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Client Alert: 2022 Construction Industry Legislative Update

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The 2022 Legislative Session saw a number of bills signed into law, effective July 1, 2022, which impact the construction industry. Below is a summary of key changes.

1. Building Regulation (Ch. 2022-136)

Chapter 2022-136 ("Building Regulation") includes several changes intended to streamline the building permit process, by expanding the use of private provider plans services, shortening the time for building departments to review and respond to permit applications, and creating a private cause of action in favor of owners, builders, and associated groups to ensure that building departments use building permit fees as authorized by statute.

First, the bill expands the use of private provider services by:

- i. Expanding eligibility for internship certification. Previously, only full-time employees of a local government who worked under the direct supervision of the building official were eligible to complete the four-year internship certification program required to become a private provider. Under the new law, aspiring private providers can complete their internship while employed full-time by a private provider.^[1]
- ii. Expanding the scope of services authorized by provisionally certified private providers. A provisionally certified private provider is one who meets the eligibility requirements to sit for, but has not yet taken, the private provider examination. Under the new law, these individuals are permitted to act as the "duly authorized representative" of a private provider for the purposes of plans review and inspections, so long as they are supervised by a licensed private provider.^[2]
- iii. Defining "reasonable administrative fee." Previously, Chapter 553 did not define what constituted a "reasonable administrative fee" to be imposed by a building department for private provider services. Under the new law, this fee is now defined as the "cost actually incurred" to include the labor cost of the personnel providing the service for clerical and supervisory assistance only.^[3]
- iv. Equal access to records. The new law now requires that building departments provide "equal access" to permitting and inspection documents and reports.^[4]

v. Issuance of a Certificate of Occupancy or Completion. For most commercial projects, building officials are now granted 10 business days (as opposed to 2 business days under the old law) to issue a certificate of occupancy or equivalent ("CO") upon receipt of a complete application for CO and payment of all outstanding permit and inspection fees. However, if a building official fails to respond to a complete application for CO within 10 business days, the CO is deemed to be granted and must be provided within 10 additional days. ^[5]

Second, the bill ***shortens the time for building departments to review and respond to permit applications.*** ^[6] Below is a list of deadlines for building departments to review and respond to building permit applications:

- i. If, after receiving building permit application, the building department notes deficiencies and requests additional information (**first request**), and the applicant provides the requested information within 30 days, the local government must, within 15 days of receiving the information:
 - a. Determine if the application is properly completed;
 - b. Approve the application;
 - c. Approve the application with conditions;
 - d. Deny the application; or
 - e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.
- ii. If a building department notes deficiencies and requests additional information under (i)(e) (second request), and the applicant provides the requested information within 30 days, the local government must, within 10 days, take one of the actions set forth in (i)(a)-(e);
- iii. A building department cannot request additional information after the second request without first offering the applicant an opportunity to meet to resolve the outstanding issues. If, after an opportunity to meet, the building department makes a **third request** for additional information, and the applicant timely responds (within 30 days), it must, within 10 days, take either one of the actions set forth in (i)(b)-(d) or, at the request of the applicant, process the application, if the applicant believes the request for further information is not legally authorized.
- iv. If the building department fails to abide by the above deadlines, then it must reduce the permit fee by 10 percent for each business day of non-compliance.

Third, the new law ***creates a private cause of action in favor of owners, builders, and associated entities*** to ensure that building departments use building permit fees as authorized by statute. Under Florida law, a building department is only authorized to charge permit fees associated with "enforcing the Building Code." Such fees cannot be used to fund other unrelated local government operations and can only be carried forward in amount not to exceed one year of the building department's operating budget, unless the local government establishes a "Building Inspections Fund Advisory Board." ^[7]

The new law gives standing to an owner, contractor, or associated group of owners or contractors in Florida with permits in the jurisdiction to sue the building department and local government to ensure permit fees are properly applied in accordance with the statute. ^[8]

