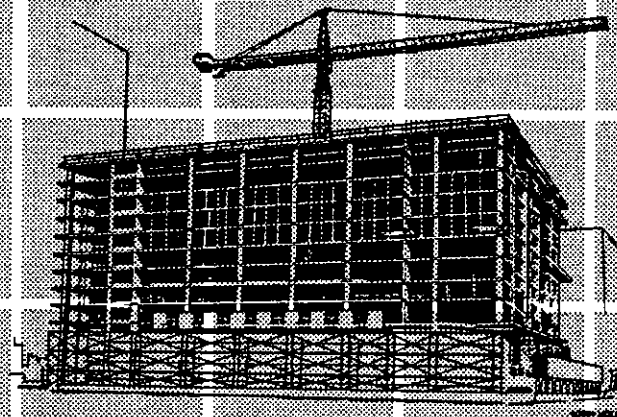


**TECHNICAL PUBLICATION 124**  
**PRIVATIZATION OF THE**  
**PLANS REVIEW AND INSPECTION FUNCTIONS:**  
**A FEASIBILITY STUDY**

*This study was sponsored by  
the Building Construction Industry Advisory Committee under a grant from the  
State of Florida Department of Education*



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**Miami, Florida**  
**2000**

**Privatization of the  
Plan Review and Inspection Functions:  
A Feasibility Study**



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Research Associate**



**Technical Report 124  
Department of Construction Management  
College of Engineering and Applied Science  
Florida International University  
Miami, Florida  
April 1, 2000**



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Building Construction Industry Advisory Committee  
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## Acknowledgments

As the Project Director, I need to acknowledge the assistance of building officials, design professionals, and contractors in the preparation of this report. Throughout the period I was working on the project I met with individuals and representatives of organizations interested in having their views on the matter listened to and included as a part of the discourse. At no time did anyone or any organization ask for more or try to place any particular 'spin' on what should be included. Particularly meaningful assistance was received from James Pillon and the staff at the Broward County Board of Rules and Appeals. They were amongst the first and the last that were turned to for information; every request was acted upon in a most timely manner and with complete candor and openness.

I also need to acknowledge the patience and support of Dr. Brisbane Brown and the members of the Building Construction Industry Advisory Committee. They were most understanding of the problems encountered.

There is no way that I could have navigated through the legalese associated with the subject without the knowledge and assistance of David Valdini, a practicing attorney, an adjunct faculty member at our University, and the individual I turn to when I have a question about construction and the law. He provided the sections on sovereign immunity and the liability of individuals operating as plans reviewers and inspectors outside of the normal venue of the building departments.

An especial word of thanks also goes to Ms Racquel Gibson who holds our office together while I trot from place to place, assignment to assignment, class to class. She is the glue that makes it all work.

Finally, while most of them will never know the cause for my seeming distraction over the last several months, I need to acknowledge the patience and understanding of the students in the Department of Construction Management at Florida International University. Working on a report such as this takes away from the time that a faculty member has to perform his primary function as a teacher. It is my sincere hope that in the relatively short period covered by the interviews and writing I did not slight them and was able to provide a meaningful learning experience for my classes.

The opinions, conclusions, and recommendations are mine. Any disagreement with them should start with me and not with the very able and fine individuals who contributed the information contained in this report.

## **Executive Summary**

### **General**

The project reported on in this document was conducted by members of the faculty in the Department of Construction Management at Florida International University. The effort was prosecuted under the auspices of the Building Construction Industry Advisory Committee (BCIAC) and funded by a grant from the State's Department of Education. The study effort examined the question of privatization of the plans review and inspection processes within the building departments and addressed the following points:

- ▶ exactly what does privatization of a governmental function mean;
- ▶ who are the forces behind, and those opposed to, the privatization of the plans review and inspection processes;
- ▶ what is the legal basis for the current plans review and inspection processes;
- ▶ what is the current plans review process;
- ▶ what is the current inspection process;
- ▶ what proposals have been made concerning privatization of these two processes;
- ▶ what are the legal implications of such proposals with respect to the liability of individuals operating under a privatized system;
- ▶ what are the costs and/or savings represented by privatized work.

To a great extent the work presented is the amalgamation of interviews, surveys, and conversations with contractors, architects and professional engineers (hereinafter referred to as design professionals), Building Officials, and the professional staffs of building departments or code enforcement agencies.

The report includes a discussion of the discontent of the construction industry within the State with the overall functioning of the permitting and inspection processes that has led elements within the industry to look towards privatization. There is also a walk through the nominal requirements for a building permit, the details of which have been provided elsewhere in studies done under the auspices of the BCIAC. In doing this, we revisit the concept of commonality and, briefly, discuss the advantages of one set of rules that all of the players

know. It works pretty well in contractor licensing, and there is no cogent argument that can be presented that it would not work as well in a building code. There is also a discussion of the concept of sovereign immunity for employees of a building department and the lack thereof for individuals who work in the private sector. Unlike their counterparts in the public sector, private plans reviewers and inspectors would be exposed to liability for errors.

### **Summary Conclusions**

Based on the interviews, reports, and research conducted in the preparation of the report, the authors have concluded:

- ▶ **Privatization of the plans review and inspection processes within the construction community, in accordance with a strict dictionary definition, is neither feasible nor desirable.**
- ▶ **The individuals and organizations that are supporting the privatization of the plans review and inspection functions are primarily contractors and design professionals, while those opposed are public officials and public employees.**
- ▶ **Limited privatization of the plans review and inspection processes is allowable under the SBC and the proposed Florida Building Code. Additional or separate state wide legislation on the matter is not required. <sup>1</sup>**
- ▶ **A probable cause of delay in any plan review process is the variation in requirements for content and form of plan/specification submission between the two different building codes used in the State, and between jurisdictions utilizing the same basic code.**
- ▶ **Timeliness in the plans review and inspection processes is an issue for owners and contractors. Building Officials should be required to provide, or allow to be provided, the services required for the plans review and inspection processes in a timely manner. Undue delay in these areas should not become a constraining economic factor when planning for construction.**
- ▶ **Private plans reviewers and inspectors operating in a manner consistent with the current SBC and that in the proposed Florida Building Code cannot claim freedom from liability under the doctrine of *sovereign immunity*.**

- ▶ **Privatization of a small portion of the plans review and inspection process would have little effect on the costs incurred by a jurisdiction in staffing and maintaining the functions of a building department.**

A copy all of this report may be obtained by contacting:

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**Florida International University**

**Review Board**

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Mr. David Schumacher:	Plumbing, Heating, and Cooling Contractors
Mr. Warren Sutton:	Construction Industry Licensing Board

**Disapproved by:**

Mr. Anthony Abate: American Institute of Architects

"Generally it appears the research is not complete, does not adequately review many aspects of the subject and appears/or at least gives a distinct impression of a bias which undermines an otherwise more objective look at the issues."

Mr. Richard Reynolds: Florida Home Builders Association

"The conclusions in this paper are not arrived at in the way of good academic research; instead they are prejudicial, opinionated, unconsidered, unweighed (sic), and largely unsubstantiated. For each conclusion there should have been detailed pro and con arguments with an attempt at weighing the strength of each argument."

**The research was sponsored by the Building Construction Industry Advisory  
Committee under a grant from the Florida Department of Education**

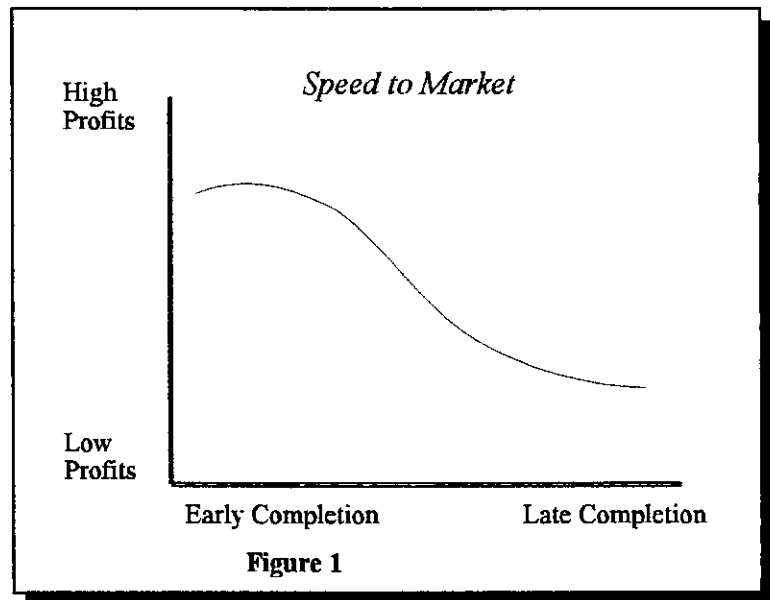
## II. Introduction

### Background

The Beacon Council is a jointly funded private-public economic development partnership in Miami-Dade County. During the last week in June of 1999, the Council hosted a seminar wherein members of the Miami-Dade County Building Department described to interested individuals changes that had been made in an effort to make the Department more responsive to the public. The County's mayor, Alex Penelas, addressed the meeting. He started his speech by relating that one of his first actions after becoming mayor was to go to New York to speak with investment bankers and obtain their recommendations as to actions that could be taken to increase the attractiveness for investments in the Miami-Dade area. He was surprised when told that high on his list of priorities should be to get rid of the Miami-Dade County Building Department.

The mayor continued his remarks by noting that a part of the rationale of the bankers when looking for sound investments was timing. As shown graphically in Figure 1, opportunities for investment for new capital structures to house offices or manufacturing facilities for the production of goods and services are fleeting.<sup>2</sup> Investments which make sense today may make less sense at some time in the future.

Consequently, the County's reputation (deserved or otherwise) for lengthy review periods for new structures and projects mitigated against looking to the area as a place in which to site new industry or, for that matter, to invest in the growth phase of existing ones.





It may seem peculiar to some that investment bankers who may not know a truss bucket from a hurricane clip would be so interested in the functioning of a governmental organization that, on the surface, has little relationship to investment banking. However, it is indicative of the importance of the functioning of the building departments in all things that affect public life, whether it be the decision to invest, to build a home, or to erect a fence. It is also indicative of the fact that disparate organizations that interface in the same functional area: environmentalists; building departments; contractors and contractor's organizations; the manufacturing and investment community; design professionals (architects and engineers); may have opposing viewpoints as to the proper role that each is to play.

One does not often see individual attorneys or courts taking exception to the actions of the Bar Association. Similarly, one does not find individual medical doctors questioning the actions of the American Medical Association or its State counterpart, the Florida Medical Association. However, one cannot talk to individual contractors, owners, design professionals, or building officials anywhere in the state without gaining the general impression that there is an "us versus them" mentality which permeates the atmosphere of their interactions. One alternative to confrontation that has been seized upon by a segment of the construction industry is to quite simply remove the building department from a part of the loop by privatizing the plan review and the on-site inspection for code/plan/specifications compliance.

### III. The Study

#### **Standards and Definitions. What is 'privatization'?**

The Random House Dictionary of the English Language (unabridged edition) does not contain the word privatize. Nor for that matter, does Funk & Wagnall's Standard Desk Dictionary. However, Webster's Third New International Dictionary (unabridged) states that the word 'privatize' is to "alter the status of (as a business or industry) from public to private control or ownership."<sup>3</sup> In business school parlance, control means measurement of a good, product, or service to ensure that it meets a standard for acceptability.

Privatization of the means of production of a governmental service or product is not unusual or impossible. It is done all of the time. Current major examples include the privatization of the banking and electric power services in Brazil and the ongoing (maybe not terribly successful) privatization of industry within the former Soviet Union. Private enterprise is the backbone of the United States' economy and there is a large part of the body politic that adheres to the belief that "government governs best when it governs least."

