

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 665 Expedited Approval of Residential Building Permits

**SPONSOR(S):** Commerce Committee, Regulatory Reform & Economic Development Subcommittee, McClain

**TIED BILLS:** IDEN./SIM. BILLS: SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 2 N, As CS	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	10 Y, 5 N	Mwakyanjala	Darden
3) Commerce Committee	12 Y, 5 N, As CS	Wright	Hamon

### SUMMARY ANALYSIS

The Florida Building Code (Building Code) must be applied and enforced uniformly and consistently across the state. Local governments are required to enforce the Building Code and are responsible for issuing building permits.

In Florida law, "plat" means a map or delineated representation of the subdivision of lands, and is generally required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.

Some local governments allow a developer to commence construction and issue building permits after a preliminary plat has been issued, but before the plat is finalized.

The bill:

- Requires certain local governments to create a process to expedite the issuance of building permits based on a preliminary plat and to issue the number or percentage of building permits requested by an applicant, if:
  - The governing body has approved a preliminary plat for each residential building or structure.
  - The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.
  - The applicant holds a valid performance bond for up to 130 percent of the necessary improvements that have not been completed upon submission of the application.
- Provides that vested rights may be formed in a preliminary plat, under certain circumstances.
- Requires certain local governments to establish a registry of at least three qualified contractors who the governing body may use to supplement staff resources, as determined by the governing body, for processing and expediting the review of an application for a preliminary plat or any related plans.
- Allows such applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the preliminary plat before the final plat is approved.
- Requires all local governments to create a master building permit process for residential subdivisions and planned communities.

The bill may have an indeterminate fiscal impact on state and local government.

The bill provides an effective date of upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Plats

In Florida law, “plat” means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable state requirements and of any local ordinances.<sup>1</sup> Generally, platting is required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. These smaller areas become the residential lots, streets, and parks of a new residential subdivision.<sup>2</sup>

State law establishes consistent minimum requirements for the establishment of plats, and local governing bodies have the power to regulate and control the platting of lands.<sup>3</sup> Prior to approval by the appropriate governing body, the plat must be reviewed for conformity with state and local law and sealed by a professional surveyor and mapper who is either employed by or under contract to the local governing body.<sup>4</sup>

Before a plat is offered for recording with the clerk of the circuit court, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation.<sup>5</sup>

Jurisdiction over plat approval is as follows:<sup>6</sup>

- When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.
- When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.
- When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

Every plat of a subdivision offered for recording must have certain information, including providing:<sup>7</sup>

- The name of the plat in bold legible letters, and the name of the subdivision, professional surveyor and mapper or legal entity, and street and mailing address on each sheet.
- The section, township, and range immediately under the name of the plat on each sheet included, along with the name of the city, town, village, county, and state in which the land being platted is situated.
- The dedications and approvals by the surveyor and mapper and local governing body, and the circuit court clerk’s certificate and the professional surveyor and mapper’s seal and statement.
- All section lines and quarter section lines occurring within the subdivision. If the description is by metes and bounds, all information called for, such as the point of commencement, course

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<sup>1</sup> S. 177.031(14), F.S.

<sup>2</sup> Harry W. Carls, Florida Condo & HOA Law Blog, May 17, 2018, *Why is a Plat so Important?*, <https://www.floridacondohoalawblog.com/2018/05/17/why-is-a-plat-so-important/> (last visited Jan, 11, 2024).

<sup>3</sup> S. 177.011, F.S.

<sup>4</sup> S. 177.081(1), F.S.

<sup>5</sup> S. 177.071(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 177.091, F.S.

bearings and distances, and the point of beginning. If the platted lands are in a land grant or are not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses.

- Location, width, and names of all streets, waterways, or other rights-of-way.
- Location and width of proposed easements and existing easements identified in the title opinion or property information report must be shown on the plat or in the notes or legend, and their intended use.
- All lots numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.
- Sufficient survey data to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat.
- Designated park and recreation parcels.
- All interior excepted parcels clearly indicated and labeled “Not a part of this plat.”
- The purpose of all areas dedicated clearly indicated or stated on the plat.
- That all platted utility easements must provide that such easements are also easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services interferes with the facilities and services of an electric, telephone, gas, or other public utility.

