

Summary of Issue:

Petitioner represents that he is the fee owner and/or permit holder of an unspecified number of single-family residential construction projects which are the subject of a currently unresolved dispute with the local authorities. He states that there are (or were) active permits for these projects, for which construction has already commenced, and that during construction additional features were added that were not part of the originally-approved construction documents, and that the local building official issued stop work orders once these unapproved features were discovered. Petitioner states that he prepared revised construction documents that accounted for the added features, but that the local building official would not accept the revised documents.

Petitioner states that he then retained a private provider to review the revised plans, that the private provider determined they complied with the applicable codes and provided an affidavit to that effect to the local building official, but that this was subsequently rejected. Petitioner asserts that he agreed to remove the additional features at issue, but that the stop work orders remain in effect.

Petitioner's Questions:

Petitioner presents the following questions:

1. Under the version of section 553.791 applicable to Petitioner's circumstances, where a qualified Private Provider has completed plan review, determined that revised construction documents comply with the applicable codes, and provided the required Plan Compliance Affidavit, may Petitioner rely upon that completed Private Provider plan review in determining how to proceed with the projects if the local enforcement agency independently conducts or proposes to conduct a technical Code-compliance review of those same plans for the purpose of determining whether the Private Provider's Code-compliance determination is correct?
2. For purposes of determining Petitioner's rights and obligations in proceeding under section 553.791, does an independent technical examination by the local enforcement agency of plans already reviewed for Code compliance by Petitioner's Private Provider constitute replication of the Private Provider's plan review within the meaning of section 553.791(1)(b)?
3. In light of section 553.791(1)(d), which included review of building plans within "building code inspection services," do the audit requirements of section 553.791(20) apply when a local enforcement agency audits Private Provider plan-review services?
4. If section 553.791(20) applies to Private Provider plan-review services, may Petitioner's Private Provider plan review be subjected to an audit or technical re-review by a local building-code enforcement agency that has not established the standard operating Private Provider audit procedures required by that subsection?
5. If section 553.791 otherwise authorizes the local enforcement agency to identify an alleged deficiency in Private Provider-reviewed plans as Petitioner seeks authorization to proceed, what

written identification of the specific deficiency and applicable Code provisions is required under Petitioner's circumstances?

Relevant Provisions:

“[A] petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied.” *Novick v. Dep’t of Health*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002) (citing *Chiles v. Dep’t of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998)).

Section 553.775(3)(a), Florida Statutes (2026), provides that the Commission shall “issue declaratory statements pursuant to s. 120.565 relating to the enforcement or administration by local governments of the Florida Building Code or the Florida Accessibility Code for Building Construction.” (underlining provided)

Rule 28-105.001, Florida Administrative Code, states that “[a] declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.” (underlining provided)

Rule 28-105.001, Florida Administrative Code, states that “[a] petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.” (underlining provided)

Staff’s Suggested Answers:

The Florida Building Commission has limited involvement with, or authority concerning, the utilization of private providers or the interactions between private providers and local building officials.

The Commission does not have general enforcement authority over the conduct of building officials or private providers. As explicitly stated in section 553.791(21):

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.

Likewise, section 468.621(1)(i), Florida Statutes (2026), provides that disciplinary action can be taken by the Florida Building Code Administrators and Inspectors Board against licensees “[f]ailing to lawfully execute the duties and responsibilities specified in this part and ss. 553.73, 553.781, 553.79, and 553.791.”

The Commission has been tasked with creating certain forms to be used when a private provider is involved with a project. Section 553.791(5), Florida Statutes (2026), directs the Commission to adopt a form to provide notice to the local building official that a private provider will be utilized. Section 553.791(14), Florida Statutes (2026), directs the Commission to provide a form to record inspections performed by the private provider. Section 553.791(15), Florida Statutes (2026), directs the Commission to provide a form to be used for the preparation of a certificate of compliance that summarizes the inspections performed and states that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes.

In addition to creating these forms, the Commission is charged with hearing the appeal of certain decisions rendered by the local building official:

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.

Section 553.791(17)(b), Florida Statutes (2026) (underlining provided). *See also* section 553.791(17)(c), Florida Statutes (2026). The only provision in chapter 553, Florida Statutes (2026), which provides for the appeal of a local building official to the Commission is section 553.775(3)(c), Florida Statutes (2026), which states that “[t]he commission shall review decisions of local building officials and local enforcement agencies regarding interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction after the local board of appeals has considered the decision, if such board exists, and if such appeals process is concluded within 25 business days.”¹ Thus, even the Commission's authority to review disputes between the building official and the private provider is limited to interpretations of the Florida Building Code or the Florida Accessibility Code for Building Construction, not the private provider statutes.

Aside from the creation of the related forms that will be used statewide, the Legislature did not task the Commission with creating, enforcing, or interpreting any of the provisions pertaining to the utilization of private providers. As the Commission does not have authority over these provisions, it cannot issue a declaratory statement regarding their application.

With respect to Petitioner's first question, whether he may “rely” on the private provider's plan review in determining how to proceed with his projects is too general of an inquiry for the Commission to answer. If the question is intended to solicit a statement imposing constraints on or requirements concerning the conduct of other entities, it is not the appropriate subject of a declaratory statement.

¹ Section 553.73(11), Florida Statutes (2026), provides an avenue to appeal local decisions pertaining to conflicts between the Florida Building Code and the Florida Fire Prevention Code, but those decisions are subject to review by a joint committee comprised of members of the Florida Building Commission and the Fire Code Advisory Council, not the Commission itself. *See* section 553.73(11)(d), Florida Statutes (2026).

With respect to questions two through five, they pertain to the conduct of entities other than the petitioner. Furthermore, the courts have stated that “a petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied.” *Novick v. Dep’t of Health*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002) (*citing Chiles v. Dep’t of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st DCA 1998)). The Commission is thus unable to issue a declaratory statement pertaining to the past conduct of other individuals.