.

(7)(a) A local enforcement agency must refund 10 percent of the permit and inspection fees to a permit holder if:

1. The inspector or building code administrator determines that the work, which requires the permit, fails an inspection; and
2. The inspector or building code administrator fails to provide, within 5 business days after the inspection, the permit holder or his or her agent with a reason, based on compliance with the Florida Building Code, Florida Fire Prevention Code, or local ordinance, for why the work failed the inspection.

(b) If any permit and inspection fees are refunded under paragraph (a), the surcharges provided in s. 468.631 or s. 553.721 must be recalculated based on the amount of the permit and inspection fees after the refund.

(8) A permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant for such permit complies with the requirements for plan review established by the Florida Building Commission within the Florida Building Code. However, the code shall set standards and criteria to authorize preliminary construction before completion of all building plans review, including, but not limited to, special permits for the foundation only, and such standards shall take effect concurrent with the first effective date of the Florida Building Code. After submittal of the appropriate construction documents, the building official may issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the entire building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.

(9) Each enforcement agency shall require that, on every threshold building:

(a) The special inspector, upon completion of the building and prior to the issuance of a certificate of occupancy, file a signed and sealed statement with the enforcement agency in substantially the following form: To the best of my knowledge and belief, the construction of all structural load-bearing components described in the threshold inspection plan complies with the permitted documents, and the specialty shoring design professional engineer has ascertained that the shoring and reshoring conforms with the shoring and reshoring plans submitted to the enforcement agency.

(b) Any proposal to install an alternate structural product or system to which building codes apply be submitted to the enforcement agency for review for compliance with the codes and made part of the enforcement agency's recorded set of permit documents.

(c) All shoring and reshoring procedures, plans, and details be submitted to the enforcement agency for recordkeeping. Each shoring and reshoring installation shall be supervised, inspected, and certified to be in compliance with the shoring documents by the contractor.

(d) All plans for the building which are required to be signed and sealed by the architect or engineer of record contain a statement that, to the best of the architect's or engineer's knowledge, the plans and specifications comply with the applicable minimum building codes and the applicable firesafety standards as determined by the local authority in accordance with this chapter and chapter 633.

(10) No enforcing agency may issue a building permit for construction of any threshold building except to a licensed general contractor, as defined in s. 489.105(3)(a), or to a licensed building contractor, as defined in s. 489.105(3)(b), within the scope of her or his license. The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management, and control of the construction activities on the project for which the building permit was issued.

(11) Any state agency whose enabling legislation authorizes it to enforce provisions of the Florida Building Code may enter into an agreement with any other unit of government to delegate its responsibility to enforce those provisions and may expend public funds for permit and inspection fees, which fees may be no greater than the fees charged others. Inspection services that are not required to be performed by a state agency under a federal delegation of responsibility or by a state agency under the

Florida Building Code must be performed under the alternative plans review and inspection process created in s. 553.791 or by a local governmental entity having authority to enforce the Florida Building Code.

(12) An enforcing authority may not issue a building permit for any building construction, erection, alteration, modification, repair, or addition unless the permit either includes on its face or there is attached to the permit the following statement: "NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies, or federal agencies."

(13) The local enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031. A certificate of completion or occupancy may not be issued until such operating permit is issued. The local enforcing agency shall conduct its review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the Department of Health, if necessary, but may not delay the building permit application review while awaiting comment from the Department of Health.

(14) Nothing in this section shall be construed to alter or supplement the provisions of part I of this chapter relating to manufactured buildings.

(15) One-family and two-family detached residential dwelling units are not subject to plan review by the local fire official as described in this section or inspection by the local fire official as described in s. 633.216, unless expressly made subject to the plan review or inspection by local ordinance.

(16) Except as provided in paragraph (e), a building permit for a single-family residential dwelling must be issued within 30 business days after receiving the permit application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(a) If a local enforcement agency fails to issue a building permit for a single-family residential dwelling within 30 business days after receiving the permit application, it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. Each 10-percent reduction shall be based on the original amount of the building permit fee.

