

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7103      PCB COM 19-01      Property Development  
**SPONSOR(S):** Judiciary Committee, Commerce Committee, Fischer  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee	21 Y, 2 N	Smith	Hamon
1) Judiciary Committee	11 Y, 7 N, As CS	Jones	Poche
2) State Affairs Committee			

### SUMMARY ANALYSIS

Property development in Florida is governed in part by both the Community Planning Act and the Florida Building Code. The Community Planning Act governs how local governments create and adopt local comprehensive plans, implement land development regulations, and issue development orders and permits. Every local government must enforce the Building Code and issue building permits. Before a building permit can be issued, plans review and inspections must be conducted by the local building official or a private provider to ensure work complies with the building code. Private providers are licensed building code administrators, licensed engineers, and licensed architects that property owners can hire to review building plans and perform building inspections.

Local governments impose impact fees to fund local infrastructure to expand local services to meet the demands of population growth caused by development. The impact fee ordinances enacted by a county, municipality, or special district must meet certain minimum statutory criteria. However, the various types of impact fees for different infrastructure needs, the calculation of the amount due, and the timing of collecting these fees is currently at the discretion of each local government.

CS/HB 7103 changes property development regulations by:

- Restricting counties and municipalities from adopting or imposing certain mandatory affordable housing ordinances.
- Imposing time limits for a county or municipality to review a development order or permit application and providing procedures for addressing deficiencies.
- Entitling either party of a development order challenge to invoke summary proceedings under s. 51.011, F.S., unless a party shows that summary procedure is inappropriate.
- Expanding the scope of a private provider by allowing services involving the review of site plans and site work engineering plans.
- Reducing the time period building departments have to review a permit application when a private provider approves the plans, from 30 business days to five business days.
- Limiting the building department's authority to audit a private provider to four times annually.
- Prohibiting a building official from replicating plan reviews or inspections performed by a private provider.
- Allowing a person who hires a private provider to petition the court for a writ of injunctive or other equitable relief if the person believes the building department is not complying with the law.
- Amending how a local government may impose impact fees.

The bill may have an indeterminate negative impact on local government revenues.

The bill has an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### THE COMMUNITY PLANNING ACT

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.<sup>1</sup> The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The intent of the Act is that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, *housing*, and other requirements and services.<sup>2</sup> A housing element is required as part of every comprehensive plan in the state. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."<sup>3</sup>

##### *Land Development Regulations (Sections 1 & 4)*

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.<sup>4</sup> Local governments are encouraged to use innovative land development regulations<sup>5</sup> and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.<sup>6</sup>

Some affordable housing ordinances or zoning places restrictions on developments such as rent limitations or requiring a given share of the new development to be "affordable housing." These programs can be mandatory or voluntary and vary in their structure with different set-aside requirements, affordability levels, and control periods. Most programs offer developers incentives, such as density bonuses, expedited approval, and fee waivers.

##### Effect of Proposed Changes

CS/HB 7103 restricts counties and municipalities from adopting or imposing mandatory affordable housing requirements in any form. This includes comprehensive plan amendments, land development regulation, or as conditions of a development order or permit. Specifically, the bill restricts a local government from any of the following:

- Mandating or establishing a maximum sales price or lease rental for privately produced dwelling units.
- Requiring the allocation or designation, whether directly or indirectly, of privately produced dwelling units for sale or rental to any particular class or group of purchasers or tenants.

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<sup>1</sup> See ch. 2011-139, s. 17, Laws of Fla.

<sup>2</sup> S. 163.3161(4), F.S.

<sup>3</sup> S. 163.3177(6)(f)1.g., F.S.

<sup>4</sup> S. 163.3202, F.S.

<sup>5</sup> S. 163.3202(3), F.S.

<sup>6</sup> Ss. 125.01055 and 166.04151, F.S.

- Requiring the provisions of any on-site or off-site workforce or affordable housing units or a contribution of land or money for such housing, including, but not limited to, the payment of any flat or percentage-based fee whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.