## Preliminary Plat Approval

Many local governments around the state have a process to approve a preliminary plat before approving a final plat. Generally, a preliminary plat is a technical, graphic representation of a proposed development, including plans for streets, utilities, drainage, easements, and lot lines, for a proposed subdivision. If a preliminary plat is required, it is generally a prerequisite for a final plat approval and the submission of any property improvement plans or permit applications.<sup>8</sup>

Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.<sup>9</sup>

Based on a preliminary plat approval, some local governments allow a developer to commence construction before the plat is finalized. For example, the City of Jacksonville, Village of Royal Palm Beach, and the City of Tallahassee allow for a preliminary plat approval process.<sup>10</sup>

In Jacksonville, the Planning and Development Department (Department) of the City of Jacksonville, upon request of an applicant, may allow up to 50 percent of the lots within a proposed subdivision to be developed, but not occupied, based on a preliminary plat approval so long as the developer or owner meets the following conditions for construction:<sup>11</sup>

- Prior to Civil Plans submittal to the Department, the developer must submit the development proposal to Jacksonville Electric Authority (JEA) for review.
- Once JEA has granted preliminary approval, the Department will review the preliminary site plan, the preliminary and final engineering plans for the required improvements, and the sheet identifying the lots being requested for home construction prior to platting as approved by JEA.

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<sup>8</sup> For examples, see City of Zephyrhills Code of Ordinances s. 11.03.02.01; Palm Beach County Code of Ordinances Art. 11., Ch. A.; Seminole County, SEMINOLE COUNTY PLANNING & DEVELOPMENT DIVISION, Subdivision Application, <https://www.seminolecountyfl.gov/core/fileparse.php/3307/urll/SUBDIVISION-05-2023.ADA.pdf> (last visited Jan, 11, 2024).

<sup>9</sup> Advance Surveying & Engineering, *An In-Depth Look At Preliminary and Final Plats*, <https://www.advsur.com/2019/07/an-in-depth-look-at-preliminary-and-final-plats/> (last visited Jan, 11, 2024).

<sup>10</sup> City of Jacksonville Code of Ordinances s. 654-109, Village of Royal Palm Beach Code of Ordinances s. 22-22, City of Tallahassee Code of Ordinances s. 9-92.

<sup>11</sup> City of Jacksonville Code of Ordinances s. 654-139(d).

The Department reserves the right to deny authorization for development on a specific lot or lots to protect City interests.

- The developer or owner must provide a guarantee for required improvements and warranty of title.
- A Certificate of Occupancy may not be issued until the final plat is approved by JEA and the Department and recorded in the current public records of Duval County, Florida.
- Approval of the preliminary plat and required supplemental material are valid for 12 months from the date of approval. If the final plat is not submitted to and approved during the 12-month period, the conditional approvals are null and void.<sup>12</sup>

There is currently no mandatory process in Florida law that requires local governing bodies to use outside professionals to help process applications for a preliminary plat.

### **Vested Rights in Property Based on a Plat**

In general, vested rights<sup>13</sup> form when a property owner or developer acquires real property rights that cannot be taken by governmental regulation.<sup>14</sup> Property owners or developers who do not have vested rights will be subject to subsequently enacted land regulations, while subsequently enacted land regulations do not apply to the property owners or developers who are determined to have vested rights.<sup>15</sup>

Florida common law provides that vested rights in a property may be established if a property owner or developer has:<sup>16</sup>

- In good faith reliance,
- Upon some act or omission of government,
- Made such a substantial change in position or has incurred such extensive obligations and expenses,
- That it would make it highly inequitable to interfere with the acquired right.

Recordation of a final plat with the clerk of the circuit court alone is not sufficient to establish vested rights<sup>17</sup> in the land development regulations in existence at that time.<sup>18</sup> Instead, the property owner or developer must take meaningful steps towards development of the property, such as applying for development permits or expending certain monies,<sup>19</sup> to constitute a substantial change in position or be considered extensive obligations and expenses towards development of the property in reliance on some action by the local government.<sup>20</sup>

Additionally, a property owner or developer may obtain vested rights in both a local government-approved preliminary plat and a final plat, as long as expenditures or a substantial change have been made by the property owner or developer based on such preliminary plat or plat.<sup>21</sup>

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<sup>12</sup> City of Jacksonville Code of Ordinances s. 654-109(b).

<sup>13</sup> Florida courts have used the concepts of vested rights and equitable estoppel interchangeably in deciding fault in property rights cases. Equitable estoppel, in this instance, means focusing on whether it would be inequitable or fair to allow a local government to deny prior conduct or position on building or development decisions. Robert M. Rhodes and Cathy M. Sellers, *Equitable Estoppel and Vested Rights in Land Use*, The Florida Bar, II Florida Environmental and Land Use Law 8, (1994).

