

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS  
FINAL BILL ANALYSIS**

**BILL #:** CS/CS/HB 7103      PCB COM 19-01      Community Development and Housing  
**SPONSOR(S):** State Affairs Committee; Judiciary Committee; Commerce Committee; Fischer and others  
**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	Jones	Poche
2) State Affairs Committee	14 Y, 8 N	Miller	Williamson
<b>FINAL HOUSE FLOOR ACTION:</b> <b>GOVERNOR'S ACTION:</b> Approved			
66	Y's    42	N's	

**SUMMARY ANALYSIS**

CS/CS/HB 7103 passed the House on April 25, 2019. The bill was amended in the Senate on May 3, 2019, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on May 3, 2019.

The bill makes the following changes to community development and housing regulations:

- Requires county or municipal inclusionary housing ordinances, if adopted, to include incentives that fully offset costs to the developer of its affordable housing contribution;
- Imposes time limits for a county or municipality to review applications for development orders or permits and provides procedures for addressing deficiencies;
- Requires comprehensive plans adopted after January 1, 2019, and their corresponding land use regulations, to incorporate existing development orders;
- Requires credits for certain contributions for public educational facilities to be allocated to reduce applicable impact fees on a dollar-for-dollar basis at fair market value for the entire impact fee imposed, rather than just those exactions imposed for any particular type of school;
- Prohibits requiring payment of impact fees prior to the issuance of a building permit;
- Provides minimum conditions that must be satisfied before imposing an impact fee, such as a proportional and reasonable connection for additional capital facilities or expenditure of funds;
- Modifies how impact fees may be used, imposed, or credited against;
- Allows either party in a development order challenge to utilize summary procedure and entitles the prevailing party to reasonable attorney fees and costs;
- Provides legislative findings about the need to develop affordable workforce housing and creates a new definition for “essential services personnel”;
- Expands the scope of private providers, limits how much may be charged for building inspections when a private provider is used, reduces timeframes for reviewing permit applications submitted by a private provider, and limits a local government’s authority to audit a private provider; and
- Allows condominium associations to continue to vote to waive fire sprinkler system retrofitting requirements and extends to January 1, 2024, the date local authorities may require a condominium association to retrofit fire sprinkler systems or an engineered life safety system.

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

The bill was approved by the Governor on June 28, 2019, ch. 2019-165, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### THE COMMUNITY PLANNING ACT

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,<sup>1</sup> also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.<sup>2</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>3</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>4</sup>

Municipalities established after the effective date of the Community Planning Act must adopt a comprehensive plan within three years after the date of incorporation.<sup>5</sup> The county comprehensive plan controls until a municipal comprehensive plan is adopted.<sup>6</sup>

#### *Land Development Regulations*

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>7</sup> Local governments are encouraged to use innovative land development regulations<sup>8</sup> and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.<sup>9</sup>

All local government land development regulations must be consistent with the local comprehensive plan.<sup>10</sup> Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.<sup>11</sup> However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.<sup>12</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.

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<sup>1</sup> See ch. 85-55, s. 1, Laws of Fla.

<sup>2</sup> See ch. 2011-139, s. 17, Laws of Fla.

<sup>3</sup> S. 163.3161(4), F.S.

<sup>4</sup> S. 163.3177(6)(f)1.g., F.S.

<sup>5</sup> S. 163.3167(3), F.S.

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

<sup>7</sup> S. 163.3202, F.S.

<sup>8</sup> S. 163.3202(3), F.S.

<sup>9</sup> Ss. 125.01055 and 166.04151, F.S.

<sup>10</sup> S. 163.3194(1)(b), F.S.

<sup>11</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

<sup>12</sup> S. 189.081(1), F.S.

### Effect of Proposed Changes (Sections 1 & 9)

The bill authorizes counties and municipalities to continue using inclusionary housing ordinances that require a developer to provide a specified number or percentage of affordable housing units within a development or, in lieu of, allow a developer to contribute to a housing fund or other alternative. In exchange, however, a county or municipality must provide incentives to fully offset all costs to the developer for its affordable housing contribution. Incentives may include:

- Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designations; or
- Reducing or waiving fees, such as impact fees or water and sewer charges.

These inclusionary housing ordinance requirements do not apply in the Florida Keys Area or the City of Key West, which are designated areas of critical state concern.

### *Issuing Development Orders and Permits*

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.<sup>13</sup> A development order is issued by the local government and grants, denies, or grants with conditions an application for a development permit.<sup>14</sup>

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>15</sup> Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.<sup>16</sup> If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant can request the county or municipality proceed to process the application for approval or denial.<sup>17</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>18</sup>

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

### Effect of Proposed Changes (Sections 2 & 8)

The bill 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 the local government to review and issue a letter to the applicant indicating that either the application is complete or specifying deficiencies within 30 days after receiving an application. If deficiencies are identified, the applicant has 30 days to submit the required additional information. Within 120 days after the application is deemed complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, 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.