The bill, however, does allow for a county or municipality to create or implement a voluntary density bonus program or other voluntary incentive-based program designed to increase the supply of workforce or affordable housing units.

#### *Issuing Development Orders and Permits (Sections 2 & 3)*

Under the Community Planning Act, a development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. A development order is issued by local government and grants, denies, or grants with conditions an application for a development permit.

When reviewing an application for a development permit, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.<sup>7</sup> Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.<sup>8</sup> If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, they can request the county or municipality to proceed to process the application for approval or denial.<sup>9</sup> If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.<sup>10</sup>

There is no specified timeframe provided in current statute for reviewing a development permit application.

#### Effect of Proposed Changes

CS/HB 7103 imposes requirements and time limits for a county or municipality to review a development order or permit application and provides procedures for addressing deficiencies. Specifically, the bill requires that within 30 days after receiving an application the local government must review and issue a letter to the applicant indicating that either the application is complete or specifying deficiencies. If deficiencies are identified, the applicant has 30 days to submit the required additional information. Within 90 days after the initial application, or the supplemental submission, the local government must approve, approve with conditions, or deny the application.

All decisions must include written findings supporting either the approval, approval with conditions, or denial of the development permit or order. Currently, only application denials are required to include a written notice citing applicable authority for the denial decision. The bill allows for the new time limits to be waived by the applicant.

The term "development order" is added to the title and throughout the section along with conforming changes.

#### *Challenging a Development Order (Section 6)*

Section 163.3215, F.S., provides the exclusive methods for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with an adopted comprehensive plan. One method allows a local government to adopt an ordinance establishing minimum requirements and

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<sup>7</sup> Ss. 125.022 and 166.033, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

procedures for an aggrieved or adversely affected party to challenge the decision of a local government granting or denying an application for a development order.

If a local government has not adopted an established procedures ordinance, any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision granting or denying an application for, or to prevent any action on a development order which materially alters the use or density or intensity of use on a particular piece of property which is inconsistent with the comprehensive plan. The de novo action must be filed no later than 30 days following rendition of a development order, or when all local administrative appeals are exhausted, whichever occurs later.

Under this section, an aggrieved or adversely affected party is any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The term includes the owner, developer, or applicant for a development order.

### Effect of Proposed Changes

CS/HB 7103 entitles either party of a development order challenge to invoke summary proceedings under s. 51.011, F.S. However, if either party shows, by clear and convincing evidence, that summary procedure is inappropriate, the court may decline to apply summary procedure.

Summary procedure<sup>11</sup> applies to actions specified by statute or rule. Expediting timeframes under summary procedure allows a case to proceed quickly and efficiently. When summary procedure governs, the following procedures apply:

- **Pleadings.** Pleadings are limited to Plaintiff's initial pleading, Defendant's answer and counterclaim, if necessary, and Plaintiff's response to Defendant's counterclaim, if necessary.
  - Plaintiff's initial pleading must contain everything required by the applicable statute or rule, or otherwise state a cause of action.
  - Defendant's answer must be filed within 5 days after Defendant is served with Plaintiff's initial pleading, and the answer must contain all defenses of law or fact.
  - If the answer contains a counterclaim, Plaintiff must respond within 5 days after Defendant serves the counterclaim.
  - The court must hear all defensive motions before trial.
- **Discovery.** The parties can take depositions at any time. No other discovery or admissions may be conducted except by court order. Discovery does not postpone the time for trial unless a party shows good cause.
- **Jury.** Either party may demand jury trial, if authorized by law, within 5 days after the action comes to issue. The action can be tried immediately if the jury is in attendance at the close of pleading.
- **New Trial.** Either party can move for new trial within 5 days of the verdict.
- **Appeal.** Either party can appeal within 30 days of rendition of the judgment.

In an action governed by summary procedure, the Florida Rules of Civil Procedure apply, except where the statute or rule provides otherwise.

Some especially complicated cases may be inappropriate for summary procedure. If a party shows by clear and convincing evidence that summary procedure is inappropriate, the court may decline to apply summary procedure.