<sup>14</sup> *Id.*; Heeter, *Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes*, Urb.L. Ann. 63, 64-65 (1971).

<sup>15</sup> *Monroe County v. Ambrose*, 866 So.2d 707, 712 (Fla. 3d DCA 2003); Kristin Melton, de la Parte & Gilbert P.A., *When are Rights Vested in a Platted Development?*, 2016,

<https://www.dgfirm.com/email/2016summer/article2.html#:~:text=Florida%20common%20law%20provides%20that,it%20would%20make%20it%20highly> (last visited Jan, 11, 2024).

<sup>16</sup> *Monroe County*, 866 So.2d at 710.

<sup>17</sup> *Id.*

<sup>18</sup> Melton, *supra* note 15.

<sup>19</sup> *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).

<sup>20</sup> *Id.*; Melton, *supra* note 15.

<sup>21</sup> *The Florida Companies v. Orange County*, 411 So.2d 1008, 1011 (Fla. 5th DCA 1982)

## The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.<sup>22</sup>

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study's commission recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.<sup>23</sup> The current edition of the Building Code is the eighth edition, which is referred to as the 2023 Florida Building Code.<sup>24</sup>

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>25</sup>

The Florida Building Commission (Commission) was created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,<sup>26</sup> the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.<sup>27</sup>

### Building Permits

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.<sup>28</sup> Every local government must enforce the Building Code and issue building permits.<sup>29</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>30</sup> Any construction work that requires a building permit also requires plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.<sup>31</sup>

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as

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<sup>22</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Jan, 11, 2024).

<sup>23</sup> *Id.*

<sup>24</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan, 11, 2024).

<sup>25</sup> See s. 553.72(1), F.S.

<sup>26</sup> The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Jan. 11, 2024).

<sup>27</sup> S. 553.73(7)(a), F.S.

<sup>28</sup> S. 553.72, F.S.

<sup>29</sup> Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>30</sup> S. 468.603(2), F.S.; § 202, FBC, Building, 7th Ed., (2020).

<sup>31</sup> §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).

may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>32</sup> A building permit is not valid until the fees for the permit have been paid.<sup>33</sup>

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.<sup>34</sup> An application for a permit must include building plans.<sup>35</sup> A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.<sup>36</sup>

## Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. For example, delays in the completion of a construction project may:<sup>37</sup>

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:<sup>38</sup>

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue; and
- Encourage economic development by having an efficient permit system.

## Master Building Permit Program

A master building permit program is a streamlined permitting process created by a local government to help builders who expect to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. Such program must be designed to achieve standardization and consistency during the permitting process and to reduce the time spent by local building departments during the site-specific building permit application process.<sup>39</sup>

If a local building code administrator receives a written request from a licensed contractor for the creation of a master building permit program, the local government must create such program within 6 months after receipt.<sup>40</sup>

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<sup>32</sup> See ss. 125.56(4)(a) and 553.79(1), F.S.

<sup>33</sup> § 109.1, FBC, Building, 7th Ed., (2020).

<sup>34</sup> Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.

<sup>35</sup> Ss. 468.603(8), and 553.79(2), F.S.

<sup>36</sup> S. 553.79(2), F.S.

<sup>37</sup> City of Austin Development Services Department, *A Program for Expedited Permitting*, [http://austintexas.gov/sites/default/files/files/8-9-2016\\_Report\\_on\\_Expedited\\_Permitting\\_Program.pdf](http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf) (last visited Jan. 11, 2024); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).

<sup>38</sup> *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) <https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf> (last visited Jan. 11, 2024).

<sup>39</sup> S. 553.794(1), F.S.

<sup>40</sup> *Id.*

To obtain a master building permit after a program has been implemented, a builder must submit the following information to the local building department:<sup>41</sup>

- A completed master building permit application.
- A general construction plan with:
  - All of the plan pages, documents, and drawings; signed and sealed by the design professional of record;<sup>42</sup> and
  - A written acknowledgment from the design professional that the plan pages, documents, and drawings will be used for future site-specific building permit applications.
  - A model design, which may include up to four alternate exterior elevations, each containing the same living space footprint.<sup>43</sup>
- Truss specifications.
- Energy performance calculations for all building orientations.