At this point, one should note that adoption and enforcement of standards for construction (a building code) has been considered a governmental function since the beginning of codified laws. The earliest legal code extant, that of Hammurabi, states that if a structure collapses and kills the owner, the builder shall be put to death. There are five other sections of this code dealing with construction, and the translation of the entirety of these occupies about 174 words. The 1996 edition of the South Florida Building Code (SFBC) for Broward County covers the same territory, but uses nearly 800 pages. In either case, however, standards are set, compliance is measurable, and actions can be taken if compliance is lacking.<sup>4</sup>

Within the United States, the adoption of building standards by state and local governments was generally linked to attempts to control the spread of fires. The effort received added emphasis in the latter part of the 19<sup>th</sup> century following the Chicago fire. Improved fire standards were enacted in several jurisdictions (notably New York and Massachusetts) shortly after the start of the 20<sup>th</sup> century.

This was followed by the formulation of construction standards for other than fire prevention, sponsored primarily by trade organizations. While not legally binding, the adoption of these voluntary standards by insurance firms, and the resulting prohibitive cost of insurance for structures that did not meet the standards, provided further emphasis for what we now know as building codes. At the present time, 30 of the 50 states have adopted some form of building codes to regulate the construction industry.<sup>5</sup>

Florida law requires that "local governments and state agencies with building construction regulation responsibilities ... adopt a building code which shall cover all types of construction."<sup>6</sup> The preamble to this particular section of the statutes specifically points out that the intent is to "allow reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer."<sup>7</sup> Consequently, both through historical precedence and existing law we have come to accept a degree of governmental control over the building process as a means of ensuring public safety.

Within the building codes used in the State, including the proposed Florida Building Code to be presented to the legislature, control flows from the people, through the legislative bodies that have created the requirement for codes, to the legislative bodies that have adopted codes, to the individual who is accountable for the interpretation and enforcement of the code. In general, and throughout this report, this accountable individual is termed the 'Building Official.'

The Building Official is a non-elected, appointed individual who, bounded by provisions listed in the applicable building code, can:

- ▶ interpret the meaning of the code;
- ▶ delegate powers, duties, and assignments to chief inspectors;
- ▶ authorize entry into any premise to inspect for, or prevent violations of the building code;
- ▶ stop ongoing work which is in violation of the code or which is unsafe;
- ▶ order that parts of the structural work that have been concealed to be opened for inspection;
- ▶ order those buildings occupied in violation of the code be vacated.<sup>8</sup>

There are two points on this list which are of particular interest as far as a discussion of privatization is concerned: interpret the code; and delegate powers, duties, and assignments to chief inspectors. There is an additional point that is interesting to the discussion by its omission. There is no mention of delegating powers, duties, and assignments to plans examiners. Further reading shows that the delegation for interpretation of the code also does not extend beyond the chief inspector, thus presumably excluding the plans examiners.<sup>9</sup>

The matter of control, then, is settled within the current and possible future codes for the State. Excepting certain minor construction and civil works, such as highways, bridges, etc., all building and demolition of other than inconsequential structures in the State is subject to the minimum standards imposed by the applicable building code, and the individual within each jurisdiction that is responsible for enforcement of the code is the Building Official. The control of this individual over the various facets of the governmental enforcement program is complete and unfettered except as restricted by the code and other provisions of law. Consequently, unless the several jurisdictions which are required to adopt building codes are willing to amend these codes to allow some one other than the Building Official to exercise control over portions of the construction process, such as plan review and inspections, total privatization with respect to this facet of the definition is not possible. Absent such changes, the ultimate control of the inspection and plan review process will remain with the Building Official.

The second part of the definition of privatization involves ownership. If a governmental agency is to be privatized, the product or service produced by the agency would not only be controlled by private industry but would also be owned by private industry. Clearly, this represents a problem with respect to the services provided by a building department and the parent jurisdiction. There are a host of services provided by the jurisdiction and department which are, in part, dependent on the plan review and inspection process. These include, inter alia, the maintenance of records of the review and inspection process and providing access to plans of existing structures when required by public safety agencies or for construction purposes at some time in the future.

To accomplish these and other functions normally performed by governmental

agencies would require that the end product of the plan review and inspection process remain with the government agency. Strictly construed, privatization would mean that there may be no public records emanating from the plan review and inspection process. Individuals or agencies needing or requiring such access to records, drawings, etc., would have to determine which of the private organizations had done the work and contract with that firm for whatever was needed ... given that the firm still existed and maintained records, and was willing to share them, etc.

At the start of this discussion it was pointed out that the privatization of governmental functions is not impossible. However, an understanding of what privatization actually means leads to a conclusion that privatization of the plans review and inspection process, in its pure form and in accordance with standard definitions, is not feasible unless one is willing to totally alter the understanding and acceptance of governmental responsibility for public safety and welfare as a part of the construction process.

### **The Thrust Behind Privatization**

The primary thrust behind the move to privatize the plans review and inspection processes comes from owners and contractors. They feel that they are being unduly penalized by the lack of timely action on their requests for building permits for new projects and subjected to work delays while waiting for mandated inspections.<sup>10</sup> A secondary, supporting element is the collection of design professionals who consider that they could accomplish the review and inspection process in the timely manner desired by the owners and contractors, and make a profit while doing so.

These groups point to delays that have been encountered in the permitting process as proof for an argument that changes are desirable. From their prospective, the decrease in expected value penalty depicted in Figure 1 is a daily occurrence, with particular emphasis on the length of time required to successfully navigate the necessary steps to gain approval for construction or work stoppage while waiting for inspections. An articulation of purpose issued by the *Coalition for Acceptable Plan Reviews and Inspections* (CAPRI) in September of 1999 states, "CAPRI recognizes that overworked construction plans reviewers have

difficulty processing large numbers of plans during periods of heavy construction activity, resulting in delays in the construction process. Similarly, construction inspectors are often overburdened with an excessive number of inspections to perform, to the detriment of the safety of the people.” Amongst their goals is “... the expansion of opportunities for informed consumers and developers to engage properly licensed, properly insured, private sector professionals to perform construction plans processing and inspection functions on multifamily-residential and commercial construction projects.”<sup>11</sup>

There are three things missing from CAPRI’s statement: there is no recognition that the plans review process is only a fractional part of the total review process for a new or expanded construction project; there is no definition of an acceptable time table for review; and there is no definition for an acceptable inspection work-load or criteria for timeliness.<sup>12</sup> Each of these critical items will be addressed separately in other sections of this report.

There is also a recognition on the part of some jurisdictions that there is a proper role for private industry in the plans review and inspection processes. The SBC specifically authorizes the Building Official to “...accept a sworn affidavit from a registered architect or engineer stating that the plans submitted conform to the technical codes ... (he) may without any examination or inspection accept such affidavit, provided the architect or engineer ... submit(s) to the Building Official copies of inspection reports as inspections are performed and upon completion ... (that the) system has been erected in accordance with the requirements of the technical codes. **Where the Building Official relies upon such affidavit, the architect or engineer shall assume full responsibility for the compliance with all provisions of the technical codes and other pertinent laws or ordinances** (emphasis by authors).”<sup>13</sup> This same statement is found in the proposed Florida Building Code.

While there is no such provision for affidavits contained in the SFBC, both the SBC and SFBC do allow the individual jurisdictions to require the owner to employ special structural inspectors in addition to the threshold inspectors required under State law. “The Building Official *may* require the owner to employ a special structural inspector for ... buildings ... of unusual size, height, design, or method of construction... pile driving

...windows, glass doors and curtain walls ... (and) concrete unit masonry.” In the case of the SFBC (Broward) these special inspectors are required to be duly registered design professionals or an employee of the design professional and their inspections “...shall satisfy the requirements for mandatory structural inspections by the municipality.”<sup>14</sup> The SFBC (Miami-Dade) version allows for a special inspector, but does not require that the municipality accept the inspections in lieu of their own. For both versions of the SFBC the use of these special inspectors is limited to structural inspections.

Both the SBC and the proposed Florida Building Code provide that the Building Official “...may make, or cause to be made, the inspections required...” Additionally, “He may accept reports of inspectors of recognized inspections services, provided that after investigation he is satisfied as to the qualifications and reliability.”<sup>15</sup> A Building Official in a jurisdiction under the SBC has been quoted as saying, “under the auspices of local government authority we review all requests to use a resident inspector as a primary inspector before giving any approvals. We review the inspector’s reputation, credibility and periodically monitor their progress to ensure compliance with all codes. In this way our role becomes more like a quality assurance role in addressing building inspections.”<sup>16</sup> Under proper circumstances and with proper monitoring, this Building Official considers that the private effort can provide the same benefits to the industry as is done with the use of government employees.

### **Opposition to Privatization**

Opposition to privatization of the plans review and inspection processes is most vocal from Building Officials, building department professional staff members, and professional staff members associated with code enforcement. Individuals from this group in jurisdictions which have adopted the SFBC are, generally, more outspoken in their opposition than those in jurisdictions which have been operating under the SBC where a form of privatization has been allowable and utilized. An understanding of the basic differences in the codes and the organizational culture that has formed supporting these codes leads to an understanding of the greater reluctance of the SFBC jurisdictions to accept the proposed changes.

If one had to summarize the differences in the approach to construction monitoring and regulation between the SFBC and SBC in only two words, they would be *prescriptive* and *descriptive*. The SFBC tends to be prescriptive and tells you not only the end result desired, but also how to get there. The SBC tends to be descriptive, telling you the end result desired, then relying on the expertise of the design professionals and contractors to achieve the desired results. Both have a monitoring system to ensure that the desired end point is attained, but the SFBC not only specifies the end point, but the path to the end point.

The culture that exists within an organization is the sum of the values that its leaders and workers bring to the work environment.<sup>17</sup> Individuals, be they workers or managers, tend to join and stay with organizations where they feel comfortable, where they have empathy with the organizational goals, and where their cohorts share the same aspirations. Managers of organizations tend to hire those who accept the prevailing culture of the organization, and individuals who are 'out of step' tend not to be hired or, if hired, to leave. This is true no matter the organization and no matter whether it be the most progressive or the most regressive in personnel management and motivation. "Whatever the prevailing culture, employees ... behave in a manner consistent with group forces."<sup>18</sup> Consequently, while it may be a 'chicken or egg' argument as to which came first, the supporting managers and employees or the particular organization, it should be expected that individuals working within a building department that is wedded to a prescriptive system, such as the SFBC, will be more reticent to accept a collaborative approach to the plans review and inspection processes than those working under a more descriptive system, such as the SBC.

The opposition of Building Officials and professional staffs centers on three points: protection of the public health and safety; a transient work force; and uniformity of enforcement.<sup>19</sup>

There is concern that plans reviewers and inspectors who operate independently of the building departments would have a profit motive that might impair their administration of a duty derived from the building codes to be, first and foremost, guardians of the public health and safety. No one that was interviewed suggested that such individuals would knowingly approve a set of plans or an inspection for construction that would involve substantial risk to



public safety. However, there are judgement calls and it was felt that the employees of a building department would be less inclined to allow a questionable set of plans, specifications, or inspection pass than would an individual whose future earnings depended upon customer satisfaction. In this case of the public employee, the customer is the general public and there is no stigma attached to an individual who is known as a stickler for detail and has a penchant for completeness. In the case of the private plans reviewer or inspector, the customer is the contractor, design professional, or owner. Correctly or incorrectly, the perception may be that future employment depends not only on timeliness but the lack of hassle.<sup>20</sup>

The second point raised in opposition is the fleeting nature of the employment of private plans reviewers, inspectors, and their employers. The argument is made that government employees generally tend to remain employed within the agency, while private companies (and their employees) tend to come and go with market demand. The ramifications of a more transient reviewing/inspecting workforce are lack of continuity, lack of single points of information, and a lack of corporate or institutional memory. It also raises the specter of literally hundreds of private repositories for public records.