(b) A local enforcement agency does not have to reduce the building permit fee if it provides written notice to the applicant, by e-mail or United States Postal Service, within 30 business days after receiving the permit application, that specifically states the reasons the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances. The written notice must also state that the applicant has 10 business days after receiving the written notice to submit revisions to correct the permit application and that failure to correct the application within 10 business days will result in a denial of the application.

(c) The applicant has 10 business days after receiving the written notice to address the reasons specified by the local enforcement agency and submit revisions to correct the permit application. If the applicant submits revisions within 10 business days after receiving the written notice, the local enforcement agency has 10 business days after receiving such revisions to approve or deny the building permit unless the applicant agrees to a longer period in writing. If the local enforcement agency fails to issue or deny the building permit within 10 business days after receiving the revisions, it must reduce the building permit fee by 20 percent for the first business day that it fails to meet the deadline unless the applicant agrees to a longer period in writing. For

each additional business day, but not to exceed 5 business days, that the local enforcement agency fails to meet the deadline, the building permit fee must be reduced by an additional 10 percent. Each reduction shall be based on the original amount of the building permit fee.

(d) If any building permit fees are refunded under this subsection, the surcharges provided in s. 468.631 or s. 553.721 must be recalculated based on the amount of the building permit fees after the refund.

(e) A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within 15 working days after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(17)(a) A property owner, regardless of whether the property owner is the one listed on the application for the building permit, may close a building permit by complying with the following requirements:

1. The property owner may retain the original contractor listed on the permit or hire a different contractor appropriately licensed in this state to perform the work necessary to satisfy the conditions of the permit and to obtain any necessary inspections in order to close the permit. If a contractor other than the original contractor listed on the permit is hired by the property owner to close the permit, such contractor is not liable for any defects in the work performed by the original contractor and is only liable for the work that he or she performs.

2. The property owner may assume the role of an owner-builder, in accordance with ss. 489.103(7) and 489.503(6).

3. For purposes of this section, the term "close" means that the requirements of the permit have been satisfied.

(b) If a building permit is expired and its requirements have been substantially completed, as determined by the local enforcement agency, the permit may be closed without having to obtain a new building permit, and the work required to close the permit may be done pursuant to the building code in effect at the time the local enforcement agency received the application for the permit, unless the contractor has sought and received approval from the local enforcement agency for an alternative material, design, or method of construction.

(c) A local enforcement agency may close a building permit 6 years after the issuance of the permit, even in the absence of a final inspection, if the local enforcement agency determines that no apparent safety hazards exist.

(18)(a) A local enforcement agency may not deny issuance of a building permit to; issue a notice of violation to; or fine, penalize, sanction, or assess fees against an arms-length purchaser of a property for value solely because a building permit applied for by a previous owner of the property was not closed. The local enforcement agency shall maintain all rights and remedies against the property owner and contractor listed on the permit.

(b) The local enforcement agency may not deny issuance of a building permit to a contractor solely because the contractor is listed on other building permits that were not closed.

(19) Certifications by contractors authorized under the provisions of s. 489.115(4)(b) shall be considered equivalent to sealed plans and specifications by a person licensed under chapter 471 or chapter 481 by local enforcement agencies for plans review for permitting purposes relating to compliance with the wind resistance provisions of the code or alternate methodologies approved by the commission for one and two family dwellings. Local enforcement agencies may rely upon such certification by contractors that the plans and specifications submitted conform to the requirements of the code for wind resistance. Upon good cause shown, local government code enforcement agencies may accept or reject plans sealed by persons licensed under chapter 471, chapter 481, or chapter 489. A truss-placement plan is not required to be signed and sealed by an engineer or architect unless prepared by an engineer or architect or specifically required by the Florida Building Code.

