ALTERNATIVE PLANS REVIEW AND INSPECTIONS WORK GROUP

PHASE II
RECOMMENDATIONS TO THE FLORIDA BUILDING COMMISSION

PROPOSED REVISIONS TO SECTION 553.791, F.S.

Process Design & Facilitation By

Florida Conflict Resolution Consortium

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This document is available in alternate formats upon request to Dept. of Community Affairs, Codes & Standards, 2555 Shumard Oak Blvd., Tallahassee, FL 32399, (850) 487-1824.
OVERVIEW

In 2002 the Florida Legislature passed legislation (Section 553.791, F.S.) authorizing the use of private providers to conduct plans review and inspections services. The Legislation also directed the Florida Building Commission to submit a report to the Legislature on the implementation of this section of law on or before January 1, 2004.

In response to this reporting mandate, the Department of Community Affairs issued a purchase order, to the Shimberg Center for Affordable Housing at the University of Florida (The Center), directing an efficacy assessment of the implementation of Section 553.791.

In order to solicit additional feedback, The Commission held a public workshop at the October 13, 2003 Commission meeting. During the workshop the Center reported to the Commission that the results of their survey and interviews indicated there was no strong consensus between local jurisdictions and industry on the benefits of the private provider option. In addition, there were public comments ranging from total support to total rejection of the private provider option.

As a result of the assessment report and public comment, on November 18, 2003 the Commission voted to recommend to the 2004 Florida Legislature that the Florida Building Commission work with stakeholders to clarify the intent and requirements of Section 553.791 and develop consensus recommendations for revisions to the law governing the alternative plans review and inspections system.

As a first step in developing recommendations to the Legislature, on January 13, 2004, The Florida Building Commission voted to convene a work group tasked with reviewing issues related to the implementation of legislation (Section 553.791, F.S.) authorizing the use of private providers to conduct plans review and inspections. The Commission adopted a plan that will address the issue in phases, with Phase I focusing on identifying and agreeing on consensus recommendations to enhance the system’s efficacy in the short-term. Phase I recommendations were presented and approved by the Commission at the March 2, 2004 meeting and submitted to the 2004 Legislature.

Phase II recommendations were developed by the Work Group during the course of three meetings in various locations around the state and are presented in this report. The Commission will review the Work Group’s recommendations at their August 2004 meeting and solicit additional public comment. In addition, the Commission will be asked to provide their preliminary feedback at the August meeting, and finalize their recommendations at the October 2004 Commission meeting, for submittal to the 2005 Legislature.
Commission Chair, Raul Rodriguez, appointed 13 members to the Work Group and assigned Rick Dixon (FBC executive director) and Jim Richmond (FBC legal council) to serve as DCA staff. In addition, Jeff Blair (FBC facilitator) was assigned to serve as process designer and meeting facilitator. Following are the Work Group members and their respective stakeholder groups:

**Florida Building Commission’s Interests**
- James Schock, P.E., CBO
- Doug Murdock, CBO

**Building Officials’ Interests**
- Ronnie L. Spooner
- Bill Dumbaugh, CBO
- Robert Nagin

**League of Cities Interests**
- George Wiggins

**Insurance Interests**
- Do Y. Kim, P.E.

**General Contractors’ Interests**
- Allen Douglas

**Home Builders’ Interests**
- Jack Glenn, CBO

**Florida Engineers’ Interests**
- Gary H. Elzweig, P.E.

**Florida Architects’ Interests**
- Mike Rodriguez, AIA

**Private Provider Interests**
- George W. Dixon, MPA, CBO

**Public Consumer Interests**
- Barry Ansbacher

**PROCESS OVERVIEW**

The Work Group’s Consensus building and decision making process was a participatory one whereby on matters of substance, the members jointly strove for agreements which all of the members can accept, support or at least agree not to oppose.

In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on an issue or package of recommendations, and where 100% acceptance or support is not achievable, final recommendations of the Work Group required at least a 75% favorable vote of all members present and voting. This super majority decision rule underscored the Work Group’s view of the importance of seeking and developing agreements with the participation of all members and with which all can live with and support. Where the Work Group did not reach consensus (75% in favor) on a decision, a minority report was issued on proposals achieving a 50% or greater level of support, articulating the rationales and preferences of those dissenting, and is included in this submittal of the package of recommendations. In order to enhance final consensus recommendations, an amendatory text process was used at the final meeting.
PROCESS SCHEDULE

Phase I
Work Group Meeting I  February 18, 2004  Orlando

Phase II
Work Group Meeting II  April 2, 2004  Jacksonville
Work Group Meeting III  June 3, 2004  Tampa
Work Group Meeting IV  June 17, 2004  Ocala

Phase III
Public comment and recommendations  August 31, 2004  Miami
delivered to the Florida Building Commission
Public comment and Commission’s  October 19, 2004  Orlando
decision and submittal to 2005 Legislature

WORK GROUP RECOMMENDATIONS

PHASE I—APPROVED UNANIMOUSLY BY THE FLORIDA BUILDING COMMISSION ON MARCH 2, 2004

Direct versus Contract Labor (duly authorized representative)
Clarify in 553.791(7) that a duly authorized representative means an employee of the private provider as defined by the Fair Labor Standards Act and the Internal Revenue Service.