The third point, lack of uniformity of code enforcement, follows from the second. Those in opposition to, or with reservations about, the privatization of the plans review and inspection processes point to the near continuous training, both formal and informal, that is conducted within the building departments in order to ensure a uniform application of the codes requirements.<sup>21</sup> The building department cadre point to the initial rejection rate for plans and specifications, discussed elsewhere in this report, as an indicator that not all design professionals are sufficiently knowledgeable of, or well enough trained in, the details of the building codes.<sup>22</sup> This re-confirms a discussion in a previous study done for the BCIAC.<sup>23</sup>

Informal training is accomplished on a daily basis within the building departments as more experienced plans reviewers and inspectors mentor, monitor, and impart by example to the less experienced individuals in their department. Formal training is conducted on particular sections in the codes so that there is a uniformity of knowledge that will be applied, no matter the individual and, to a lesser extent, no matter the professional skill level of that individual. This will all be lacking in a privatized system. Although continuing education is

required of all registered design professionals and contractors, the amount required is relatively insignificant as compared to that conducted within the building departments. Additionally, continuing education is not limited to code specific training, but rather can be general training applicable to all segments of the profession.

A fourth area of concern, voiced not only by individuals within the building departments but also shared by other design professionals interviewed by authors, was the perception of impropriety that might come about when design professionals from different firms or organizations are hired to review the work of other design professionals. The concern expressed by several consulting design professionals was that by making another firm look bad you, in fact, made your firm look good. Consequently, when the owners were considering new projects and attempting to avoid previously encountered problems, your firm might be in an advantageous position by having 'demonstrated' superior skill, knowledge, and abilities.

The question, then, is whether or not the code and BIACA (Building Inspectors and Codes Administrators) Board prescriptions against profiting from an official position should be extended to design professionals who, when working under the codes even in a private setting, may review plans or perform inspections of another design professional's work. Should it be allowable for these individuals to review plans and inspect work while at the same time competing for contracts and assignments against those whose work they are reviewing or inspecting? The operable sections of the SBC and the proposed Florida Building Code which allow the Building Officials to accept private inspections do not contain any restrictions which would preclude these same individuals from overtly or indirectly soliciting work from the owners of projects they are inspecting.

### **Statutory Requirements for Plan Review and Inspection**

Florida state law makes it unlawful for "any person, firm, or corporation to construct, erect, alter, repair, or demolish any building ... without first obtaining a permit therefore from the appropriate enforcing agency or from such persons ... as may be delegated (by the enforcing agency) authority to issue such permits ..." <sup>24</sup> Within the context of this report, the enforcing agencies are those that are associated with the normal building permit process, such

as counties, cities, towns, and certain other governmental agencies. Throughout the report they will generally be referred to simply as 'jurisdictions.'

The statutes also state that none of these jurisdictions may issue a permit for any of the activities for which permits are required until the plans and specifications have been *reviewed* and approved as being in compliance with the local building code and the applicable fire safety code.<sup>25</sup> However, with the exception of structural inspections for 'threshold' buildings, inspections for ongoing or completed construction work are not required by statutes except as specified in the building codes adopted by the various jurisdictions. Inspection for code compliance is one of the 'police' powers of the local jurisdiction which it may choose to exercise or not to exercise.

A threshold building is defined as " ... any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification that exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."<sup>26</sup> The law stipulates that jurisdictions enforcing a building code " ... shall require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plans prepared by the engineer or architect ..." of record for the building.<sup>27</sup> (To avoid confusion with other special inspector categories permitted by the building codes and statutes or as suggested by the advocates of privatization, this category of special inspector will be referred to as a threshold inspector throughout the remainder of this report.) Subsequent sections of the statute also provide that the threshold inspector shall be selected, and all costs paid for, by the owner of the new construction. However, it also provides that the threshold inspector will be responsible to the jurisdiction or agency permitting the work. The criteria or qualifications for a threshold inspector are set by the State, and a list of individuals who have applied to be, and are considered qualified as, threshold inspectors is maintained within the Department of Community Affairs. Owners may select any of those considered qualified and the local jurisdiction may not refuse to accept an individual certified as qualified.

Nothing in the statutes provides that the threshold inspector either replaces or supplants any inspections mandated by the building codes. Interviews with Building Officials in various jurisdictions throughout the state indicate that there is a lack of uniformity between

the jurisdictions as to the manner in which the work and reports of the threshold inspectors are utilized. In some jurisdictions, representatives of the building department meet with the threshold inspector; devise a common structural inspection worksheet; and, within the limits of the statute, the building code, and the design professionals inspection plan, utilize the threshold inspector to fulfill applicable structural inspection requirements. This is consistent with those sections of the applicable building codes which permit the Building Official this latitude. In other jurisdictions, inspections by the threshold inspector are essentially filed, ignored, and these jurisdictions require normal inspections utilizing building department inspectors.

### **The Building Permit Process**

The two primary building codes used in the State are not entirely consistent with respect to the size of the work or the type of construction which trigger the requirement for a building permit. There are differences between SFBC and the SBC, between the two counties that use the SFBC, and between the jurisdictions utilizing the SBC.

The SFBC, Miami-Dade version, states that "It shall be unlawful to construct, enlarge, alter, repair, move, remove, or demolish any building, structure, or any part thereof, or any (sic) equipment, device or facility therein or thereon; or to change the occupancy of a building from one use group to another requiring greater strength, means of egress, fire and sanitary provisions; or to change to an unauthorized or prohibited use; or to install or later install any equipment for which provision is made of the installation of which is regulated by this Code; without first having filed application and obtained a permit therefor, from the Building Official, validated by payment therefor."<sup>28</sup> There are exceptions where the dollar value of the work is small (\$500) and there is no change in the occupancy, life safety is not affected, and the required work is to be done for general maintenance. The Broward version is similar although slightly more detailed and with differing dollar amounts when defining exceptions.

The SBC states that, "Any owner, authorized agent, or contractor who desires to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace an electrical

gas, mechanical, or plumbing system, the installation of which is regulated by the technical codes, or to cause any such work to be done, shall first make application to the Building Official and obtain the required permit for the work.”<sup>29</sup> The listed exceptions are concerned with mechanical devices, and there are no dollar values assigned.

Unfortunately for the contractor/builder, the requirement for permitting normally includes more than just the plans and specifications for the actual construction. The SFBC states: “In addition, the Building Official shall require that the laws, rules, and regulations of any other regulatory authority having jurisdiction, and where such laws, rules, and regulations are applicable and are known to the Building Official, shall be satisfied before a permit shall be issued.”<sup>30</sup> Similar wording, placing the Building Official in the position of monitoring compliance for other Departments is not found within the SBC. In practice, however, the building departments for jurisdictions covered by that Code require the same types of approvals before considering the request for a building permit. Consequently, the plans review and permitting process contains many wickets, several of which are beyond the control of the Building Official, which have to be cleared before a permit will be issued. Depending upon the geographical area of the State and the code used, contractors and design professionals have an uncertain path leading to a building permit. These differing requirements may lead to delays in cases where contractors, owner-builders, and design professionals are not aware of and do not take these variations into account in the preparation of plans and specifications.

Two studies have been conducted by the BCIAC addressing the building permit process in various jurisdictions in the State.<sup>31</sup> While the hours of operation and physical locations of various agencies vary, a generic permitting process for commercial construction follows a general outline:

- ▶ Requirements for the individual/entity to be able to request a permit: contractor’s license; registration when applicable; occupational license; and certificate(s) of insurance.
- ▶ A minimum of two sets of complete plans and specifications. Some jurisdictions require more. Some jurisdictions will allow separate structural,

electrical, and mechanical plans. Others require that all plans and requests for permits for the sub trades be submitted at the same time.

- ▶ A review for environmental impact, including the availability of water and sewage services. If wells and septic tanks are involved, permits for these are usually obtained separately and required prior to submitting plans for the environmental impact review.
- ▶ A review for proper zoning, setback requirements, etc.
- ▶ A review for drainage and pavement. For commercial structures, this normally requires additional plans. If there are entrances or exits on state rights-of-ways, a review and approval is required from the Department of Transportation (DOT).
- ▶ Building department review for structure, electrical, and mechanical. Depending upon the jurisdiction, a separate review for landscaping, etc., may be required.
- ▶ Fire marshal's review.
- ▶ When applicable, a separate review from special agencies, such as for elevators, water management districts, etc.<sup>32</sup>

It should be noted that all of these items are not necessarily related to the he plans review process. However, in general they are required to be provided to the building departments before the department will review the plans.

With rare exceptions, jurisdictions do not have all of the agencies co-located or even provide all of the permit review services required. For example, most jurisdictions depend upon an outside agency to determine if the code requirements for elevators have been met. In such cases, the permitting authority is normally the State, and permits have to be obtained from the Elevator Inspection Program in Tallahassee. Similarly, if there are docks and/or sea walls involved, permits may be required from outside agencies, such as the Army Corps of Engineers and the Submerged Lands and Environmental Resources Program. Consequently, the opportunity for delays may occur at any point in the permitting process, not just within the building department which is reviewing the structural, mechanical, and electrical portions of

the plans for code compliance. At any point in the preliminary permitting process, errors or omissions in the plans and specifications may be a significant source of delay.

### **Plans Review within the Building Departments**

Plans and specifications that are submitted for review and permitting can be as simple as a homeowner's plans and accompanying drawings/sketches and surveys for a new fence, or as complicated as those required for a multi-story commercial building or sports arena. The first can be (and often is) done on a walk-through basis with a permit being issued within an hour of the time of application. The second will require a considerably longer period and more extensive review.<sup>33</sup> In either case, the reader needs to be aware of the fact that within this report we are only dealing with the review of plans and specifications for construction, not for related areas such as compliance with such matters as zoning laws, environmental matters, or entrance/egress on public rights-of way. As noted elsewhere, the various jurisdictions generally charge the Building Official with ensuring that the reviews required by all laws and regulations in all matters concerning the proposed construction have been accomplished, but he/she has no control over that part of the review or approval process.

Initial review of plans submission in the building departments invariably starts with the assurance that all of the wickets described above have been met. If not, the process stops until the non-building department reviews have been completed. (Note that in some jurisdictions a 'one stop' program has been established so that the preliminary steps are not taken separately and prior to submitting the plans to the building department. This is the proverbial two edged sword: convenient, but plans may be rejected on the basis of, say environmental reasons, over which the building department has no control.) Additionally, plans that are incomplete (no electrical, no mechanical sections, no truss drawings, etc.) are typically refused.

Given that the required steps have been followed and that the plans are complete, there is no mandatory order for plans reviews that follows. Individuals interviewed in the various building departments indicated that departmental policy normally had established a preferred sequence. For most it is not engraved in stone and could be varied as circumstances require in

order to accomplish the entire review in the minimum amount of time. Consequently, if the building (structural) and mechanical examiners were not available due to work load, the electrical plans examiner could be the first in the review cycle. Generally speaking, if omissions or errors are found in one discipline, the plans proceed through the remainder of the review sequence unless the examiner feels that the errors are so gross that there is no use in going further.

Normally the last reviewer is the fire marshal's representative. In more progressive and customer oriented jurisdictions, this review is done in an integrated manner with the building department. However, there are some jurisdictions where this remains a separate hurdle, in another building or location, that has to be cleared.

The professional staffs of the building departments were adamant in pointing out the frequency of errors which cause plans to be rejected. They considered that the initial rejection rates indicated a lack of knowledge of code requirements on the part of design professionals which should also be considered when considering privatization of the plans review and inspection processes. Rejection rates for three typical jurisdictions and for types of plans are displayed in Table 1.