(20)(a) The Florida Building Commission shall establish, within the Florida Building Code adopted by rule, standards for permitting residential buildings or structures moved into or within a county or municipality when such structures do not or cannot comply with the code. However, such buildings or structures shall not be required to be brought into compliance with the building code in force at the time the building or structure is moved, provided:

1. The building or structure is structurally sound and in occupiable condition for its intended use;
2. The occupancy use classification for the building or structure is not changed as a result of the move;
3. The building is not substantially remodeled;
4. Current fire code requirements for ingress and egress are met;
5. Electrical, gas, and plumbing systems meet the codes in force at the time of construction and are operational and safe for reconnection; and
6. Foundation plans are sealed by a professional engineer or architect licensed to practice in this state, if required by the building code for all residential buildings or structures of the same occupancy class;

(b) The building official shall apply the same standard to a moved residential building or structure as that applied to the remodeling of any comparable residential building or structure to determine whether the moved structure is substantially remodeled. The cost of moving the building and the cost of the foundation on which the moved building or structure is placed shall not be included in the cost of remodeling for purposes of determining whether a moved building or structure has been substantially remodeled.

(21) Notwithstanding any other provision of law, state agencies responsible for the construction, erection, alteration, modification, repair, or demolition of public buildings, or the regulation of public and private buildings, structures, and facilities, shall be subject to enforcement of the Florida Building Code by local jurisdictions. This subsection applies in addition to the jurisdiction and authority of the Department of Financial Services to inspect state-owned buildings. This subsection does not apply to the jurisdiction and authority of the Department of Agriculture and Consumer Services to inspect amusement rides or the Department of Financial Services to inspect state-owned buildings and boilers.

(22)(a) A local enforcing agency, and any local building code administrator, inspector, or other official or entity, may not require as a condition of issuance of a one- or two-family residential building permit the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.

(b) This subsection does not apply to a building permit sought for:

1. A substantial improvement as defined in s. 161.54 or as defined in the Florida Building Code.
2. A change of occupancy as defined in the Florida Building Code.
3. A conversion from residential to nonresidential or mixed use pursuant to s. 553.507(3) or as defined in the Florida Building Code.
4. A historic building as defined in the Florida Building Code.

(c) This subsection does not prohibit a local enforcing agency, or any local building code administrator, inspector, or other official or entity, from:

1. Citing any violation inadvertently observed in plain view during the ordinary course of an inspection conducted in accordance with the prohibition in paragraph (a).
2. Inspecting a physically nonadjacent portion of a building, structure, or real property that is directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought in accordance with the prohibition in paragraph (a).
3. Inspecting any portion of a building, structure, or real property for which the owner or other person having control of the building, structure, or real property has voluntarily consented to the inspection of that portion of the building, structure, or real property in accordance with the prohibition in paragraph (a).
4. Inspecting any portion of a building, structure, or real property pursuant to an inspection warrant issued in accordance with ss. 933.20-933.30.

(d) This subsection is repealed upon receipt by the Secretary of State of the written certification by the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code which substantially incorporates this subsection, including the prohibition in paragraph (a), as part of the code and such amendment has taken effect.

(23) For the purpose of inspection and record retention, site plans or building permits may be maintained in the original form or in the form of an electronic copy at the worksite. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code.

(24)(a) A political subdivision of this state may not adopt or enforce any ordinance or impose any building permit or other development order requirement that:

1. Contains any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under chapter 526 or in carrying out business activities defined as a franchise by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. seq.; or

2. Imposes any requirement on the design, construction, or location of signage advertising the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121 which prevents the signage from being clearly visible and legible to drivers of approaching motor vehicles from a vantage point on any lane of traffic in either direction on a roadway abutting the gas station premises and meets height, width, and spacing standards for Series C, D, or E signs, as applicable, published in the latest edition of Standard Alphabets for Highway Signs published by the United States Department of Commerce, Bureau of Public Roads, Office of Highway Safety.

(b) This subsection does not affect any requirement for design and construction in the Florida Building Code.

(c) All such ordinances and requirements are hereby preempted and superseded by general law. This subsection shall apply retroactively.

(d) This subsection does not apply to property located in a designated historic district.