2. Building Safety (Ch. 2022-269)

In the wake of the Champlain Towers collapse in Surfside, FL, and following a special legislative session in May 2022, Gov. DeSantis signed into law Chapter 2022-269 ("Building Safety"). While this law addresses the operation and funding of condominium associations and their reserves, there are several aspects of the new law that impact the commercial construction industry.

i. Expansion of building components subject to evaluation during turnover study. For design professionals, contractors, subcontractors, and suppliers who perform services or work on new condominiums, Florida law requires that upon turnover of the developer-controlled association to the unit owners, the developer is required to deliver a turnover study prepared by a licensed architect or engineer, which addresses the required maintenance, condition, useful life, and maintenance costs of the condominium property. Often, turnover studies, to the extent defects or deficiencies are noted, can result in an association serving a notice of claim pursuant to Chapter 558, Florida Statutes. The new law adds "waterproofing" as a component, which must now be addressed in the developer's turnover study, and further, brings "loadbearing walls and primary structural members and primary structural systems" into the definition of the "structure" to be inspected.^[9]

ii. Milestone Inspections. Associations that are three stories in height or greater are now obligated to retain an architect or engineer to perform periodic Milestone Inspection Reports as follows:

- December 31st of the building's 30th anniversary from CO; except
- For buildings within three miles of the coastline, on the 25-year anniversary from CO, and then every 10 years that follow; or
- If a CO was issued before July 1, 1992, then the milestone inspection must be completed by December 31, 2024.

Milestone Inspections begin with a "Phase I" visual inspection and, if deemed necessary by the architect or engineer, proceed to a "Phase II" if "substantial structural deterioration" is identified during Phase I. Phase II may or may not include destructive investigation. The Milestone Inspection Report is required to document the findings from the investigation and identify recommended repairs, which may be structural or remedial in nature.^[10]

3) Other Changes

The 2022 legislative session saw the following additional changes:

i. Roof replacement. Fla. Stat. §553.844(5) now provides that for any roof which was repaired, built, or replaced in accordance with the 2007 Florida Building Code, if 25 percent or more of the roof needs to be replaced, then only those portions being replaced are required to comply with the version of the Florida Building Code then in existence. This new law provides that this statute must be adopted by the Florida Building Commission and incorporated into the Florida Building Code, and further, prevents a local government from passing an ordinance which seeks to circumvent the law.

ii. Notices of Commencement for HVAC Projects. Fla. Stat. §713.135 has been amended to increase the threshold for direct contracts for the repair or replacement of an HVAC system from \$7,500 to \$15,000, which are exempt from the requirement for Notice of Commencement as a condition of

applying for a building permit.

iii. Demolition Permits for Waterfront Homes. Fla. Stat. §553.79(25) now provides that a local government may not place restrictions on a private property owner to obtain a demolition permit for a single family home located in a coastal highhazard area, moderate flood zone, or special flood hazard area.

1 Fla. Stat. §468.609(7)(a) (2022); Fla. Stat. §468.609(7)(c) (2022).

2 Fla. Stat. §553.791(1)(f) (2022).

3 Fla. Stat. §553.791(2)(b) (2022).

4 Fla. Stat. §553.791(2)(c) (2022).

5 Fla. Stat. §553.791(13)(a)-(b) (2022). Note, this time change does not apply to applications for CO on single-family or two-family projects.

6 Fla. Stat. §553.79(b)-(c) (2022). It is important to note that the time periods set forth in this statutory section do not apply to projects in which an owner has elected to use a private provider for alternative plans review and inspection under Fla. Stat. §553.791. See Fla. Stat. §553.791(7)(a)-(d) (setting forth deadlines for permit review on private provider projects).

7 Fla. Stat. §553.80(7)(a)(1) (2022).

8 Fla. Stat. §553.80(7)(a)(2) (2022).

9 Fla. Stat. §718.301(4)(p)(2);(14) (2022).

10 *See generally* Fla. Stat. §553.899 (2022).