**Table 1**  
Plans Review Rejection Rates

<b>Jurisdiction</b>	<b>Percent of Submissions Initially Rejected</b>
City of Pompano Beach, Overall, last three years	85%
Miami-Dade County (98-99)	
Drop Off	55%
Walk Through	28%
Revisions	9%
Jacksonville, 1999	
Residential	28%
Commercial < \$100,000	92%
Commercial > \$100,000	100%



The reader should take note of the fact that, except for Miami-Dade County, the data of Table 1 only reflect the rejection of plans by the building departments for lack of code compliance. In all jurisdictions other than Miami-Dade it is not a generalized function of the building department to evaluate the engineering calculations which result in the size of structural members or sizes and types of mechanical or electrical subsystems. That is the function of the design professionals (architects or engineers) who did the calculations and had the plans prepared. As long as the plans reflect the code requirements for sizing, materials, fire safety, and design, they will be accepted. The rejection rates in the table also do not include rejection rates for planning, zoning, environmental, or other agencies. Consequently, the initial rejection rate problem depicted may be much more severe than the data indicate. Given that design professionals would not knowingly submit plans for review which they knew contained flaws, the first time rejection rates appear to confirm the reason for uneasiness on the part of the building departments when they consider privatization.

Plans which are rejected as not conforming to "all pertinent laws" may require varying degrees of correction and the reason for rejection must be specifically stated.<sup>34</sup> Revisions to plans that require major corrections will generally require a re-drawing of substantial portions of the original sheets, and re-submission of the corrected prints. On occasions, minor corrections may be made by annotation of the sets already submitted. However, in general jurisdictions are not inclined to accept annotations on the approved sets as they need to ensure that all future copies of the original drawings will include the same approved corrections.

There are no data readily available that indicate the length of time for the 'average' correction, and if it were, it would be relatively meaningless. The average elapsed time computed from spending one work hour for corrections on a sign drawing and 47 working hours on a \$100 million dollar for a new computer manufacturing facility is 24 hours, or three working days. The impact, however, is markedly different.

Discussions with Building Officials and their professional staffs revealed a concern that their departments were unjustly being cited for delays in the review process when, in fact, plans had been rejected and returned for correction. In a scenario constructed by those interviewed, plans spent more time awaiting correction than in the various reviewing sections,

but owners were generally not informed that the delay was caused by the design professionals rather than the building department.

The requirements for the level of competency of the plan reviewers and the plan review requirements are not consistent between the building codes, nor within the jurisdictions utilizing the same basic codes. Consider the following:

- ▶ To be a structural plans examiner under the SFBC (Miami-Dade version) the individual must (a) be certified by the local Board of Rules and Appeals; (b) be a registered professional engineer in the State of Florida who has obtained the license by examination in the structural discipline; and (c) have practiced as a structural engineer under the SFBC (Miami-Dade version) for a period of at least five years.
- ▶ To be a structural plans examiner under the SFBC (Broward version) the individual needs to be certified as such by the State Building Code Administrators and Inspectors (BCAI) Board or be a State of Florida registered architect or engineer, and (a) be certified by the local Board of Rules and Appeals; (b) if a licensed engineer, be licensed in the structural discipline; (c) have practiced under the code for at least three years and two years (of which) as a structural inspector ; OR (c) be a licensed general contractor for at least ten years, five of which shall have been in construction experience in the discipline within the jurisdiction of the code, and two years as a structural inspector under the code; OR (d) have five years experience as a chief structural inspector, structural plans examiner or structural inspector, with three years under the jurisdiction of the code; OR (e) get credit for three years of the ten required, if possessing a baccalaureate degree in engineering, architecture, or building construction, and 1 year for an associates degree in the same fields.
- ▶ There are no requirements in the SBC for the competency of structural plans reviewers.
- ▶ The proposed Florida Building Code provides that a jurisdiction may require a

structural plans examination, and if so, that the individual shall be certified by the Board of Rules and Appeals, and shall be a Florida licensed professional engineer who has obtained such license by examination under the structural discipline and who has practiced under his/her license as a structural engineering for a period of five years.

Similar variations exist in the required levels of competency for plans examiners in the remainder of the building and the mechanical and electrical fields.

The different codes also have differing requirements as to what is to be examined. In most cases, it is assumed that the reason for plans examination by the building departments is to ensure that the plans and specifications meet the minimum requirements of the building code (and those codes and standards included in the Building Code.) In general, this is true. Two of the three codes generally used within the State allow the Building Official to request "... details , computations, stress diagrams, and other data necessary to describe the construction or installation and the basis of calculations."<sup>35</sup> The proposed Florida Building Code utilizes the same language. The Miami-Dade version of the SFBC alone *requires* the submission of "...stress diagrams, structural load calculations, results of site soil tests, floor plans of existing building to which additions are proposed, roof framing plans with permanent bracing and lateral wind and uplift forces calculations."<sup>36</sup> This requirement has led, in that jurisdiction, to the requirement for a structural calculations review for all building plans, including residential construction. There is no similar requirement for electrical or mechanical subsystems.

Interviews conducted with design professionals revealed three different areas of thought concerning the structural calculations review required only in Miami-Dade. Those outside of the jurisdiction were unaware of the necessity to always submit the information, being accustomed to the need stated in the other codes and jurisdictions to provide these only when asked for. Those within the jurisdiction or otherwise aware of the requirement were ambivalent or opposed on the grounds that it could lead to the substitution of the reviewers judgement for that of the engineer of record. One individual compared it to requiring a surgeon to submit, ahead of time, his planned surgery for review by a committee who could

preclude the surgeon from operating if they preferred a different technique.

An additional concern expressed was that the various jurisdictions within the county did not have sufficient individuals on their staffs of the prescribed level of competency to complete the review process in a timely manner. Consequently, these jurisdictions were hiring other design professionals to conduct the reviews. In the scenario posited by those interviewed and concerned, the rejection of a structural design over a matter of judgement would indicate to owners that the way to avoid future problems or delays would be to hire the firms/individuals which were conducting reviews. The implication being that individuals or firms conducting reviews would be more experienced, and would know the code requirements well enough to avoid errors.

Interviews with Building Officials, design professionals, and contractors provided distinctly differing views as to an acceptable time period that should be allowed for plans review. Simple plans, for which walk through review is permitted, can be started and finished within the span of one to three hours, given that all of the preliminary approvals, such as zoning, environmental impact, etc., have been garnered. If these approvals have not been obtained, then there will be no review process at the building department as the documents will be rejected. It is unfortunate for the Building Official and the staff in the building department that the perception of the owner and contractor will probably be that it is the fault of the review process, not the owner or contractor or design professional, that the plans were rejected.

These same interviews indicated that normal residential and smaller light commercial plans review should be accomplished within two weeks given that the requisite preliminary approvals had been accomplished and that there was no need for correction. In general, however, building department staffs considered that the plans review for major projects could take as long as two to three months. Also, generally speaking, contractors considered that this was far too long.

Data for the amount of time that was being taken to review plans and specifications for jurisdictions within the State, and from jurisdictions outside of the State were obtained through interview, from the Internet, from public documents, and from private organizations.

A problem arises, however, in defining how to compute the actual length of time required between plans submission and the issuance of a permit. For example, does the phrase "under review" include the time that the plans are awaiting review? Also, if plans are rejected, and are not picked up in a timely manner by the owner, contractor, or design professional, are they still 'under review?' The advertised turn-around time is considerably different for a jurisdiction that excludes the time that the plans are awaiting review than a jurisdiction that includes all of the time that the plans and specifications are held by the building department. Use of data obtained without clarification of the manner in which the data were accumulated results in the proverbial mix of apples and grapefruits; the mixture is not representative of either apples or grapefruits but fruit salad.

A jurisdiction in Georgia stated that site plan review *alone* (no structural, no electrical other than site illumination, etc.) for a typical strip mall project could take approximately two months, two weeks of which were in the building department, and up to six weeks gaining approval from agencies outside the department. A jurisdiction in Wisconsin stated that it attempted to review plans for both residential and commercial construction within three to five days. (The Wisconsin administrative code *requires* that building departments in that state complete the review of residential plans within 10 working days, and the review of commercial building plans within 15 working days.) A jurisdiction in Colorado stated that it would take a minimum of four months to review plans and specifications for a major commercial project. Miami-Dade County stated that the average turn around time was 10 days. On the other hand, an interview with a representative of a contracting firm indicated that the firm had a set of plans for a commercial structure in the Miami-Dade Building department for (at that time) six months with no permit in sight. In fairness, however, it should be pointed out that the same individual stated that the design professional had been asked to provide additional information on several occasions, which indicates that the plans probably had been rejected more than one time. In both cases, the perception of timeliness or delay is in the mind and may or may not reflect reality.

A limitation on the time that a building department may take in reviewing plans is appealing from the stand point of planning. If an owner/developer/design professional, or

contractor can be assured that a review process will take not more than a given period, then plans can be made accordingly. The Wisconsin example cited above may be an attractive starting point. However, setting time requirements is not a solution if the problem is not a lack of efficiency but rather a lack of qualified individuals to review the plans within whatever time constraint is established. It is also not a solution if the problem is not the lack of timeliness on the part of the building department but rather a lack of knowledge within the architectural/engineering community of code requirements.

Progressive building departments have attempted to mitigate the rejection rate problem by establishing check lists and other customer oriented aids. These pamphlets, brochures, and (in some cases) on-line publications guide the individual applicant through the steps necessary to obtain a building permit. They are not, however, a substitute for knowledge of the technical requirements contained in the building code. Given that design professionals are required to maintain a level of continuing education, it may be reasonable to require at least a part of this education be in the area of building code requirements.

No discussion of delays in the permitting process would be complete without noting the wide variance in local regulations affecting applicants for building permits. The BCIAC studies cited earlier provided clear recommendations for the adoption of uniform operating procedures: such as hours of operation; a single point of inquiry for contractor licensing and insurance matters; and single point drop-off and retrieval for plans and permits; and even consistency in the number of sets of plans that are required. Minimal steps can be taken to assist the consumer which do not surrender the prerogatives of the individual jurisdictions to establish and maintain a building department consistent with the needs of its community.

### **The Inspection Process**

The building codes used in Florida require inspections at certain phases of the construction process to ensure that the work in progress conforms to the plans and specifications that have been approved. As in the permitting process, the requirement for inspections differs between the codes and even differs between jurisdictions using the same code. This is true even for the SFBC, with variations between the only two counties that

utilize this code. Table 2 is an abbreviated listing of the code requirements for **structural inspections only** and is shown, not for completeness, but rather to demonstrate the differences.

**Table 2**  
Code Mandated Inspections

<b>Inspection</b>	<b>South Florida Building Code (SFBC) (Broward-1999)</b>	<b>Standard Building Code (SBC)<sup>37</sup></b>	<b>Proposed Florida Building Code</b>
Piling	yes	no	yes
Foundation	yes	yes	yes
Floor slab on grade	yes	no	no <sup>2</sup>
Concrete columns	yes	no <sup>1</sup>	yes
Concrete beams	yes	no <sup>1</sup>	yes
Roof trusses	yes	yes <sup>1</sup>	yes
Roof sheathing	yes	yes <sup>1</sup>	yes
Framing	yes	yes <sup>1</sup>	yes
Windows and doors	yes	no	yes
Wire lath	yes	no	yes
Insulation	yes	no	yes
Rock lath	yes	no	yes
Dry wall	yes	no	yes
Curtain wall	yes	yes <sup>1</sup>	yes
Storefront	yes	no	yes
Window and glass door	yes	yes <sup>1</sup>	yes
Hurricane Shutters	yes	no	yes
Final	yes	yes <sup>1</sup>	yes
Swimming pools	yes	no	yes

Notes for Table 2

1. The actual wording of the SBC is as follows: "(1) Foundation Inspection: To be made after trenches are excavated and forms erected. (2) Frame Inspection: To be made after the roof, all framing, fire blocking and bracing is complete, all concealing (sic) wiring, all pipes, chimneys, ducts and vents are complete. (3) Final Inspection: To be made after the building is completed and ready for occupancy." The interpretation as to whether or not a particular structural inspection is required by the SBC is the author's, drawn from interviews with design professionals and Building Officials.
2. The proposed Florida Building Code calls for inspection of reinforcement for concrete without specifying its location. Consequently, a non-reinforced slab on grade would apparently not require an inspection even if it called for wire mesh since this is generally not considered as structural reinforcing. As in the case of the SBC inspections, the interpretation is that of the project director.