Credits

Laws 1974, c. 74-167, § 10; Laws 1977, c. 77-365, § 4; Laws 1983, c. 83-160, § 10; Laws 1983, c. 83-352, § 1; Laws 1984, c. 84-24, § 2; Laws 1984, c. 84-365, § 3; Laws 1985, c. 85-97, § 2; Laws 1986, c. 86-135, § 2; Laws 1987, c. 87-349, § 5; Laws 1987, c. 87-287, § 2; Laws 1988, c. 88-142, § 2; Laws 1988, c. 88-378, § 1; Laws 1991, c. 91-7, § 1; Laws 1993, c. 93-249, § 4; Laws 1994, c. 94-119, §§ 57, 260; Laws 1994, c. 94-284, § 7; Laws 1994, c. 94-356, § 461; Laws 1995, c. 95-144, § 72; Laws 1995, c. 95-379, § 2; Laws 1996, c. 96-298, § 14. Amended by Laws 1997, c. 97-103, § 1175, eff. July 1, 1997; Laws 1998, c. 98-287, § 48, eff. July 1, 1998; Laws 1998, c. 98-287, § 49, eff. March 1, 2002; Laws 2000, c. 2000-141, § 82, eff. May 24, 2000; Laws 2000, c. 2000-141, §§ 83, 84, 135, eff. March 1, 2002; Laws 2001, c. 2001-186, § 27, eff. March 1, 2002; Laws 2003, c. 2003-261, § 666, eff. June 26, 2003; Laws 2005, c. 2005-147, § 10, eff. July 1, 2005; Laws 2010, c. 2010-176, § 36, eff. July 1, 2010; Laws 2011, c. 2011-82, § 1, eff. July 1, 2012; Laws 2012, c. 2012-5, § 73, eff. May 8, 2012; Laws 2012, c. 2012-13, § 15, eff. July 1, 2012; Laws 2013, c. 2013-183, § 150, eff. July 1, 2013; Laws 2013, c. 2013-193, § 16, eff. July 1, 2013; Laws 2014, c. 2014-17, § 126, eff. July 1, 2014; Laws 2014, c. 2014-154, § 22, eff. Oct. 1, 2014; Laws 2016, c. 2016-129, § 19, eff. July 1, 2016; Laws 2016, c. 2016-129, § 39, eff. Oct. 1, 2017; Laws 2017, c. 2017-3, § 36, eff. July 7, 2017; Laws 2017, c. 2017-149, § 3, eff. July 1, 2017; Laws 2019, c. 2019-75, § 5, eff. July 1, 2019; Laws 2019, c. 2019-86, § 11, eff. Oct. 1, 2019; Laws 2020, c. 2020-2, § 131, eff. May 18, 2020; Laws 2021, c. 2021-25, § 15, eff. May 7, 2021; Laws 2021, c. 2021-201, § 3, eff. July 1, 2021; Laws 2021, c. 2021-212, § 2, eff. July 1, 2021; Laws 2021, c. 2021-224, § 4, eff. Oct. 1, 2021.

Notes of Decisions (7)

West's F. S. A. § 553.79, FL ST § 553.79


553.79. Permits; applications; issuance; inspections, FL ST § 553.79

Current with laws and joint resolutions in effect from the 2021 First Regular Session and Special "A" and "B" Sessions of the Twenty-Seventh Legislature. Some statute sections may be more current, see credits for details.

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Exhibit "B"

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Florida Statutes Annotated
Title XXXIII. Regulation of Trade, Commerce, Investments, and Solicitations (Chapters 494-560)
Chapter 553. Building Construction Standards (Refs & Annos)
Part IV. Florida Building Code (Refs & Annos)

West's F.S.A. § 553.791

553.791. Alternative plans review and inspection

Effective: July 1, 2021
Currentness

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

(a) "Applicable codes" means the Florida Building Code and any local technical amendments to the Florida Building Code but does not include the applicable minimum fire prevention and firesafety codes adopted pursuant to chapter 633.