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<sup>13</sup> S. 163.3164(16), F.S.

<sup>14</sup> See ss. 125.022, 163.3164(15), and 166.033, F.S.

<sup>15</sup> Ss. 125.022(1) and 166.033(1), F.S.

<sup>16</sup> *Id.*

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

<sup>18</sup> Ss. 125.022(2) and 166.033(2), F.S.

If both parties agree, the bill allows for the time limits to be reasonably extended, particularly in the event of a force majeure<sup>19</sup> or other extraordinary circumstance.

These timeframes and requirements do not apply in the Florida Keys Area or the City of Key West, which are designated areas of critical state concern.

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

### *Existing Land Development Orders*

A county or municipality is required to adopt or amend land development regulations within one year after submitting its comprehensive or revised comprehensive plan for review.<sup>20</sup> Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

### Effect of Proposed Changes (Sections 3 & 6)

The bill provides that a municipal comprehensive plan effective after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate a development order existing before the comprehensive plan’s effective date. The new municipal comprehensive plan may not impair a party’s ability to complete development in accordance with the development order and must vest the density<sup>21</sup> and intensity<sup>22</sup> approved by the development order without any limitations or modifications. The bill requires land development regulations to incorporate preexisting development orders.

### *Challenging a Development Order*

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 procedures for the local hearing process, providing an aggrieved or adversely affected party the opportunity to challenge the proposed decision of a local government granting or denying an application for

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<sup>19</sup> The Merriam-Webster Dictionary defines “force majeure” as an event or effect that cannot be reasonably anticipated or controlled.

<sup>20</sup> S. 163.3202(1), F.S.

<sup>21</sup> S. 163.3164(12), F.S., defines “density” as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

<sup>22</sup> S. 163.3164(22), F.S., defines “intensity” as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.

a development order. Review of the local government's final decision is by petition for writ of certiorari in the circuit court.<sup>23</sup>

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 in circuit court<sup>24</sup> no later than 30 days following rendition of a development order, or when all local administrative appeals are exhausted, whichever occurs later.<sup>25</sup>

Under s. 163.3215, F.S., 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.<sup>26</sup>

### Effect of Proposed Changes (Section 7)

The bill entitles either party to 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. The bill also entitles the prevailing party to recover reasonable attorney fees and costs.

Summary procedure<sup>27</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 all elements 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

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<sup>23</sup> S. 163.3215(4), F.S.

<sup>24</sup> See s. 26.012, F.S.

<sup>25</sup> S. 163.3215(3), F.S.

<sup>26</sup> S. 163.3215(2), F.S.

<sup>27</sup> S. 51.011, F.S. Summary procedure may apply to actions in circuit court and is not analogous to the procedure for small claims in county court to which the Florida Small Claims Rules apply. See R. 7.010, Fla. Sm. Cl.

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>28</sup>

## IMPACT FEES AND CONCURRENCY

Impact fees are amounts imposed by local governments<sup>29</sup> to fund local infrastructure required to provide for increased local services needs caused by new growth.<sup>30</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>31</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>32</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>33</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>34</sup> School districts have authority to impose ad valorem taxes within the district for school purposes<sup>35</sup> but are not general purpose governments with home rule power<sup>36</sup> and are not expressly authorized to impose impact fees.<sup>37</sup> Local governments imposing specific impact fees for education capital improvements typically collect the fees for

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<sup>28</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>29</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>30</sup> S. 163.31801(2), F.S.

<sup>31</sup> S. 163.31801(3), F.S.

<sup>32</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/loaddoc.aspx?PublicationType=Committees&Committeeld=3025&Session=2019&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual Final.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>33</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>34</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>35</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>36</sup> See art. VIII, ss. 1(f)-(g), (2), Fla. Const.

<sup>37</sup> S. 163.31801(2), F.S.

deposit directly into an account segregated for funding those improvements.<sup>38</sup> The ordinances creating the impact fee also require the funds be used only for education capital improvement projects.<sup>39</sup>

Some local governments require payment of impact fees prior to the issuance of a development or building permit.<sup>40</sup> In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.<sup>41</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>42</sup>

Local comprehensive plans must contain a capital improvements element designed to provide for the construction, extension, or increase in capacity of public facilities necessary to implement the plan. The purpose is to ensure the availability and adequacy of public facilities to meet established acceptable levels of service.<sup>43</sup> The capital improvements element must estimate the costs for such public facilities and when they will be needed.<sup>44</sup> The only public facilities subject to the concurrency requirement statewide are sanitary sewer, solid waste, drainage, and potable water.<sup>45</sup> Local governments are authorized to extend the concurrency requirement to additional types of public facilities.