The Florida Supreme Court has held that the summary procedure statute, even though it sets judicial procedures, is a valid exercise of legislative authority.<sup>12</sup>

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<sup>11</sup> S. 51.011, F.S.  
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DATE: 4/3/2019

## IMPACT FEES (Section 5)

Impact fees are amounts imposed by local governments<sup>13</sup> to fund local infrastructure required to provide for increased local services needs caused by new growth.<sup>14</sup> Impact fees must meet the following minimum criteria when adopted by ordinance of a county, municipality, or special district:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees must be limited to the actual costs.
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.<sup>15</sup>

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees.<sup>16</sup> The courts have found the imposition of impact fees appropriate where the local government meets two fundamental requirements known as the dual rational nexus test, which requires impact fees to have a reasonable connection, or nexus, between the:

- Need for additional capital facilities and the population growth generated by the project.
- Expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project.<sup>17</sup> Meeting this criterion requires the local government ordinance imposing the impact fee to earmark the funds collected to acquire the new capital facilities necessary to benefit the new residents.

Some local governments impose impact fees specifically for local school facilities.<sup>18</sup> School districts have authority to impose ad valorem taxes within the district for school purposes<sup>19</sup> but are not general purpose governments with home rule power<sup>20</sup> and are not expressly authorized to impose impact fees.<sup>21</sup> Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into an account segregated for funding those improvements.<sup>22</sup> The ordinances creating the impact fee also require the funds be used only for education capital improvement projects.<sup>23</sup>

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<sup>12</sup> See, e.g., *Crocker v. Diland Corp.*, 593 So. 2d 1096 (Fla. 5th DCA 1992); *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2008) (approving *Crocker*, 593 So. 2d 1096, and addressing the interplay between the Florida Rules of Civil Procedure and s. 51.011, F.S.).

<sup>13</sup> S. 163.31801, the impact fee statute, uses "local government" inclusively to refer to counties, municipalities, and special districts. The statute distinguishes school districts from other local governments. See s. 163.31801(4), F.S.

<sup>14</sup> S. 163.31801(2), F.S.

<sup>15</sup> S. 163.31801(3), F.S.

<sup>16</sup> Currently, in Florida there are 67 counties, 413 municipalities, 1,091 independent special districts, and 637 dependent special districts. See ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appx. B, [http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&Committeeld=3025&Session=2019&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual Final.pdf](http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&Committeeld=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf) (last visited Apr. 3, 2019); Lists of Independent and Dependent Districts available through Dept. of Economic Opportunity, Special District Accountability Program, <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Apr. 3, 2019).

<sup>17</sup> *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla. 1991) (citing *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), rev. den. 440 So. 2d 352 (Fla. 1983)).

<sup>18</sup> See, e.g., Miami-Dade County Code of Ordinances ch. 33K, "Educational Facilities Impact Fee Ordinance"; Orange County Code of Ordinances ch. 23, art. V, "School Impact Fees."

<sup>19</sup> Art. VII, s. 9(a), art. IX, s. 4(b), Fla. Const.; s. 1011.71, F.S. See also *St. Johns County*, *supra* at 583 So. 2d 642.

<sup>20</sup> See art. VIII, ss. 1(f)-(g), (2), Fla. Const.

<sup>21</sup> S. 163.31801(2), F.S.

<sup>22</sup> In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(1). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues must be deposited. Orange County Code of Ordinances, ss. 23-142.

<sup>23</sup> See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

Some local governments require payment of impact fees prior to the issuance of a development or building permit.<sup>24</sup> In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.<sup>25</sup> A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.<sup>26</sup>

### Effect of Proposed Changes

CS/HB 7103 prohibits a local government from requiring payment of impact fees prior to the issuance of a building permit. The bill codifies the dual rational nexus test by requiring an impact fee to have a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction. Local governments must designate the funds collected by the impact fees for acquiring, constructing, or improving capital facilities to benefit new users. Impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction.