(b) "Audit" means the process to confirm that the building code inspection services have been performed by the private provider, including ensuring that the required affidavit for the plan review has been properly completed and submitted with the permit documents and that the minimum mandatory inspections required under the building code have been performed and properly recorded. The local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.

(c) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure or site work for which permitting by a local enforcement agency is required.

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) involving the review of building plans as well as those services involving the review of site plans and site work engineering plans or their functional equivalent, to determine compliance with applicable codes and those inspections required by law, conducted either in person or virtually, of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(e) "Deliver" or "delivery" means any method of delivery used in conventional business or commercial practice, including delivery by electronic transmissions.

(f) "Duly authorized representative" means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(g) "Electronically posted" means providing notices of decisions, results, or records, including inspection records, through the use of a website or other form of electronic communication used to transmit or display information.

(h) "Electronic signature" means any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record.

(i) "Electronic transmission" or "submitted electronically" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium which is suitable for the retention, retrieval, and reproduction of information by the recipient and is retrievable in paper form by the receipt through an automated process. All notices provided for in this section may be transmitted electronically and shall have the same legal effect as if physically posted or mailed.

(j) "Immediate threat to public safety and welfare" means a building code violation that, if allowed to persist, constitutes an immediate hazard that could result in death, serious bodily injury, or significant property damage. This paragraph does not limit the authority of the local building official to issue a Notice of Corrective Action at any time during the construction of a building project or any portion of such project if the official determines that a condition of the building or portion thereof may constitute a hazard when the building is put into use following completion as long as the condition cited is shown to be in violation of the building code or approved plans.

(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.

(l) "Permit application" means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.
2. The affidavit from the private provider required under subsection (6).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(m) "Plans" means building plans, site engineering plans, or site plans, or their functional equivalent, submitted by a fee owner or fee owner's contractor to a private provider or duly authorized representative for review.

(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.

(o) "Request for certificate of occupancy or certificate of completion" means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.
2. A certificate of compliance from the private provider required under subsection (12).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(p) "Single-trade inspection" means any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping."

(q) "Site work" means the portion of a construction project that is not part of the building structure, including, but not limited to, grading, excavation, landscape irrigation, and installation of driveways.

(r) "Stop-work order" means the issuance of any written statement, written directive, or written order which states the reason for the order and the conditions under which the cited work will be permitted to resume.

(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. 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 or the fee owner's contractor, upon written authorization of the fee owner. 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.

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee.

(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.

(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 in writing at the time of permit application, or by 2 p.m. local time, 2 business days before the first scheduled inspection by the local building official or building code enforcement agency that a private provider has been contracted to perform the required inspections of construction under this section, including single-trade inspections, 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 e-mail address 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 or within 2 business days before the next scheduled inspection, update the notice to reflect such changes. A change of a duly authorized representative named in the permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change.

(5) After construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the fee owner or the fee owner's contractor may elect to use a private provider to provide inspection services by notifying the local building official of the owner's or contractor's intention to do so by 2 p.m. local time, 2 business days before the next scheduled inspection using the notice provided for in paragraphs (4)(a)-(c).

(6) A private provider performing plans review under this section shall review the plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

Such affidavit may bear a written or electronic signature and may be submitted electronically to the local building official.

(7)(a) No more than 20 business days after receipt of a permit application and the affidavit from the private provider required pursuant to subsection (6), 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 20-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.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 20-day period, the 20-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled 20-day period plus 5 business days from the date of resubmittal to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. Any subsequent review by the local building official is limited to the deficiencies cited in the written notice. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be deemed approved as a matter of law, and the local building official must issue the permit on the next business day.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days from the date of resubmittal to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(8) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. Such inspection may be performed in-person or virtually. The private provider may have a duly authorized representative perform the required inspections, provided all required reports are prepared by and bear the written or electronic signature of the private provider or the private provider's duly authorized representative. The duly authorized representative must

be an employee of the private provider entitled to receive reemployment assistance benefits under chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(9) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may not prohibit the private provider from performing any inspection outside the local building official's normal operating hours, including after hours, weekends, or holidays. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. Such notice may be physically posted at the job site or electronically posted. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or readjustment fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

(10) If equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the Florida Building Code, a private provider may perform emergency inspection services without first notifying the local building official pursuant to subsection (9). A private provider must conduct the inspection within 3 business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within 1 day after the inspection is completed.