Once a master building permit application is approved, the local building department may only require the builder to submit the following documents for each site-specific building permit application:<sup>44</sup>

- A completed site-specific building permit application that includes the master building permit number and identifies the model design to be built, including elevation and garage style.
- Three signed and sealed copies of the lot or parcel survey or site plan.
- An affidavit by the design professional of record affirming that the attached master building permit is a true and correct copy.
- Complete mechanical drawings of the model design.

An approved master building permit remains valid until the Florida Building Code is updated,<sup>45</sup> which is every 3 years.<sup>46</sup>

### **Effect of the Bill**

The bill requires a governing body to create:

- A two-step application process for the adoption of a preliminary plat, inclusive of any plans, in order to expedite the issuance of building permits related to such plats. The application must allow an applicant to identify the percentage of planned homes, or the number of building permits, that the governing body must issue for the residential subdivision or planned community indicated in the preliminary plat.
- A master building permit process consistent with existing master building permit application requirements for applicants seeking multiple building permits for residential subdivisions or planned communities.
  - The bill provides that a master building permit issued pursuant to this requirement is valid for 3 consecutive years after its issuance or until the adoption of a new Building Code, whichever is earlier. After a new Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for 3 consecutive years.

By **October 1, 2024**, the bill requires any governing body of a county that has 75,000 residents or more and any governing body of a municipality that has 25 acres or more of contiguous land that is designated in its comprehensive plan and future land use map as land that is agricultural or to be developed for residential purposes, to create a program to expedite the process for issuing building permits for residential subdivisions or planned communities before a final plat is recorded with the clerk of the circuit court.

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<sup>41</sup> S. 553.794(3), F.S.

<sup>42</sup> The design professional must be a licensed engineer or architect.

<sup>43</sup> S. 553.794(4)(c), F.S.

<sup>44</sup> S. 553.794(6), F.S.

<sup>45</sup> S. 553.794(5)(e), F.S.

<sup>46</sup> S. 553.73(7)(a), F.S.

- Such expedited process must include an application for an applicant to identify **up to 50 percent** of planned homes, or the number of building permits, that the governing body **must** issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

By **December 31, 2027**, the bill requires such a governing body to update its expedited process to contain an application that allows an applicant to request an **increased percentage of up to 75 percent** of building permits for planned homes that the local governing body must issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 75 percent of the residential subdivision or planned community.

The timelines for creating such applications do not apply to a county subject to the designation of the Florida Keys as an area of critical state concern in s. 380.0552, F.S., which is Monroe County.

If a governing body had a program in place **before July 1, 2023**, to expedite the building permit process, the bill requires such governing body to only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

In accordance with the timelines above, the bill requires the governing body to issue the number or percentage of building permits requested by an applicant, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

- The governing body has approved a preliminary plat for each residential subdivision or planned community.
- The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.
- The applicant holds a valid performance bond for up to 130 percent of the necessary improvements<sup>47</sup> that have not been completed upon submission of the application. For purposes of a master planned community,<sup>48</sup> a valid performance bond is required on a phase-by-phase basis.

The bill allows an applicant to use a **private provider** to expedite the application process detailed above.

The bill requires a governing body to **establish a registry of** at least three **qualified contractors** who the governing body may use to supplement staff resources, as determined by the governing body, for processing and expediting the review of an application for a preliminary plat or any plans related to such application. A qualified contractor on the registry who is hired to review an application, or any part thereof, for a preliminary plat, or any part thereof, may not have a conflict of interest with the applicant.<sup>49</sup>

The bill allows a governing body to work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in an application.

<sup>47</sup> As defined in s. 177.031(9), F.S., improvements include, but are not limited to, street pavements, curbs and gutters, sidewalks, alley pavements, walkway pavements, water mains, sanitary sewers, storm sewers or drains, street names, signs, landscaping, permanent reference monuments (P.R.M.s), permanent control points (P.C.P.s), monuments, or any other improvement required by a governing body.

<sup>48</sup> "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. S. 163.3203(5)(b), F.S.

<sup>49</sup> "Conflict of interest" has the same meaning as in s. 112.312, F.S., which means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.



The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill prohibits an applicant from obtaining a temporary or final certificate of occupancy for each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill provides that an applicant has a vested right in a preliminary plat that has been approved by a governing body if all of the following conditions are met:

- The applicant relies in good faith on the approved preliminary plat or any amendments thereto.
- The applicant incurs obligations and expenses, commences construction of the residential subdivision or planned community, and is continuing in good faith with the development of the property.