The bill also requires the local government to credit against the collection of the impact fee any contributions related to public educational facilities, whether provided in a proportionate share agreement or any other form of exaction. Any such contributions must be applied to reduce impact fees on a dollar-for-dollar basis at fair market value. If the local government adjusts the amount of impact fees, outstanding and unused credits must be adjusted accordingly. If a local government does not provide the proper credits for a project, it may not impose concurrency mitigation conditions on the project. The holder of impact or mobility fee credits in existence before an impact fee or mobility rates increase is entitled to a proportionate increase in his or her credit balance.

### **THE FLORIDA BUILDING CODE**

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>27</sup> Every local government must enforce the Building Code and issue building permits.<sup>28</sup> It is unlawful for an entity to construct, alter, repair, or demolish any building without first obtaining a permit from the local enforcing agency.<sup>29</sup>

Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections. In addition to required inspections, a local building official may require other inspections of any work to ensure it complies with the building code.<sup>30</sup>

#### *Private Providers (Section 7)*

In 2002, the Legislature created s. 553.791, F.S., allowing contractors and property owners to hire licensed building code administrators, engineers and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

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<sup>24</sup> See, e.g., Roads Impact Fee, ch. 2, art. VI, div. 2, s. 2-267(a), Land Development Code Lee County, Florida, [https://library.municode.com/fl/lee\\_county/codes/land\\_development\\_code?nodeId=LADECO\\_CH2AD\\_ARTVIIMFE](https://library.municode.com/fl/lee_county/codes/land_development_code?nodeId=LADECO_CH2AD_ARTVIIMFE) (last visited Apr. 3, 2019); Transportation Impact Fee, Ch. 56, Part I, s. 56-15.C.1, City of Orlando Code of Ordinances, [https://library.municode.com/fl/orlando/codes/code\\_of\\_ordinances?nodeId=TITIICICO\\_CH56IMFE](https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH56IMFE) (last visited Apr. 3, 2019); Road Impact Fees, Miami-Dade County Code of Ordinances, s. 33E-6.1(c), [https://library.municode.com/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH33EROIMFEOR\\_S33E-6.1PAROIMFE](https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH33EROIMFEOR_S33E-6.1PAROIMFE) (last visited Apr. 3, 2019).

<sup>25</sup> S. 553.79, F.S.

<sup>26</sup> S. 163.3164(16), F.S.

<sup>27</sup> S. 553.72, F.S.

<sup>28</sup> Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>29</sup> See ss. 125.56(4)(a) and 553.79(1), F.S.

<sup>30</sup> Ss. 107, 110.1, and 110.3, Sixth edition of the Florida Building Code.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. Auditing a private provider does not require a building official to replicate a private provider's plan review or inspection, but it does not prohibit it. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the building code. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.<sup>31</sup>

When a property owner or a contractor elects to use a private provider, he or she must notify the building official at the time of the permit application or no less than seven business days before the next scheduled inspection.<sup>32</sup>

A private provider who approves building plans must sign by sworn affidavit, on a form adopted by the commission, that the plans comply with the Building Code and the private provider is authorized to review the plans.<sup>33</sup>

Upon receipt of a building permit application from a private provider, a building official has 30 business days to grant the permit or deny the permit. Denying a permit automatically tolls the remaining 30 business days. If an applicant resubmits, the building official has the remainder of the tolled 30 business days plus five additional business days to grant or deny the permit. If the building official denies the permit a second time, the building official has five additional business days to review the resubmittal by the applicant.<sup>34</sup>

Before a private provider performs building inspections, he or she must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.<sup>35</sup>

Upon completion of all required inspections, a private provider must give the building official a record of all the inspections, a request for a certificate of completion, and a sworn statement stating the building complies with the building code. Upon receipt, the building official has two business days to issue the certificate of completion, deny the request for a certificate of completion, or issue a stop work order.<sup>36</sup>

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<sup>31</sup> S. 553.791(1), (13), and (18), F.S.

<sup>32</sup> S. 553.791(4)-(5), F.S.

<sup>33</sup> S. 553.791(6), F.S.

<sup>34</sup> S. 553.791(7), F.S.