(11) 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. The form must bear the written or electronic signature of the provider or the provider's duly authorized representative. 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, upon completion of the required inspection, shall post each completed inspection record, indicating pass or fail, and provide the record to the local building official within 2 business days. Such inspection record may be electronically posted by the private provider, or the private provider may post such inspection record physically at the project site. The private provider may electronically transmit the record to the local building official. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is electronically posted or posted at the project site and all such inspection records are submitted with the certificate of compliance. Unless the records have been electronically posted, 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.

(12) Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form and shall be signed and sealed by a private provider as established in subsection (1) or may be electronically transmitted to the local building official:

To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved plans and the applicable codes.

(13) No more than 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 (14) or to submit a corrected request for a certificate of occupancy or certificate of completion.

(14) 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 the noncompliance poses an immediate 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.

(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, which shall consider the matter at the commission's next scheduled meeting.

(15) For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the e-mail address listed for that person or entity in the permit application or revised permit application, or, if no e-mail address is stated, when actually received by that person or entity.

(16)(a) A local enforcement agency, local building official, or local government may not 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)(n) and the insurance requirements of subsection (17).

(c) This section does not limit the authority of the local building official to issue a stop-work order for a building project or any portion of the project, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(17) 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 liability covering 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 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.

(18) When performing building code inspection services, a private provider is subject to the disciplinary guidelines of the applicable professional board with jurisdiction over his or her license or certification under chapter 468, chapter 471, or chapter 481. All private providers shall be subject to the disciplinary guidelines of s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a private provider's performance of building code inspection services shall be conducted by the applicable professional board.

(19) Each local building code enforcement agency may audit the performance of building code inspection services by private providers operating within the local jurisdiction. However, the same private provider may not be audited more than four times in a month unless the local building official determines a condition of a building constitutes an immediate threat to public safety and welfare. 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 (9) and, subsequent to such inspection and approval, the work shall not be delayed for completion of an inspection audit by the local building code enforcement agency.

(20) The local government, the local building official, and their building code enforcement personnel shall be immune from liability to any person or party for any action or inaction by a fee owner of a building, or by a private provider or its duly authorized representative, in connection with building code inspection services as authorized in this act.

(21) Notwithstanding any other law, a county, a municipality, a school district, or an independent special district may use a private provider to provide building code inspection services for a public works project, an improvement, a building, or any other structure that is owned by the county, municipality, school district, or independent special district.

Credits

Added by Laws 2002, c. 2002-293, § 17, eff. Oct. 1, 2002. Amended by Laws 2005, c. 2005-2, § 106, eff. July 5, 2005; Laws 2005, c. 2005-147, § 11, eff. July 1, 2005; Laws 2005, c. 2005-216, § 1, eff. Oct. 1, 2005; Laws 2006, c. 2006-65, § 6, eff. July 1, 2006; Laws 2007, c. 2007-187, § 6, eff. June 19, 2007; Laws 2008, c. 2008-4, § 141, eff. July 1, 2008; Laws 2012, c. 2012-30, § 77, eff. July 1, 2012; Laws 2017, c. 2017-149, § 7, eff. July 1, 2017; Laws 2019, c. 2019-86, § 12, eff. Oct. 1, 2019;

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Laws 2019, c. 2019-165, § 14, eff. June 28, 2019; Laws 2020, c. 2020-2, § 132, eff. May 18, 2020; Laws 2020, c. 2020-27, § 20, eff. July 1, 2020; Laws 2021, c. 2021-201, § 4, eff. July 1, 2021.

Notes of Decisions (5)

West's F. S. A. § 553.791, FL ST § 553.791

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