The reader should be aware of the fact that the data of Table 2 reflect only the material included in the basic codes and only for structural inspections. While there are minor differences between the Miami-Dade and Broward versions of the SFBC, local jurisdictions within those counties are not permitted to enlarge upon or change the requirements of the SFBC as adopted by their county. The same is not true for those jurisdictions that have adopted the SBC. For example, the structural swimming inspection shown in Table 2 as required by the SFBC and not by the SBC is, in fact required in areas under the jurisdiction of the Palm Beach County Planning, Zoning, and Building Department.

It is exactly these types of variations that were cited earlier as a possible cause for delay in the permitting process and which, undoubtedly, lead to delays in scheduling inspections. Earlier studies have indicated the advantages of switching from local to state-wide contracting licenses to avoid the problems caused by local variations in prescribed qualifications.<sup>38</sup> Without taking sides in the issue of the merit of a particular building code for the State, the lack of uniformity in requirements is undoubtedly a factor in the timeliness of the plans review and inspection processes. In the context of this report, it should also be noted that the concept of privatization of the plan review and inspection processes would accomplish little in alleviating this possible source of delay. It could, conceivably exacerbate the problem if building departments began to find inappropriately approved plans and inspections.

One argument for privatization of the inspection process has been the inability of building departments to conduct the required inspections in a timely manner.<sup>39</sup> The Broward (1999) edition of the SFBC states that a reasonable amount of time should be allowed for the



jurisdictions to schedule inspections that are requested and that inspections requested before 12 noon **shall** be made not later than the following work day after the day of the request, while those that are made after 12 noon **shall** be made not later than the day after the following work day (emphasis added by authors).<sup>40</sup> No such requirement exists within the Miami-Dade version of the SFBC, the SBC, or the proposed Uniform Building Code. Other than in Broward County, local jurisdictions may have adopted similar time frames as a matter of policy rather than code requirement. If adhered to, it would appear that the time table set in the SFBC (Broward) would satisfy the demand for timeliness for all but the most unusual of circumstances.

A problem often arises when contractors feel compelled to schedule inspections before the work has been completed. A simple scenario illustrates the dilemma. Concrete pours need to be scheduled approximately more than a week in advance to ensure availability of trucks, pumps, etc. To pour a set of elevated beams on a Friday, the contractor has to put in a request for concrete to the concrete vendor and pump operator not later than the previous Wednesday or Thursday. At this point, the forms are not ready, the reinforcing steel is not in place, and the request is made based upon a schedule of planned events. The contractor needs the reinforcing/beam inspection not later than the day ahead of the scheduled pour, or on Thursday, a week after scheduling the pour with the suppliers. Given that the contractor is working in Broward County, to ensure an inspection on Thursday, the inspection would have to be requested prior to noon on Wednesday, a time when it is safe to say that the forms will not be complete and when reinforcing cages may still be on the assembly jigs. If the inspection is not called in before the work is complete, the earliest that the pour can be made is two days after that phase of the work is done. And then only if the concrete vendor and pump operator can react on such a short notice.

Building departments are well acquainted with this dilemma and those that are more customer oriented will allow contractors to request a morning or an afternoon inspection. In the scene described above, an afternoon inspection of Thursday would allow the contractor to continue to work through noon of the day the inspection was desired, if it was necessary to do so. Proponents of privatization would point out that arrangements could be made with a

private inspection firm to provide the service as late in the sequence as desired, theoretically up until just before putting concrete in the forms, i.e., Friday morning.

A review of inspection data for two common inspections that are required by all of the codes utilized within the State for three separate jurisdictions indicates the failure rates shown in Table 3. These data are for residential construction only.

**Table 3**  
Inspection Failure Rates<sup>41</sup>

Type of Inspection	Pinellas County	Duval County	Charlotte County
Framing	31.4%	29.3%	19.8%
Electrical Rough	11.7%	1.3%	6.9%

Data were not collected that would indicate if these failure rates pertain only to first time rejections or if they include re-inspections. Accompanying data do indicate that the problem of scheduling inspections prior to completing the work, as described above, may be significant. In Charlotte County, the cancellation rate for all trades for the same period and residential type construction reflected in Table 3 was 3.0%, or nearly two thousand inspections over the two year period for which the data were obtained. Given that these were cancelled on the day that the inspection was scheduled when it was too late to adjust the schedule, there are significant lost man hours that could have been utilized elsewhere. This is a 'hit' on the efficiency of the building department which is beyond the control of the Building Official.

Even as there are differences between the codes as to the qualifications for plans examiners, there are also differences in the qualifications for inspectors. Consider the following:

- ▶ According to the SFBC (Broward), to be certified "an electrical inspector shall meet one or more of the following requirements: five years construction experience in the electrical field in a supervisory capacity of which at least 2 years shall have been within the jurisdiction of this Code and possessing a current Certification of Competency as a Master Electrician ..." <sup>42</sup> Succeeding

sections deal only with the administration of the exam for the Certification of Competency.

- ▶ The requirement in the SBC are: “ ... (have) at least five years experience as a building inspector, engineer, architect, or as a superintendent, foreman, or competent mechanic in large construction. The inspector should be certified, through a recognized certification program for the appropriate trade.”<sup>43</sup>

Finally, the requirements for an electrical inspector in the proposed Florida Building Code are:

- ▶ “...such person shall be certified by the State of Florida, Building Code Administrators and Inspectors Board....by the Board of Rules and Appeals and shall meet one or more of the following qualifications...Florida registered Professional Engineer in the discipline requested and having practiced within the jurisdiction of the State ...for at least 3 years, or ...Five (5) years construction experience in the electrical discipline of which two (2) years have been within the jurisdiction of the State of Florida ...(and) a current Certificate of Competency as Master Electrician/Electrical Contractor...”<sup>44</sup> Similar differences are in the qualification statements for the other disciplines such as plumbing, mechanical, and structural.

### **Privatization Proposals**

Proposals to implement privatization run the gamut from wishing that the Building Officials would take advantage of the process in jurisdictions utilizing the SBC, to legislative proposals such as that included as Appendix A. The authors reviewed this latter document from two points of view: the layman/contractor/building official and the legal implications for liability and future litigation. It should be noted that this proposal does not address the issue of privatization of the plan review process.

#### General

The preamble to the proposed legislation reflects the fact that the dominant issue is to wrest control of the inspection process from the hands of the building departments. There is no documentation required to show that the building department has been incapable, either in

the past or in the current situation, of meeting its obligations in a timely manner. Simply, that if owners desire they may contract with a private firm to complete the inspection process for a structure.

There is apparent gamesmanship in the wording that allows the "fee simple title owners" to request and pay for an inspection service outside of the building department instead of the contractor. On the surface, it would appear to eliminate any conflict of interest which might occur if the inspector was paid directly by the contractor. (As a separate matter, contractors routinely pay for inspections of piling, concrete, compaction, etc., and provide the results of these inspections to owners and building departments.) As a practical matter, it would have to be assumed that most fee-simple title owners of construction projects are not sufficiently schooled in construction procedures to exercise control of an independent testing or inspecting agency and that the actual control would be with the contractor(s).

Wittingly or otherwise, the proposal places no minimum limitations on the inspection process by providing a list of required inspections. Instead, the proposal states that the inspections required are those which are required by applicable codes. Consequently, locally required inspections, such as the swimming pool inspection(s) required under the SFBC (and some jurisdictions of the SBC), stay when inspecting in those jurisdictions. It should also be noted that the authors have avoided a confrontation with the State's Fire Marshall by exempting any fire-safety inspections from the privatization process.

#### Future Litigation

Proponents of the legislation to privatize the plan review and inspection process, claim that privatization will benefit consumers because, "unlike county employees, private architects and engineers can be sued if they make a mistake."<sup>45</sup> The presumption being that private inspectors and plan reviewers will not be protected, as their counter-parts in government employ are, by the doctrine of sovereign immunity (discussed in greater detail later in the report).

Indeed, the privatization proposal of Appendix A provides a "civil remedy" to "any person or party, in an individual capacity or on behalf of a class of persons or parties, damages [sic] as a result of a violation of this part" against "the person or party who committed the

violation.”<sup>46</sup> This is not a hollow remedy and exposes individuals who may enter the private inspector arena to law suits from all sides, including the firm/owner employing them. The proposed legislation also requires the special inspector to “maintain independent insurance for professional liability, comprehensive general liability, such other liability insurance as may be required with minimum policy limits of \$1,000,000,000 per occurrence relating to all work performed.” Little wonder why some think “... there is a lot of good potential there ...” for future litigation and profit for attorneys.<sup>47</sup>

Several questions present themselves with respect to the legislation:

- ▶ Does the proposed legislation change the current state of the law?
- ▶ What is the extent of the liability of the special inspectors and, if later incorporated, plan reviewers? Who is liable? Liable for what and for how much?
- ▶ Are special inspectors and plan reviewers, in fact, not protected by the doctrine of sovereign immunity?
- ▶ How does the insurance industry view the added exposure?

These points are addressed below.

#### *The Liability of Public Building Officials*

Under the current state of the law existent in Florida, Building Officials are granted broad protection against liability when acting within the scope of their employment. This protection is derived from the doctrine of sovereign immunity.

Sovereign immunity is a doctrine designed to protect the public treasure from what might otherwise be countless claims filed by any of the vast number of citizens affected by the actions of a government. Its genesis is in the Divine Right of Kings and the maxim that the King could do no wrong.<sup>48</sup> In general the concept is considered odious in modern societies. However, at least to the extent that the concept has been retained by the legislatures and the courts, under certain circumstances it is a rational safeguard of taxpayers’ monies.<sup>49</sup>

In 1985, the Florida Supreme Court was presented with a case that specifically addressed how the doctrine is applied to limit the liability of Building Officials. The Court addressed the following question: “Whether a governmental entity may be liable in tort to

individual property owners for the negligent actions of its building inspectors in enforcing provisions of a building code enacted pursuant to the police powers vested in that governmental entity." In this case, commonly referred to as the *Trianon Park* case, the answer was a resounding, no.<sup>50</sup>

The case arose when Trianon Park Condominium Association, consisting of 65 unit-owners, brought suit against the developer of the condominium complex for breach of warranty, negligence, and strict liability, and against the City of Hialeah for its negligent performance in inspecting the condominium building and certifying it for occupancy. Trianon asserted that there was improper construction of the roof membrane, flashing, and drainage system on the main roofs, and other flaws in the construction which resulted in leaks and water damage to 49 of the 65 condominium units.