<sup>35</sup> S. 553.791(8) and (18), F.S.

<sup>36</sup> S. 553.791(11)-(12), F.S.

## Effect of Proposed Changes

CS/HB 7103 expands the scope of services of a private provider by allowing them to approve plans and perform inspections for portions of a project that are not part of the building structure such as services involving the review of site plans and site work engineering plans. As part of this expansion, the bill includes two new definitions, as follows:

"Site-work" means the portion of a construction project that is not part of the building structure, including but not limited to, grading, excavation, landscape irrigation and the installation of driveways.

"Plans" means building plans, site engineering plans, site plans, or their functional equivalent submitted by a fee owner or fee owner's contractor to a private provider or duly authorized representative for review.

This expansion allows private providers to review applications and inspect work related to all aspects of development from site plan approval through vertical building construction.

The bill provides that a building official may not audit a private provider more than four times in a calendar year unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. The bill prohibits a building official from replicating the plan review or inspection performed by the private provider, unless expressly authorized.

The bill reduces the required minimum notification time to a local building official regarding the use of a private provider to two business days from seven business days prior to a scheduled inspection.

Timing of the permit application process is reduced to five business days, rather than 30 business days, for building officials to review an application from a private provider and either:

- Issue a permit,
- Provide the applicant written notice of deficiencies, or
- Allow the application to be deemed approved as a matter of law, if a deficiency notice was not provided.

If the applicant submits revisions, the bill provides 3 business days, rather than the current 5 business days, from the date of resubmittal for the building official to either issue the requested permit or provide a second written notice stating the remaining deficiencies. Additionally, the bill provides that a building official's review of a resubmitted permit application from a private provider is limited to the deficiencies cited in the written notice.

Currently, private providers performing plans review must certify that the plans comply with the Building Code on a form adopted by the commission. The bill changes the form requirement to one "reasonably acceptable" to the commission.

The bill allows the fee owner's contractor, which requested use of a private provider, to petition the circuit court for a writ of injunctive relief or other equitable relief if they believe the building official is not complying with the alternate plan review and inspection provisions of the statute.

The bill has an effective date of July 1, 2019.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 125.01055, F.S., relating to affordable housing.

**Section 2:** Amends s. 125.022, F.S., relating to development permits.

**Section 3:** Amends s. 166.033, F.S., relating to development permits.

**Section 4:** Amends s. 166.04151, F.S., relating to affordable housing.



**Section 5:** Amends s. 163.31801, F.S., relating to impact fees; short title; intent; definitions; ordinances levying impact fees.

**Section 6:** Amends s. 163.3215, F.S., relating to standing to enforce local comprehensive plans through development orders.

**Section 7:** Amends s. 553.791, F.S., relating to alternative plans review and inspection.

**Section 8:** Provides an effective date of July 1, 2019.

## 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:

The bill may delay when impact fees are collected, but it does not change the amount of such fees; thus, it does not restrict the amount of revenue local governments may raise nor require they expend additional amounts. Reflecting the possibility that payments may be delayed into later fiscal years than under current law, the Revenue Estimating Conference estimates the bill will have a negative indeterminate impact on local government revenues.

2. Expenditures:

None.

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

The bill may have a positive indeterminate impact on property development by establishing a timeframe for the issuance of development permits and orders and reducing the timeframes of plans inspections and reviews by private providers. The bill may also impact the private sector by affecting private financing of the change in timing of collecting the impact fees.

### 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:

This bill does not provide rulemaking authority or require executive branch rulemaking.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 3, 2019, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibited collecting an impact fee earlier than the time a building permit is issued.
- Codified the "dual rational nexus test" for impact fees.
- Required a local government to earmark impact fee revenue for capital facilities that benefit new residents.
- Prohibited using impact fee revenue to pay existing debt, except as specified.
- Required a local government to credit contributions related to public education facilities against impact fees.
- Provided full credit for prepaid impact fees at the value when paid.
- Prohibited a local government from imposing concurrency mitigation under certain conditions.

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