Job Site Notification
Amend 553.791 to require that a private provider must post contact information on the job site permit board. The permit holder shall be responsible to ensure the required information is posted. The information must be provided for plans review and/or inspection services.

30 Business Days versus 30 Calendar Days to start permit clock
Support legislative efforts to retain the 30 business day provision currently found in 553.791(6). The Work Group voted to recommend maintaining the existing provisions.
Valid Permit Application
Amend 553.791(1)(f) to read:
(f) "Permit Application," means a properly completed and submitted application for the requested building or construction permit, and includes:

1. The plans reviewed by the private provider.
2. The affidavit from the private provider required pursuant to subsection (5).
3. Any applicable fees.
4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

Insurance Tail Coverage
The Work Group discussed requiring 5 year tail coverage for claims made policies, and not requiring tail coverage for occurrence based policies but was unable to reach a 75% level of agreement.
At the recommendation of Jim Richmond, DCA attorney, the Commission discussed the issue and made a recommendation.

WORK GROUP’S PHASE II RECOMMENDATIONS

NOTE: Exact language and citations within the statute (§553.791) will be prepared by DCA legal staff.

INSURANCE

Work Group Consensus Recommendation
Require private provider to submit to the local jurisdiction a certificate of their insurance coverage (certificate of insurance), pursuant to the requirements found in F.S. 553.791 (15) prior to providing services within the jurisdiction.

APPEAL RIGHTS OF PRIVATE PROVIDERS

Work Group Consensus Recommendation
The Work Group unanimously agreed to recommend adding a new section to 553.791 that clarifies the law does not limit the authority of the local jurisdiction to stop work as authorized by provisions of other law or local ordinance.
AUDIT REQUIREMENTS

Work Group Consensus Recommendation
Revise. F.S. 553.79 (17) “Each local building code enforcement agency shall develop and maintain a process to audit the performance of building code inspection services by private providers operating within the local jurisdiction. Work may proceed after inspection and approval by the private provider provided that notice is given pursuant to 553.791(8).

DOCUMENTATION REQUIREMENTS

Work Group Consensus Recommendation

Revise F.S. §553.791(9) “Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, before leaving the project site, shall post each completed inspection record, indicating pass or fail, at the site and provide the record to the local building official within 2 business days. The Building Official may waive the requirement for a written record of each inspection within the time frame indicated provided that a copy is posted at the building site and they are submitted with the Certificate of Compliance. Records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.” Revise F.S. §553.791 (10) Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form:
LOCAL QUALIFICATIONS FOR THE PRIVATE PROVIDER

Work Group Consensus Recommendation
Revise 553.791 (14) “No local enforcement agency, local building official, or local government may adopt or enforce any laws, rules, procedures, qualifications, or standards more stringent than those prescribed by this section. Local enforcement agencies, local building officials, local governments, or other authorities having jurisdictions may establish a system of registration for the Private Providers and Duly Authorized Representatives working within their jurisdiction, whereby staff verifies statutory compliance with the insurance requirements of 553.791 (15) and the licensure requirements of 553.791 (1) (e) & (g).

BUYER’S CHOICE AND DISCLOSURE TO BUYER

Work Group Consensus Recommendation
The Commission recommend to the Legislature a statutory change authorizing the Commission to adopt by rule a jobsite notice form. In addition, the Work Group recommends the Commission determine and adopt by rule who the viewer should be directed to regarding contacting a provider.