The action against the developer was settled out of court and a jury returned a verdict against the city in the amount of \$291,000.<sup>51</sup> However, in denying the claims against the city, the Supreme Court gave several rationales. It reasoned that "for there to be governmental tort liability, there must be either an underlying common law or statutory duty of care with respect to the alleged negligent conduct. For certain basic judgmental or discretionary governmental functions, there has never been an applicable duty of care." Laws, such as the building code, which are meant for the benefit of the general public "do not automatically create an independent duty to either individual citizens or a specific class of citizens."<sup>52</sup>

Moreover, the Court said, "there is not now, nor has there ever been, any common law duty for either a private person or a governmental entity to enforce the law for the benefit of an individual or a specific group of individuals." Nor should the courts "interfere with the discretionary functions of the legislative or executive branches of government absent a violation of constitutional or statutory rights." "Judicial intervention through private tort suits into the realm of discretionary decisions relating to basic governmental functions would require the judicial branch to second guess the political and police power decisions of the other branches of government and would violate the separation of powers doctrine." Finally, the Court stated, "... certain discretionary functions of government are inherent in the act of governing and are immune from suit."<sup>53</sup>

The *Trianon Park* case thus clearly established that, within Florida, no cause of action exists against Building Officials who fail to properly perform their inspection duties. However, the Court made it clear that "the legislature has the power to create such a cause of action, but we find no such intent in the particular act which provided for the establishment of building codes in this state."<sup>54</sup>

The question of sovereign immunity is therefore settled when the Building Official (translate, building department) acts in their official and public capacity. However, another question arises when, under certain circumstances, the task of plan review and building inspection is not restricted to public Building Officials. As previously discussed, Florida Statutes provide for threshold inspectors. In addition, the several building codes also provide for other special inspectors. In either case, the work of these individuals may substitute for the publicly employed Building Official. Generally, these special or threshold inspectors may not enjoy the same protections afforded by the Court to publicly employed officials in the *Trianon Park* decision. The issue revolves, in part, on the concept of agency.

#### *The Liability of the Special Inspectors*

Unlike the government employed building inspector, the threshold and other special inspectors are paid, not by the enforcing agency, but by the building owner. This is true even though, by law, they are still responsible to the Building Official.<sup>55</sup> Any standard text on management covers the problems associated with the establishment of a matrix type of an organization, and this 'hired by one party but responsible to another party' is a classical example of a system that may not work well. Some believe that this "dichotomy of responsibility" creates a potentially destabilizing condition.<sup>56</sup>

In terms of the legal liability, the special inspector occupies a position somewhere between the government employed building inspector and the private inspector. An examination of the special inspector legislation and code requirements may therefore shed light on the liability questions posed regarding privatization of the plan review and inspection processes.

By providing that it is the owner's responsibility to compensate the special inspector, the statutes appear to establish a contractual relationship between owner and that individual.

This relationship would presumably subject the special inspector to liability for breach of contract. On the other hand, by providing that the special inspector is responsible to the Building Official, it is not unreasonable to assume that the special inspector is acting as the agent of the Building Official.

Black's Law Dictionary defines "agent" as "a person authorized by another . . . to act for or in place of him; one intrusted with another's business."<sup>57</sup> In the case of the threshold inspectors, the statutes appear to "authorize" the "special inspector" to act for or in place of the government employed building inspector by specifically stating that 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 the enforcing agency prior to the issuance of a building permit for the construction of a threshold building (emphasis added)."<sup>58</sup>

If a true agency situation exists, the agent may enjoy the protection of sovereign immunity similar to that enjoyed by the Building Official.<sup>59</sup> Quoting from the court in *Dorse v Armstrong*, "... (a) person or entity may share in governmental immunity only when performing activities within the scope of a true agency relationship with a sovereign."<sup>60</sup> Much like the question of who is an independent contractor and who is an employee, something that all contractors are familiar with, the determination of the existence of a true agency relationship is the "degree of control exercised by the principal." In this instance, the principal would be the governmental entity, e.g., the Building Official/department. The court's decision also noted that, "Where the principal controls only the outcome of the relationship, not the means used to achieve that outcome" no true agency exists.<sup>61</sup>

Although a special inspector is authorized to perform at least a part of the function of the government employed building inspector, it is not clear that the governmental entity exercises control over these individuals. If not, then there is no agency, and the special inspectors are not covered under the doctrine of sovereign immunity. Consequently, until there is more guidance, either from the legislature or from the courts, the issue of whether the special inspector (and, by extension, the private plans reviewer) is in fact an agent of the government, remains uncertain. What is clear, however, is that even if a special inspector is



deemed to be an agent of the governmental entity, the special inspector may still be "liable for acts outside the scope of the agency relationship or contrary to the principal's instructions, whether or not the principal can be sued".<sup>62</sup>

For completeness, it should be noted that in addition to the statutorily-mandated use of a special inspector for threshold buildings, the statute allows the 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" to "designate such building as a threshold building, subject to more than the minimum number-of-inspections required by the Florida Building Code." Accordingly, the building owner can create a situation in which a special inspector is required, although this scenario seems unlikely, given the economics of the situation.

#### *The Liability of the Private Inspectors*

The draft legislation for privatization of the plans examiner and inspection functions, takes the use of outside, non-government employed, special inspectors to a new level. The proposed legislation specifically allows for a civil remedy. It states as follows: "Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damages [sic] as a result of a violation of this part, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation." Consequently, the language of this proposal removes any possibility for the private inspector to enjoy the benefit of sovereign immunity that is accorded to the government employees. Moreover, the wording of the draft means that the private inspector is exposed to liability on several fronts. There is exposure to liability from the contractor and third parties.

Additionally, as with the threshold inspectors, the private inspector would be expected to enter into a contractual relationship with the building owner. As stated in the proposal, "it is the intent of this act to allow fee simple title owners of the construction projects to contract directly with the properly qualified private sector building inspectors for the inspection of building construction for conformance with applicable codes ..." A contractual relationship of this type would also expose the private inspector to a claim of breach of contract from the fee

simple title owner.

Similar to the requirements for acceptance as a threshold inspector which are set forth in current State law, the proposed legislation requires a private inspector to be a professional and licensed for practice with the State. As such, private inspectors would be subject to personal liability for professional negligence and the possibility of disciplinary action by the controlling state or local authority, i.e., their professional board. As the Florida Supreme Court recently made clear: "Under Florida's common law a person who is injured by another's negligence may maintain an action against the other person based on that other person's violation of a duty of due care to the injured person. Further, where the negligent party is a professional, the law imposes a duty to perform the requested services in accordance with the standard of care used by similar professionals in the community under similar circumstances."<sup>63</sup> In a separate case, *Moransais v Heathman*, the court stated, "Generally, individuals performing architectural and engineering services are performing professional services, and the law imposes upon such persons the duty to exercise a reasonable degree of skill and care, as determined by the degree of skill and care ordinarily employed by their respective professions under similar conditions and like surrounding circumstances."<sup>64</sup>

This is so even where the contract for private inspector services is entered into by a corporation. The *Moransais* court reasoned that "the responsibility of individual professionals for their negligent acts is also evidenced by the express provisions of two legislative enactments that are relevant here: Section 471.023, Florida Statutes (1993), pertaining to engineers; and Section 621.07, Florida Statutes (1993), pertaining to professional associations." The court stated that while "both of these statutory provisions permit professionals to practice in the form of a corporation or partnership for the purpose of rendering professional services . . . both sections indicate an intent to hold professionals personally liable for their negligent acts by expressly stating that the formation of a corporation or partnership shall not relieve the individual members of their personal professional liability."

Accordingly, the private inspector most probably will be required to manage such risks through the use of insurance. Ultimately, it may be the insurance industry which determines

whether the new proposed legislation has any possibility of success. This will undoubtedly be true regardless of whether the legislation is enacted or not. If the insurance industry is unwilling to cover the potential risk, the legislation will surely not succeed.

### **Costs and Savings**

Data were obtained from interviews with Building Officials and their staffs as to the time required to review the plans and perform the inspections for construction under two different scenarios: a single family dwelling (SFD) with less than 2,500 sq. ft. floor area and a commercial structure with a value of less than \$3 million. At the outset it was realized that there could be great variations in the actual time required to review the plans. For example, the commercial construction could be a hollow shell or could be totally complete with all tenant fit-up in place. On the first case, for \$3 million, you would have mainly structural with minimal electrical or mechanical requirements. In the second, the electrical and mechanical would be major factors.

Similarly, data were obtained from design professionals as to their charges for plans review and inspections services. As would be expected, these vary considerably depending upon the size of the firm, the area of the state, and individual preferences. These data are combined with the hourly data and the estimated cost of privatized plan and inspection services are shown in Table 4.

**Table 4**  
Estimated Costs of Privatized Services

Type of Construction	Plan Review @ \$130/hr	Inspection @ \$60/hr	Total
SFD < 2,500 sq. ft.	\$780	\$600	\$1,380
Commercial < \$3 million	\$1,300	\$900	\$2,200

There are numerous limitations on the validity of the data and the resulting calculations used in the construction of Table 4. First, the review data encompasses only the review of code related matters, not structural, mechanical, or electrical engineering types of calculations. Similarly, there was no intent to include all of the matters that are to be reviewed, such as

environmental, zoning, historical zones, etc. These all take time but are outside of the context of privatization that is being used in this report. Additionally, the times used are point times, i.e., no allowance for holding the plans while waiting for time to be available for the review.

Unless the totality, or at least a significant part, of the plans review and inspection processes within an individual building department were privatized, one should not expect that there would be any significant reduction in permit costs to the contractor/owner electing to use a private plans review and inspection process. The workload reduction in the building department resulting from one less set of plans is marginal and totally insignificant with respect to the costs of establishing and maintaining the necessary office spaces, equipment, and personnel. State law mandates that funds generated from permits and other user fees in the building departments may only be used to fund the operations of building code enforcement, and jurisdictions generally depend upon these funds for that operation.<sup>65</sup> There is some point in the public-private mix of plans review and inspections which would allow an offset in the permit costs. However, this crossover point would be different for each jurisdiction, and within the jurisdiction, with respect to time.

## IV. Conclusions

### Conclusions

Based upon the documentation provided throughout this report as well as interviews with Building Officials, owners, design professionals, and contractors the authors have concluded:

- ▶ **Privatization of the plans review and inspections processes within the construction community, in accordance with a strict dictionary definition, is neither feasible nor desirable.**

*Strictly interpreted, privatization of the plans review and inspection processes would remove control of key elements of the construction process from the public officials specifically charged with the protection of the public welfare and safety. It flies in the face of the historical rationale for the creation of building codes and would require a massive change in the expectations of individuals who depend upon the Building Officials and their staffs to ensure compliance with building code requirements.*

- ▶ **The individuals and organizations that are supporting the privatization of the plans review and inspection functions are primarily contractors and design professionals while those opposed are public officials and public employees.**

*For contractors, in particular, time consumed is money spent. The same could be said for owners except that, generally speaking, owners blame contractors for delays whether or not it is justified. Similarly, contractors tend to blame the building departments for delays, whether or not the claim is justified. Many of the situations that may cause delays in the permitting process are outside of the building department since, by law and code requirement, the Building Official is charged with enforcing plan review requirements established by other agencies but over which he/she has no control. Generally, the design professionals backing privatization do so out of a profit motive. In a free enterprise system, such as ours, this is to be expected, understood, and considered appropriate.*

*Opposition to privatization comes naturally from Building Officials and the professional staffs of the building departments, most vociferously in those jurisdictions utilizing the SFBC. The individuals have been charged with the duty of protecting the public welfare and safety in the construction processes. It is natural that they should question the efficacy of programs that would remove essential portions of the oversight functions currently performed and turn them over to individuals who are not accountable to the general public.*

- ▶ **Limited privatization of the plans review and inspection processes is allowable under the SBC and the proposed Florida Building Code. Additional or separate statewide legislation on the matter is neither desirable nor required.**

*For jurisdictions currently operating under the SBC, the Building Official may accept affidavits from design professionals that the design complies with all aspects of the applicable codes, that, during the construction phase all required inspections have been made, and that the completed structure has been constructed in accordance with the plans, specifications, and all applicable code requirements. By preparing and executing the affidavits, the design professionals assume all responsibility for the work that they are certifying. Similar language is included in the proposed Florida Building Code and could be incorporated in the SFBC should the proposed Code not be adopted.<sup>66</sup>*