A local government applying the concurrency requirement to transportation facilities must comply with the statutory requirements in order to achieve and maintain the level of service standard adopted in the comprehensive plan.<sup>46</sup> A local government that later repeals transportation concurrency is encouraged to apply statutory criteria to an alternative mobility funding system. A mobility fee-based funding system adopted by a local government must comply with the dual rational nexus test applicable to impact fees.<sup>47</sup>

Local governments may also apply concurrency to public education facilities.<sup>48</sup> With certain exceptions, when establishing such concurrency requirements the local government must enter into an interlocal agreement with the school district.<sup>49</sup> The interlocal agreement may authorize a contribution of land, construction, expansion, or payment for land acquisition, construction or expansion of a public school, or construction of a charter school, as proportionate-share mitigation. If so, the local government must credit such contribution towards any other impact fee or exaction on a dollar-for-dollar basis at fair market value.<sup>50</sup>

#### Effect of Proposed Changes (Sections 4 & 5)

With respect to school concurrency and proportionate share mitigation, the bill specifies that all provisions governing impact fees, in s. 163.31801, F.S., also apply to mobility fees. Additionally, the bill requires credit

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<sup>38</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>39</sup> See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

<sup>40</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>41</sup> S. 553.79, F.S.

<sup>42</sup> S. 163.3164(16), F.S.

<sup>43</sup> S. 163.3177(3), F.S.

<sup>44</sup> S. 163.3177(3)(a)2., F.S.

<sup>45</sup> S. 163.3180(1), F.S.

<sup>46</sup> S. 163.3180(5), F.S.

<sup>47</sup> S. 163.3180(5)(i), F.S.

<sup>48</sup> S. 163.3180(6)(a), F.S.

<sup>49</sup> Ss. 163.3177(1) and 163.3180(6)(i), F.S.

<sup>50</sup> S. 163.3180(6)(h)2.b., F.S.

for impact fees imposed for public educational facilities to be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.

The bill 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 be proportional and 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 increases an impact fee, the bill requires outstanding and unused credits be adjusted accordingly. The holder of impact or mobility fee credits in existence before an impact fee or mobility fee rate increase is entitled to a proportionate increase in his or her credit balance. This credit balance adjustment only applies prospectively.

The bill authorizes counties, municipalities, and special districts to provide exceptions or waivers of impact fees to encourage the development or construction of affordable housing. Providing such an exception or waiver does not require the local government to use other revenues to offset the impact.

In any action challenging the government's failure to provide the required dollar-for-dollar credits for the payment of impact fees for school concurrency, the government has the burden of proving by a preponderance of the evidence that the amount of the credit meets the requirements of state legal precedent and the provisions of this section of law. The bill prohibits the court from using a deferential standard for the benefit of the government.

The bill also clarifies that water and sewer connection fees are not treated as impact fees.

## **TOLLING AND EXTENSION OF PERMITS**

When the Governor issues a declaration of emergency, the period to exercise rights under a permit or other authorization is tolled (expiration date extended) for the duration of the emergency. The period remaining to exercise such rights is extended for six months in addition to the tolled period. The tolling and extension applies to the:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of a permit issued by the Department of Environmental Protection or a water management district under ch. 373, part IV, F.S.; or
- Buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.<sup>51</sup>

The statute recognizes two types of emergencies. A "manmade emergency" is caused by actions against persons or society, including without limitation enemy attack, sabotage, terrorism, civil unrest, or other

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<sup>51</sup> S. 252.363(1)(a), F.S.



action impairing the orderly administration of government.<sup>52</sup> A “natural emergency” is caused by natural events, including without limitation hurricane, storm, flood, severe wave action, drought, or earthquake.<sup>53</sup>

### Effect of Proposed Changes (Section 13)

The bill limits the extended period remaining to exercise rights under a permit or other authorization to during declarations of a state of emergency for a “natural emergency.” Extensions will no longer be applicable during a general state of emergency.

## **AFFORDABLE WORKFORCE HOUSING POLICY**

The Florida Housing Finance Corporation (FHFC) administers the financing of affordable housing in the state.<sup>54</sup> FHFC is authorized to participate in various federal housing grant programs, including drawing and administering certain funds and other resources made available to Florida.<sup>55</sup>

### Effect of Proposed Changes (Sections 10, 11, & 12)

The bill creates a statement of intent to create a state housing finance strategy to provide affordable workplace housing in specific areas of critical state concern. The statement includes findings on the reason for the continuing lack of affordable workforce housing and the detrimental impacts of such lack on essential services personnel. The bill replaces an old definition of “essential services personnel” with one more broadly applicable to all FHFC programs. The new definition applies to police or fire personnel, child care workers, teachers or other education personnel, health care personnel, public employees, and service workers.