TIME FOR PRIVATE PROVIDERS TO NOTIFY THEIR INTENT TO CONDUCT INSPECTIONS ON A PROJECT

Work Group Consensus Recommendation
Revise F.S. 553.791 (4) “A fee owner using a private provider to provide building code inspection services shall notify the local building official at the time of permit application on a form to be adopted by the commission. This notice shall include the following information:....”
(4)(a) Exception: A fee owner using a private provider to provide only the inspection portion of the building code inspection services shall notify the local building official at the time of permit application or seven (7) business days prior to the first scheduled building department inspection.”
(See Minority Report)

JOB SIZE RESTRICTIONS FOR CHAPTER 468 PRIVATE PROVIDERS

Work Group Consensus Recommendation
Change definition of “Private provider” to allow any person licensed under Chapter 468 as a Building Code Administrator to perform services as a private provider subject to the limitations of the license/s they hold.
(See Minority Report)
ADDITIONAL WORK GROUP CONSENSUS RECOMMENDATIONS

Uniform Interpretation and Enforcement by Licensing Boards

Recommend that the respective licensing boards shall adopt rules to facilitate better communication, uniform interpretation & enforcement of the laws regarding plan review and inspections, and training for both building officials and private providers. The Building Commission should further this effort by publishing applicable rules, interpretations & enforcement actions on its website.

Commission Rule Authority to Establish Format for Forms

553.791(5) third line
The private provider shall stamp each sheet of all plans reviewed and approved. The Commission should seek authority to establish the minimum information required on the stamp by rule.

POLICY STATEMENT RECOMMENDED BY WORK GROUP

The Building Commission should implement an education program to inform consumers, local governments, contractors and industry of the purposes & limitations of plan review & inspections, the role of local building officials, private providers and their respective regulatory bodies, and the procedures.

This education program should include specific information informing consumers, local governments, contractors and industry as to the proper implementation of building code inspection services, what additional steps they may take to assure that construction meets building code requirements and what steps an owner may take to resolve a grievance or file a complaint.
MINORITY REPORT

(Proposals achieving at least a 50% favorable vote)

BUILDING OFFICIALS’ OVERSIGHT AUTHORITY

Revise F.S. §553.791 (2) Notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider’s firm, and the fee owner. The fee owner may elect to use a private provider to provide either plans review or required building inspections. The local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

PRIVATE PROVIDERS’ RESPONSIBILITY TO BUYER I

Add explicit liability provision similar to §553.84
Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of the private provider’s negligence in accordance with applicable law and the applicable codes shall have a cause of action.

PRIVATE PROVIDERS’ RESPONSIBILITY TO BUYER II

Add explicit liability provision similar to §553.84
Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of the private provider’s failure to perform building code inspection services in accordance with applicable law and the applicable codes. The insurance required to be maintained by the private provider shall be for the benefit of such persons or parties. The prevailing party in any such action will be entitled to recover their reasonable attorney’s fees and costs.
TIME FOR PRIVATE PROVIDERS TO NOTIFY THEIR INTENT TO CONDUCT INSPECTIONS ON A PROJECT

(4)(a) Exception: A fee owner using a private provider to provide only the inspection portion of the building code inspection services shall notify the local building official at the time of permit application or five (5) business days prior to the first scheduled building department inspection."

JOB SIZE RESTRICTIONS FOR CHAPTER 468 PRIVATE PROVIDERS

Change definition of “Private provider” to allow any person licensed under Chapter 468 as a Building Code Administrator to perform services as a private provider.

LOCAL FEES/REFUNDS WHEN A PRIVATE PROVIDER IS USED I

(2) Notwithstanding any other provision of law, the fee owner of a building may use a private provider to provide building code inspection services with regard to such building and may make payment directly to the private provider for the provision of such services. The fees normally being paid to the local building department shall not be reduced below that necessary to support the required audit program. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner. The fee owner may elect to use a private provider to provide either plans review or required building inspections. The local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner who desires to use a private provider to use the private provider to provide both plans review and required building inspection services.

LOCAL FEES/REFUNDS WHEN A PRIVATE PROVIDER IS USED II

Allocate a portion of fees when private providers are used for audit and training purposes, but do not reduce the fees.
ADDITIONAL MINORITY REPORT RECOMMENDATIONS

EFFICACY STUDY

Commission conduct a statistically viable efficacy study of the private provider system after implementation of the Work Group’s current package of recommendations.

MINORITY POLICY STATEMENT RECOMMENDATION

The integrity of the private provider program requires oversight by both the local building official and by the respective licensing boards for the private providers.

1. Local building officials should use the audit process under existing law to monitor compliance and protect the public, but not to discourage the legitimate use of private providers who are performing review or inspection services in accordance with the law and applicable professional standards.

2. If the auditing performed by local building officials reveals either a pattern of negligence or misconduct by a private provider then the local building official should be encouraged to notify the applicable licensing board(s).

3. The respective licensing boards should be encouraged to adopt rules to expedite the audit by a local building official, and where circumstances warrant suspend the licensee’s authority to perform plan review or inspections under Section 553.791 pending final adjudication of the complaint.