- ▶ **The more limited application of legislatively mandated threshold special inspectors and the special inspectors allowed under the current codes, including the SFBC, does not provide the same level of service as the limited privatization allowed under the SBC and the proposed Florida Building Code.**

- ▶ **A probable cause of delay in any plan review process is the variation in requirements for content and form of plan/specification submission between the two different building codes used in the state, and between jurisdictions utilizing the same basic code. Adoption of a statewide building code should alleviate a portion of the delay encountered in the plans review process.**

*This and previous reports sponsored by the BCIAC have documented differences between the codes and local regulations in areas which have absolutely nothing to do with public safety and welfare.*

- ▶ **Timeliness in the plans review and inspection processes is an issue for owners and contractors. Building Officials should be required to provide, or allow to be provided, the services required for the plans review and inspection processes in a timely manner. Undue delay in these areas should not become a constraining economic factor when planning for construction.<sup>67</sup>**

*The draft legislation of Appendix A did not offer a triggering mechanism which would require the authorization of private inspectors (and, by extension, plans reviewers) if*

*the Building Official could not provide the service without undue delay. Such a triggering mechanism would be desirable and provide the impetus required for contractors to request, and Building Officials to provide, the use of private inspectors and plans reviewers.*

*The current version of the SFBC (Broward) contains a time frame for requesting and providing inspections. This standard appears reasonable and is well within the planning and scheduling horizon of any competent contractor. A similar statement can be included to cover plans review, and both should be considered for inclusion in the proposed Florida Building Code.*

- ▶ **Private plans reviewers and inspectors operating in a manner consistent with the current SBC and that in the proposed Florida Building Code cannot claim freedom from liability under the doctrine of sovereign immunity.**

*Individuals/firms/contractors that are not true employees of the governmental entity are not truly agents of that entity and therefore not immune from liability for their judgements and actions.*

- ▶ **Privatization of a small portion of the plans review and inspection process would have little effect on the costs incurred by a jurisdiction in staffing and maintaining the functions of a building department.**

*Given that total privatization of the plans review and inspection processes is not recommended and not considered feasible, the only reduction in costs obtained through limited privatization would be marginal and entail that for the actual staff time spent in the review. The other functions and overhead of the department would remain unchanged.*

## Endnotes

1. Contrary to the specific language of the Code, the Building Inspectors and Code Administrators Board (BIACA) has established by rule that only when under contract to a local jurisdiction can a design professional function as an inspector. Their action stems from the rule making authority found in 468.617, F. S., and apparently has not been challenged in a court case to date. Later legislation grants the DBPR authority to rescind rules issued by advisory boards.
2. Adapted from Dorsey, R. W. Project Delivery Systems for Building Construction. Associated General Contractors of America: Washington, D. C.
3. Webster's Third New International Dictionary (1971). G. & C. Merriam: Springfield, MA. page 1805.
4. A brief history of milestones in establishing building codes can be found on the homepage of Broward County, [www.co.broward.fl.us](http://www.co.broward.fl.us), then search for "Board of Rules and Appeals."
5. Barnes, W. C., & Mitrani, J. D. (1992). "Code Enforcement: Scope and Extent of Problem and Recommendations for Solutions." Department of Construction Management Technical Report 105. Florida International University: Miami.
6. Section 553.73, FS.
7. Section 553.72, FS.
8. This particular listing is taken from the SFBC, Broward County, 1996, Chapter 2. There is no significant difference between this list and that contained in the SBCCI or the proposed Florida Building Code.
9. A reviewer noted "According to Chapter 468, F. S., interpretation by the BIACA Board (sic), a plan reviewer is an inspector. Hence, it could be argued that the chief plan reviewer could be delegated interpretation responsibilities."
10. 553.79 (14), F.S., does provide a requirement for single family residences. "A building permit for a single-family residential dwelling must be issued within 30 working days of application therefor unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the enforcing agency's laws, ordinances, or codes."



11. CAPRI is a "...coalition of business and construction interests..." in South Florida operating through the South Florida Chapter of the Associated General Contractors (AGC).
12. A reviewer noted that the Insurance Services Organization (ISO) rating system for building departments suggests 12-14 inspections per day per inspector, while the Building Officials Association of Florida (BOAF) has suggested 14-16.
13. SBC (1994). Sec.104.3.2.
14. SFBC (1999) Broward Version. Sec. 305.3
15. SBC (1994). Sec. 105.3
16. Dominic Sims, Executive Director of Planning and Zoning for Palm Beach County, as quoted in Brenda Silva (1999). Construction Ink, Fall 1999. "Privatization of Plan Reviews and Inspections." page 16+. A publication of the Construction Association of South Florida. 3550 NW 9<sup>th</sup> Ave., Ft. Lauderdale, FL 33309. (954) 565-5900.
17. Kossen, S. (1991). The Human Side of Organizations, 5<sup>th</sup> edition. HarperCollins Publishers: New York. page 12.
18. Steers, R. M. (1991). Introduction to Organizational Behavior, 4<sup>th</sup> edition. HarperCollins Publishers: New York. page 392+.
19. The authors are indebted to Cos Tornese, Director, Broward County Building and Permitting Division, who provided them with an unpublished position paper on this subject.
20. A reviewer of the draft report provided the following editorial comments: "In most jurisdictions the customer is the contractor or the prospective home/business owner and if the Building Official can not (sic) satisfy that group he/she will not be the Building Official for long because the political body will demand his/her removal. Future employment for a private plans examiner may be affected in the residential or remodel area, but not in the major project area because the owner/developer of a major project has too much at risk to accept a shoddy job of design/review." The authors do not necessarily subscribe to the same point of view.
21. A reviewer of the draft report took exception "to the general statement that building departments provide more training than the private sector" and noted that this was not necessarily true for all building departments throughout the state. The authors note that the statement included in the report is specifically noted as a viewpoint or argument of those opposed to privatization, not an opinion of the authors or a statement of fact.

22. A reviewer of the draft report opined that the mandatory use of check lists could solve the problem of lack of uniformity in enforcement and noted that there are plans review software packages available.
23. Barnes, W. C., & Mitrani, J. D. (1992). *Ibid*.
24. Sec. 553.79 (1), FS.
25. Sec. 553.79 (2), FS
26. Sec 551.71 (7), FS
27. Sec. 553.79(5)(a), FS
28. SFBC, Miami-Dade (1994). Section 301.
29. SBC (1994). Sect. 104.1.1
30. SFBC, Miami-Dade (1994). Section 301.2 A similar requirement is found in the SFBC (Broward). However, no such section is contained within the SBC or the proposed Florida Building Code.
31. (a) Dye, Mitrani, & Glasser (1995). "Building Permit Requirements in Dade and Broward Counties. Department of Construction Management Technical Report 118. Florida International University: Miami.  
(b) Uhlik, Kiber, & Wetherington (1995). "A Model Construction Permitting System for the State of Florida." School of Building Construction Technical Report 93. University of Florida: Gainesville, FL.
32. Readers familiar with the construction industry within the State of Florida are aware that 'civil' projects, such as roads, bridges, and tunnels (there is one within the State) which are constructed for the local, state, or federal government do not require building permits. Additionally, all federal buildings and some state buildings are currently exempt from the local permitting process.
33. "Steps to obtain a building permit for homeowners and general contractors." Gunnison County, Colorado. The information included in material on how to obtain a building permit from this jurisdiction runs 13 pages. It is similar to information contained in the BCIAC reports referenced in end note 32. Interested readers may find this information on the Internet, [www.co.gunnison.co.us/planning/building](http://www.co.gunnison.co.us/planning/building).
34. SFBC (Broward). Sec. 302.4(d).
35. SBC (1994). Sec. 104.2.2. Similar wording is also found in SFBC (Broward)(1999) Sec. 302.2(e).

36. SFBC (Miami-Dade)(1994). Sec. 302.2(e)(3).
37. SBC, Section 105.6.
38. SBC, Section 105.6.
39. Mitrani, J. D., Dye, J. M., & Ahmad, I. (1993) A Study of Florida's Licensing System for Construction Contractors. Technical Publication 109, Department of Construction Management, Florida International University: Miami.
40. "Ending Stop and Wait Inspections." Construction Issues, October 1999. South Florida Chapter of the Associated General Contractors of America. 2879 S. University Drive, Davie, FL 33328.
41. SFBC (Broward) 1999. Sec. 305.2(d).
42. Dye, J. M., Stroop, W. C., & Valdini, D. J. (1996). A Study of the Need for a Journeyman on Small Construction Projects. Technical Publication 120, Department of Construction Management, Florida International University: Miami
43. SFBC (Broward) 1999. Sec 201.3(B)(3).
44. SBC Sec. 102.2.3
45. Proposed Florida Building Code, 3<sup>rd</sup> draft, February 2000. Sect. 116.28
46. Finefrock, D. (1999). "Builders Push New Law to Skirt County Oversight." Miami Herald: Monday, January 11, 1999.
47. See the final section on Civil Remedies of Appendix A.
48. Finefrock, D. (1999). op.cit.
49. Prosser, W. L. (1971). Law of Torts, 4<sup>th</sup> edition. Foundation Press. Page 971.
50. 495 So.2d 189, 11 Fla. L. Weekly 1537, Souther Roadbuilders, Inc. v. Lee County, (Fla. App.2 Dist. 1986.)
51. 468 So. 2d 912, 914, (Fla. 1985). Trianon Park Condominium Ass'n, Inc. v City of Hialeah.
52. 468 So. 2d 912, 914.
53. 468 So. 2d 912, 917.
54. 468 So. 2d 912, 918.

55. Sec 553.79(5)(c), Fla. Stat. (*op. cit.*)
56. Hellriegel, D. & Slocum, J. W. (1996). Management, 7<sup>th</sup> edit. International Thomson Publishing: New York. pg. 350+. For a discussion of the conflicting responsibilities of special inspectors, see Kelly, K. P. (1999). "The Threshold Inspector: Champion of the Public Weal or Construction Industry Rogue?" Florida Bar Journal, July/August 1999.
57. Black's Law Dictionary, 6<sup>th</sup> edit (1990). West Publishing Co: St. Paul, Minnesota.
58. FSA § 553.79, Permits; applications; issuance; inspections (*op. cit.*)
59. Dorse v Armstrong World Industries, Inc., 1513 So. 2d 1265 (Fla. 1987).
60. District School Board v Talmadge, 381 So. 2d 698, 702-03 (Fla. 1980).
61. Collins v Federated Mutual Implement & Hardware Ins. Co., 247 So. 2d 461 (4<sup>th</sup> DCA), cert. Denied, 249 So. 2d 689 (Fla. 1971).
62. Dorse, 513 So. 2d 1265, (Fla. 1987), citing Tedder v Riggin, 65 Fla. 153, 61 So. 244 (1913); Wilson v Fridenberg, 22 Fla. 144 (1886).
63. See *Lochrane Engineering, Inc. v. Willingham Realgrowth Inv. Fund, Ltd.*, 552 So.2d 228, 232 (Fla. 5th DCA 1989); see also *Fain*, supra note 4, at 35.
64. Moransais v Heathman, 24 Fla. L. Weekly S308, (Fla 1999.)
65. Sec. 553.80(1) FS
66. See Endnote 1.
67. See Endnote 10.