## **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>56</sup> Every local government must enforce the Florida Building Code and issue building permits.<sup>57</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>58</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>59</sup>

### *Private Providers*

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>52</sup> S. 252.34(7), F.S.

<sup>53</sup> S. 252.34(8), F.S.

<sup>54</sup> S. 420.504(1), F.S.

<sup>55</sup> S. 420.507, F.S.

<sup>56</sup> S. 553.72, F.S.

<sup>57</sup> Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>58</sup> See ss. 125.56(4)(a) and 553.79(1), F.S.

<sup>59</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>60</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>61</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>62</sup>

Upon receipt of a building permit application from a private provider, a building official has 30 business days to grant 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>63</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>64</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>65</sup>

#### Effect of Proposed Changes (Section 14)

The bill expands the scope of services of private providers 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.

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<sup>60</sup> S. 553.791(1), (13), and (18), F.S.

<sup>61</sup> S. 553.791(4)-(5), F.S.

<sup>62</sup> S. 553.791(6), F.S.

<sup>63</sup> S. 553.791(7), F.S.

<sup>64</sup> S. 553.791(8) and (18), F.S.

<sup>65</sup> S. 553.791(11)-(12), F.S.

- “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 prohibits a local jurisdiction from charging fees for building inspections if a private provider is used; however, the local jurisdiction may charge a reasonable administrative fee.

The bill reduces the required minimum notification time to a local building official regarding the use of a private provider from seven business days to by 2 p.m. local time, two business days prior to first or next scheduled inspection.

Timing of the permit application process is reduced to 20 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 clarifies that the building official has the remainder of the tolled 20-day period plus 5 business days, from the date of resubmittal, 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 plan reviews 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.

## **FLORIDA FIRE PREVENTION CODE**

Florida’s fire prevention and control law, ch. 633, F.S., designates the state’s Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code) by rule every three years. The Fire Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire officials within each county, municipality, and special fire districts in the state.

The Fire Code requires existing multi-family buildings 75 feet or taller to be retrofitted with a fire sprinkler system or an engineered life safety system (ELSS). However, local governments may not require a residential condominium association to retrofit a building before January 1, 2020.

Currently, residential condominium associations may vote to waive the requirement to retrofit a building with a fire sprinkler system by a majority vote of the total voting interests.

For condominium associations that complete retrofitting, a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence of compliance with the Fire Code.<sup>66</sup>

### Effect of Proposed Changes (Sections 15, 16, and 17)

The bill allows condominium associations to continue to vote to waive fire sprinkler system retrofitting requirements and extends to January 1, 2024, the date local authorities may require a condominium association to complete retrofitting of a fire sprinkler system or an engineered life safety system. These provisions do not apply to timeshare condominium associations. The bill deletes the requirement that condominium associations accept a certificate of compliance as evidence that a unit has been retrofitted in accordance with the Fire Code.

The bill delays the date that a local authority may require a condominium to retrofit the common areas of a high-rise building with handrails and guardrails, which comply with the Fire Code, to the end of 2024. The bill also clarifies that individual balconies are not considered “common areas.”

Further, the bill directs the State Fire Marshal to issue a data call to local fire officials to collect data regarding high-rise condominiums greater than 75 feet in height, not retrofitted with a fire sprinkler system or an engineered life safety system. The submitted data is to include for each individual building, the address, the number of units, and the number of stories. A compiled report, by city and county, must be sent by September 1, 2020, to the Governor, President of the Senate, and the Speaker of the House of Representatives.

### **EFFECTIVE DATE**

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

## **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.

The bill limits how much a local jurisdiction may charge for building inspections performed by a private provider to a reasonable administrative fee. This may have a negative indeterminate impact on local government revenues to the extent local jurisdictions were charging full or reduced fees to private providers.

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<sup>66</sup> Ss. 718.112(2)(1), and 719.1055(5), F.S.

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 impact the private sector by affecting private financing of the change in timing of collecting the impact fees. The bill also may have a positive indeterminate impact on property development by requiring a mobility fee-based funding system to be governed by the same statute governing impact fees and by requiring credits given for contributions to public educational facilities under the concurrency statute be based on the total impact fee assessed.

The bill extends the deadline for condominium associations to become compliant with fire sprinkler system and ELSS retrofitting requirements to 2024 and allows condominium associations to continue to vote to waive fire sprinkler retrofitting requirements. This may have an initial positive economic impact on some condominium owners. Those associations that vote to waive fire sprinkler system installation requirements will still be required to comply with, the likely less expensive, ELSS requirements. The cost of installation of such systems may be offset by a reduction in property insurance rates based on an insurer's consideration of the installation of a life safety system in setting rates. However, any positive economic impact based on waiving fire sprinkler requirements or delaying the installation of a life safety system could be offset by the negative economic impact and loss of life that could occur if a fire breaks out and a life safety system is not in place.

- D. FISCAL COMMENTS:  
None.