The bill provides that upon the establishment of an applicant's vested rights, a governing body may not make substantive changes to the preliminary plat without the applicant's written consent.

The bill requires an applicant to indemnify and hold harmless the local government, its governing body, its agents, and its employees from:

- Liability or damages resulting from the issuance of a building permit or the construction, reconstruction, or improvement or repair of a residential building or structure, including any associated utilities, located in the residential subdivision or planned community.
- Liability or disputes resulting from the issuance of a certificate of occupancy for a residential building or structure that is constructed, reconstructed, improved, or repaired before the approval and recordation of the final plat of the qualified project.

This indemnification includes, but is not limited to, any liability and damage resulting from wind, fire, flood, construction defects, bodily injury, and any actions, issues, or disputes arising out of a contract or other agreement between the developer and a utility operating in the residential subdivision or planned community.

However, this indemnification does not extend to governmental actions that infringe on the applicant's vested rights.

The bill provides the following definitions:

- "Applicant" means a homebuilder or developer that files an application with the local governing body to identify the percentage of planned homes, or the number of building permits, that the local governing body must issue for a residential subdivision or planned community.
- "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.
- "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains required land boundary information.
- "Qualified contractor" includes, but is not limited to:
  - An engineer or engineering firm licensed under chapter 471, F.S.;
  - A surveyor or mapper or a surveyor's or mapper's firm licensed under chapter 472, F.S.;
  - An architect or architecture firm licensed under part I of chapter 481, F.S.;
  - A landscape architect or landscape architecture firm registered under part II of chapter 481, F.S.; or
  - Any other qualified professional who is certified in urban planning or environmental management.

The bill provides an effective date of upon becoming a law.

**B. SECTION DIRECTORY:**

- Section 1: Creates s. 177.073, F.S.; relating to approval of certain building permits pursuant to a preliminary plat.
- Section 2: Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
None.
- 2. Expenditures:  
This bill may impact local governments because they may have to hire more employees to meet the prescribed timeframes.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The streamlined permitting and development processes in the bill may expedite development across the state. However, permit fees may be raised by local governments in order to meet timing requirements.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

- 1. Applicability of Municipality/County Mandates Provision:  
Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.
- 2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 17, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that an applicant must commence construction and continue to develop the property in good faith in order to obtain vested rights.
- Requires the governing body to obtain written consent of the applicant before it may make substantive changes to the preliminary plat.
- Requires the applicant to indemnify and hold harmless the local government, governing body, its agents, and its employees, from certain liability related to the improvement of the property, including to any associated utilities, and from certain disputes related to obtaining a certificate of occupancy.
  - However, such indemnification does not extend to governmental action that infringe on the applicant's vested rights.
- Changes the date by which a governing body must allow an applicant to obtain:
  - Up to 50 percent of permits pursuant to a preliminary plat, to October 1, 2024, from August 1, 2024.
  - Up to 75 percent of permits pursuant to a preliminary plat, to December 1, 2027, from December 1, 2028.
- Exempts Monroe County from the provisions which require the governing body to issue a certain percentage of permits pursuant to a preliminary plat.
- Provides that a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier, instead of later.
- Requires an applicant for permits pursuant to a preliminary plat to provide a copy of the approved plat to relevant gas utilities.
- Removes provisions requiring certain reporting to the Department of Business and Professional Regulation and the Department of Commerce.
- Clarifies language and corrects grammatical errors.

On February 8, 2024, the Commerce Committee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified that, related to an application for building permits under a preliminary plat, if the applicant requests, the local government cannot give less than the requested amount of permits if the request does not exceed 50 percent.
- Provided that any city that does not have 25 acres of contiguous land designated by the local government for residential development or agricultural purposes does not have to create the new preliminary plat process (previously exempted those cities with under 30,000 residents).
- Clarified that a developer may not receive a temporary or final certificate of occupancy based on a preliminary plat.
- Required a local governing body to publish a list of at least 3 qualified contractors they may use to help with staffing to review and approve an expedited application for a preliminary plat.
- Provided that a qualified contractor is:
  - A licensed an engineer or engineering firm;
  - A licensed surveyor or mapper or a surveyor's or mapper's firm;
  - A licensed architect or architecture firm;
  - A registered landscape architect or landscape architecture firm; or
  - Any other qualified professional who is certified in urban planning or environmental management.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.