APPENDIX  
DRAFT LEGISLATION  
PRIVATE INSPECTORS

DRAFT

1-22-99

SPECIAL INSPECTORS

Purpose and Intent

Where the legislature has empowered local governments to administer the state minimum building code pursuant to Chapters 125 and 166, and where such administration includes the inspection of each phase of construction where a building or other construction permit has been issued, and where the legislature finds that properly qualified and insured private sector building inspectors may competently, adequately professionally provide an alternative to local government inspection of building construction for conformance with the state minimum building code or Florida Building Code, without threatening the health or welfare of the Citizens; and where in SS. 468.617 and in SS. 553.79 the legislature has authorized private individuals or firms to perform building inspections for the local government, and where in high growth areas, building departments and developers are burdened by the high volume of inspections needed, resulting in delays to construction, and at the same time local governments in low growth areas are burdened by the prospect of maintaining a fully staffed building department which does not generate sufficient revenue to cover the expense, and where there exists the need to alleviate the burdens described above and develop an alternative method of plan review to ensure the safety of the citizens, while at the same time encouraging the prompt and efficient inspection of building construction;

It is the intent of this act to allow fee simple title owners of construction projects to contract directly with properly qualified private sector building inspectors for the inspection of building construction for conformance with applicable codes prior to the issuance of a certificate of occupancy.

Definitions:

As used in this part:

(1) "Qualified Special Inspector" means a person who is qualified to determine that the particular phase of building construction, erection, repair or alteration inspected complies with the applicable building, plumbing, mechanical, electrical, gas, energy, and accessibility codes. Categories of Qualified Special Inspectors include the following:

(a) "Building inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws;

(b) "Coastal construction inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed to resist near-hurricane and hurricane velocity winds in accordance with the provisions of the governing building code;

(c) "Commercial electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial buildings and structures by inspecting for compliance with the provisions of the National Electrical Code;

(d) "Residential electrical inspector" means a person who is qualified to inspect and determine the electrical safety of one and two family dwellings and accessory structures by inspecting for compliance with the applicable provisions of the governing electrical code;

(e) "Mechanical inspector" means a person who is qualified to inspect and determine that the mechanical

installations and systems for buildings and structures are in compliance with the provisions of the governing mechanical code;

(f) "Plumbing inspector" means a person who is qualified to inspect and determine that the plumbing installations and systems for buildings and structures are in compliance with the provisions of the governing plumbing code;

(g) "One and two family dwelling inspector" means a person who is qualified to inspect and determine that one and two family dwellings and accessory structures are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes; and

(h) "Electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial and residential buildings and accessory structures by inspecting for compliance with the provisions of the National electrical code.

For purposes of this act, a qualified special inspector may not be obtained for inspection of building construction for conformance with fire prevention codes, as such review shall remain within the exclusive domain of the local government agency.

(2) "Applicable Code" shall refer to the State Minimum Building Codes, and the Florida Building Code as defined in Chapter 553, including the building, plumbing, mechanical, electrical, gas, energy, and accessibility codes. For purposes of this act, the fire prevention code is not an applicable code, as inspection of building construction for conformance with such code shall remain within the exclusive domain of the local government.

(3) "Qualified" shall mean a special inspector that has been certified as a licensed special inspector by the board pursuant to SS 468.607, or ss 468.613 as having met the standards described in



SS 468.609. In addition, a special inspector must maintain independent insurance for professional liability, comprehensive general liability, such other liability insurance as may be required with minimum policy limits of \$1,000,000 per occurrence relating to all work performed as a special inspector, and including tail coverage for a minimum of five (5) years subsequent to the performance of special inspection services.

(4) "Building Code Administrator" or "Building Official" means any of those employees of municipal or county governments with building construction regulation responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement or inspection of building construction, erection, repair, addition, remodeling, demolition or alteration projects that require permitting indicating compliance with the building, plumbing, mechanical, electrical, gas, energy, and accessibility codes as required by state law or municipal or other county ordinance. The term is synonymous with "building official" as used in the administrative chapter of the South Florida Building Code and the Standard Building Code.

(5) "Board" means the Florida Building Code Administrators and Inspectors Board.

(6) "Department" means the Department of Business and Professional regulation."

(7) "Certificate" means a certificate of qualification issued by the board as provided in ss 468.607, or ss 468.613.

(8) "Qualifying Building or Structure" shall mean any

building so designated by the fee simple title owner of the building upon entering into a written agreement with a qualified special inspector and providing written notice of same to the local building official, along with a Special Inspector's Affidavit.

(9) "Special Inspector's Affidavit" shall mean the affidavit, sworn to by the Special Inspector, verifying that the special inspector has been retained to perform inspection services for the building designated, and that the special inspector will inspect building construction for conformance with all applicable codes.

Building Inspection by a Special Inspector:

(1) Notwithstanding any other statutory provision, for any qualifying building or structure, as defined in this section, a fee simple title owner may contract with a qualified special inspector for purposes of inspection of building construction for conformance with applicable codes.

(2) Inspections performed by the qualified special inspector shall be so recorded in a form acceptable to the local government agency. Such inspection records shall reflect all inspections performed by the special inspector, including the minimum mandatory inspections required by the State Minimum Building Code or the Florida Building Code. In addition to the inspection records, the qualified special inspector shall prepare a certificate of compliance, summarizing the inspections performed, and including a written representation, under oath that the building construction inspections reflected have been performed, and that to the best of the special inspector's knowledge and belief, the building

construction inspected meets the requirements of all applicable codes, upon completion of the building, the special inspector shall submit both the inspection records and the certificate of compliance to the building official for review.

(3) Submittal of the inspection records by the qualified special inspector, along with the certificate of compliance certifying under oath that all building construction inspected meets the requirements of all applicable codes, along with any other applicable governmental approvals, shall cause the local building official to issue a certificate of occupancy for the building, within five (5) working days after submittal.

Responsibilities of Qualified Special Inspector:

(1) It is the responsibility of the qualified special inspector to inspect each phase of building construction, erection, alteration, remodeling or demolition of structures and the installation of systems where permitting is required to ensure compliance with all building, plumbing, mechanical, electrical, gas, energy, and accessibility codes. The building inspections must be performed by the qualified special inspector prior to certification that building construction has been performed in accordance with applicable codes.

(2) Upon performance of building inspections at each applicable phase of construction, it is the qualified special inspector's responsibility to record such inspections in a form acceptable to the local government agency. Such inspection records

shall reflect all inspections performed by the special inspector, including the minimum mandatory inspections required by the State Minimum Building Code or the Florida Building Code. In addition to the inspection records, the qualified special inspector shall prepare a certificate of compliance, summarizing the inspections performed, and including a written representation, under oath that the building construction inspections reflected have been performed, and that to the best of the special inspector's knowledge and belief, the building construction inspected meets the requirements of all applicable codes.

(3) In the event of a disagreement with the local building official regarding building construction conformance with applicable codes, it shall be the qualified private sector building inspector's responsibility to meet with the building official and make a reasonable effort to attempt an informal resolution of any disagreements.

Building Official Review:

(1) During the course of construction, the building official may make periodic visits to the job site as may be necessary to ascertain that the special inspector is performing the minimum mandatory inspections in a timely and professional manner. If, during such visits, the building official becomes concerned that construction is not progressing in accordance with the applicable codes, the building official may issue a stop work order, subject to the procedures contained in Paragraph 3, below.

(2) The building official of the local governmental agency

shall, within five (5) working day after submittal by the qualified special inspector of the inspection records, and certificate of compliance, along with any other required governmental approvals, issue a certificate of occupancy for the qualifying building. If during such five (5) day period, it becomes apparent to the building official that the qualifying building has not been constructed in accordance with the applicable codes, and such non-conformance poses an immediate threat to public safety and welfare, the building official may withhold a certificate of occupancy, subject to the provisions of paragraph 3, below.

(3) If, in making a periodic to the job site, or in reviewing the inspection records and certificate of compliance submitted by the qualified building inspector, the building official should become concerned that construction is not in accordance with applicable codes, and such non-conformance poses an immediate threat to public safety and welfare, the building official may issue a stop work order, or refuse to issue a certificate of occupancy, subject to the following:

- a. The building official must notify the qualified special inspector of the decision within two working days after observing construction or receiving the inspection records and certificate of compliance;
- b. The building official must meet with the qualified special inspector within two working days after issuance of a stop work order or a notice refusing the issuance of a certificate of occupancy, to attempt an informal resolution of the conflict;
- c. If the building official and qualified building inspector are unable to informally resolve the conflict, then the matter must be immediately referred to the local governmental agency's board of rules and appeals which

must consider the matter at its next scheduled meeting, or sooner as may be required by the building official. If the conflict involves a stop work order, the fee simple title owner may proceed with construction during the pendency of any appeal to the board of rules and appeals, subject to the provisions of Paragraph d, below;

d. Any construction performed by a fee simple title owner during the appeal of a stop work order as outlined in section c, above, shall be undertaken at the owner's risk, with the knowledge that the local board of rules and appeals may order the demolition of such work, should it agree with the building official that the construction was not performed in conformance with all applicable codes;

e. The building official's failure to follow any of the procedures described in sections a through d, above shall result in automatic issuance of the certificate of occupancy sought;

f. Notwithstanding anything to the contrary above, any decisions regarding the issuance of a certificate of occupancy may be reviewed by the local governmental agency's board of rules and appeals, whose decision shall be final with respect to such matter.

#### Regulation, Rulemaking and Review

1. Regulation, rulemaking and administrative review under this section shall lie within the exclusive authority of the Board. No local government may adopt or enforce any laws, rules, procedures or standards which are more stringent than those prescribed by this section.

2. With respect to building inspection by licensed architects and engineers, Board Review shall be for conformance with the requirements of this section.

#### Disciplinary Proceedings:

(1) The following acts constitute grounds for which disciplinary actions in subsection 2 may be taken:

a. Violating or failing to comply with any provision of this part, or a valid rule or lawful order of the board or department pursuant thereto;

b. Obtaining certification through fraud, deceit, or perjury;

c. Knowingly assisting any person practicing contrary to the provisions of:

1. This part; or

2. The building code adopted by the enforcement authority of that person.

d. Having been convicted of a felony against this state or the United States, or of a felony in another state that would have been a felony had it been committed in this state.

e. Having been convicted of a crime in any jurisdiction which directly relates to the practice of building code administration or inspection.

f. Making or filing a report or record which the certificate holder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

g. Committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property by failure to properly enforce applicable building codes.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

a. Denial of an application for certification.

b. Permanent revocation.

c. Suspension of a certificate.

d. Imposition of an administrative fine not to exceed \$5,000 for each separate offense. Such fine must be

rationally related to the gravity of the violation.

e. Issuance of a reprimand.

f. Placement of the certificate holder on probation for a period of time and subject to such conditions as the board may impose, including alternation of performance level.

g. Satisfactory completion of continuing education.

h. Issuance of a citation.

(3) Where a certificate is suspended, placed on probation, or has conditions imposed, the board shall reinstate the certificate of a disciplined building code administrator, plans examiner, or inspector upon proof the disciplined individual has complied with all terms and conditions set forth in the final order.

(4) No person may be allowed to apply for certification under this part for a minimum of 5 years after the date of revocation of any certificate issued pursuant to this part. The board may by rule establish additional criteria for certification following revocation.

Prohibition; Penalties:

(1) No person may:

a. Falsely hold himself or herself out as a certificate holder;

b. Falsely impersonate a certificate holder;

c. Present as his or her own the certificate of another;

d. Give false or forged evidence to the board or the department, or a member, an employee, or an officer thereof, for the purpose of obtaining a certificate;

e. Use or attempt to use a certificate which has been suspended or revoked;



f. Threaten, coerce, trick, persuade, or otherwise influence, or attempt to threaten, coerce, trick, persuade, or otherwise influence, any certificate holder to violate any provision of this part;

g. Offer any compensation to a certificate holder in order to induce a violation of this part, a local building code or ordinance, or another law of this state;

(2) Any person who violates any provision of this part, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. Any person who violates any provision of this part after a previous conviction for such violation commits a felony of the third degree, punishable in § 775.082 or § 775.083.

#### Civil Remedy:

Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damages as a result of a violation of this part, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation.