

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 250

INTRODUCER: Fiscal Policy Committee, Community Affairs Committee, and Senator Martin

SUBJECT: Natural Emergencies

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Hunter</u>	<u>Yeatman</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 250 makes various changes throughout Florida Statutes regarding the preparation and response activities of state and local government when natural emergencies impact the state.

Specifically, the bill:

- Requires the Division of Emergency Management to post on its website a model debris removal contract for the benefit of local governments.
- Encourages local governments to create emergency financial plans in preparation for major natural disasters.
- Provides that counties and municipalities cannot prohibit a resident from placing a temporary residential structure on their property for up to 36 months following a natural emergency under certain circumstances.
- Authorizes local governments to create specialized building inspection teams following a natural disaster and encourages interlocal agreements for additional building inspection services during a state of emergency.
- Requires local governments to expedite the issuance of permits following a natural disaster.
- Increases the extension of certain building permits following a declaration of a state of emergency from six to 24 months and caps such extension at 48 months in the event of multiple natural emergencies.
- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from increasing building fees until October 1, 2024.
- Allows registered contractors to engage in contracting for the types of work covered by their registration within areas for which a state of emergency has been declared.

- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from adopting more restrictive or burdensome procedures to its comprehensive plan or land development regulations concerning review, approval, or issuance of a site plan, development permit, or development order before October 1, 2024.
- Extends the date for fire control districts to submit the statutorily-required performance reviews in the event of a natural disaster or a major hurricane.
- Amends the Consultants' Competitive Negotiation Act to allow for additional disaster-related construction projects relating to Hurricane Ian to utilize the "continuing contracts" provision through December 31, 2023.
- Makes the Local Government Emergency Bridge Loan Program a *revolving* program and makes funds available for local governments impacted by federally declared disasters until July 1, 2038. Additionally, the bill appropriates \$50 million in nonrecurring funds from the General Revenue Fund to the program.
- Provides clarification regarding the 45 day grace period following a hurricane in which owners must bring a derelict vessel into compliance before being charged with a violation.
- Directs the Division of Emergency Management to administer a revolving loan program for local government hazard mitigation projects, and appropriates \$1,000,000 in nonrecurring funds from the General Revenue Fund and \$10,000,000 in nonrecurring funds from the Federal Grants Trust Fund for such activity. Such funds will be held in reserve, contingent upon FEMA approval and release by the Legislative Budget Commission.
- Requires property insurers doing business within the state to annually submit a claims handling manual to the Office of Insurance Regulation (OIR).
- Appropriates \$971,331 in recurring funds and \$37,456 in nonrecurring funds from the Insurance Regulatory Trust Fund to fund eight new positions at the OIR for hurricane-related market conduct activity.

The bill takes effect on July 1, 2023, unless otherwise expressly provided.

II. Present Situation:

The present situation for each issue in the bill is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Present Situation:

State Emergency Management Act

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.¹ In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.²

¹ Section 252.311(1), F.S.

² Section 252.311(2), F.S.

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.³

The responsibilities of the division include:

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.⁴

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency⁵ has occurred or is imminent, he or she must declare a state of emergency.⁶ An executive order or proclamation of a state of emergency shall identify whether the state of emergency is due to a minor,⁷ major,⁸ or catastrophic⁹ disaster.¹⁰ The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.¹¹ Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.¹²

In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. A state of emergency provides the governor with additional authority not otherwise present, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation.¹³ To effectively facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.¹⁴

Through this emergency power, the Governor can suspend the provisions of any regulatory statute if compliance would prevent, hinder, or delay necessary action to deal with the emergency. Further, as designated by the Governor or in emergency management plans, state

³ Sections 252.32(1)(a) and 252.34(3), F.S.

⁴ Section 252.35(1) and (2), F.S.

⁵ "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. *See s. 252.34(4)*, F.S.

⁶ Section 252.36(2), F.S.

⁷ "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance. *See s. 252.34(2)(c)*, F.S.

⁸ "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. *See s. 252.34(2)(b)*, F.S.

⁹ "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement. *See s. 252.34(2)(a)*, F.S.

¹⁰ Section 252.36(4)(c), F.S.

¹¹ *Supra* note 6.

¹² Section 252.36(3), F.S.

¹³ *See s. 252.36(6)*, F.S.

¹⁴ Section 252.36(1)(b), F.S.

agencies, local governments, and others can make, amend, and rescind orders and rules as necessary for emergency management purposes. However, these orders and rules cannot conflict with orders of the Governor, the division, or other state agencies delegated emergency powers by the Governor.

Presidential Disaster and Emergency Declarations

When there is a disaster in the United States, the Governor of an affected state must request an emergency and major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.¹⁵ All emergency and disaster declarations are made at the discretion of the President of the United States.¹⁶ There are two types of disaster declarations, emergency declarations and major disaster declarations.¹⁷ Both declarations allow for federal assistance to states and local governments, however they differ in scope, types, and amount of assistance available.¹⁸ Primary federal disaster assistance administered by the Federal Emergency Management Agency (FEMA) is provided via the Individual Assistance Program and the Public Assistance Grant Program. The scope of an event will determine which categories within each program are available to affected states.

One component of the Public Assistance Grant Program is the provision of direct assistance or reimbursement to state and local governments for the costs of removing debris and wreckage from public and private property.

Effect of Proposed Changes:

Section 1 creates s. 125.023, F.S., to provide that a county must allow for a resident to place a temporary structure on residential property if the permanent residential structure was damaged and rendered uninhabitable during a natural emergency¹⁹ for which the Governor declared a state of emergency. The temporary structure may be placed on the property for up to 36 months after the date of the declaration of emergency or until a certificate of occupancy is issued for the permanent residential structure, whichever occurs first. A temporary structure includes, but is not limited to, a recreational vehicle, trailer, or similar structure.

Residents must live in the temporary structure and be making a good faith effort to rebuild or renovate the damaged permanent residential structure including, but not limited to, applying for a building permit, submitting a plan or design to the county, or obtaining a construction loan. The temporary shelter must be connected to water and electric utilities and cannot present a threat to health and human safety.

Section 2 creates s. 166.0335, F.S., to make identical changes to section 1, as applied to municipalities.

¹⁵ 2 U.S.C. §§ 5121-5207

¹⁶ FEMA, *How a Disaster Gets Declared*, available at: <https://www.fema.gov/disaster/how-declared> (last visited March 14, 2023.)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ “Natural emergency” means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. *See* s. 252.34(8), F.S.

Section 4 amends s. 252.35(2), F.S., to require the Division of Emergency Management to post a model of a local government contract for debris removal to their website no later than June 1, 2023, and to post an updated model no later than June 1 of each subsequent year.

This section also requires the division to prioritize technical assistance and training to fiscally constrained counties²⁰ as defined in s. 218.67, F.S., on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

Additionally, this section directs the division to administer a revolving loan program for local government hazard mitigation projects. This provision will allow the division to receive grant funding from FEMA to administer the Safeguarding Tomorrow Revolving Loan Fund Program, described in more detail below.

This section is effective upon becoming law.

Section 6 creates s. 252.391, F.S., to encourage local governmental entities to create emergency financial plans for major natural disasters, including, among other things, a calculation of the costs for the event and the financial resources available to recover from the event. The plan should also identify alternative funding strategies in the event that the local governmental entity would be unable to financially address the natural disaster.

Present Situation:

Safeguarding Tomorrow Revolving Loan Fund Program

The Safeguarding Tomorrow through Ongoing Risk Mitigation (“STORM”) Act, which became federal law on January 1, 2021, authorizes FEMA to provide capitalization grants to states and federally recognized tribes to establish revolving loan programs for hazard mitigation. The revolving loan funds will be used by local governments to fund projects to increase resiliency and mitigate the impacts of natural hazards including drought; severe storms, including hurricanes, tornadoes, windstorms, cyclones, and severe winter; storms; wildfires; earthquakes; flooding; shoreline erosion; high water levels; and storm surges.²¹

Under the Safeguarding Tomorrow Revolving Loan Fund Program, local governments can apply to the state entity for such loans with an interest rate of no more than 1 percent, which must be repaid by the local government no later than 20 years after the date the project is completed, or 30 years for projects in low-income areas.²² The Safeguarding Tomorrow Revolving Loan Fund Program represents the first time that a revolving loan fund has been set up to fund hazard mitigation.

²⁰ Each county that is entirely within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1, shall be considered a fiscally constrained county. There are currently 29 fiscally constrained counties.

²¹ Division of Emergency Management, *STORM Revolving Loan Fund - FAQ*, available at <https://www.floridadisaster.org/globalassets/dem/mitigation/storm/storm-rlf-faq-3-13-2023.pdf> (last visited March 24, 2023)

²² *Id*

In December 2022, FEMA released the Notice of Funding Opportunity making available \$50 million for revolving loan program funding.²³ The Division of Emergency Management intends to apply to FEMA by April 29, 2023, for a capitalization grant to establish a revolving loan program for the state of Florida.²⁴ The division issued a public notice seeking proposals from communities to develop a project proposal list to accompany its application to FEMA.²⁵

Effect of Proposed Changes:

Section 17 appropriates \$1,000,000 in nonrecurring funds from the General Revenue Fund and \$10,000,000 in nonrecurring funds from the Federal Grants Trust Fund to the Division of Emergency Management to fund the Safeguarding Tomorrow Revolving Loan Program. The division may submit a budget amendment to the Legislative Budget Commission to release the funds, which is contingent upon documentation of an award or other approval by FEMA and the division's approved intended use plan for the funds.

Present Situation:

Registered Contractors

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR).²⁶ The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.²⁷ The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.²⁸

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.²⁹

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.³⁰

²³ Division of Emergency Management, *STORM Revolving Loan Fund*, available at <https://www.floridadisaster.org/dem/mitigation/safeguarding-tomorrow-through-ongoing-risk-mitigation-storm-revolving-loan-fund/> (last visited March 24, 2023).

²⁴ *Id.*

²⁵ Division of Emergency Management, *Public Notice RE Safeguarding Tomorrow Revolving Loan Fund*, available at [storm-rlf-public-notice-3-13-2023.pdf \(floridadisaster.org\)](https://www.floridadisaster.org/storm-rlf-public-notice-3-13-2023.pdf) (last visited March 24, 2023).

²⁶ See ss. 489.105, 489.107, and 489.113, F.S.

²⁷ Section 489.107(1), F.S.

²⁸ Section 489.107, F.S.

²⁹ See ss. 489.105(6)-(8) and (11), F.S.

³⁰ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

“Registered contractors” are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.³¹

Effect of Proposed Changes:

Section 11 amends s. 489.117, F.S., to allow registered contractors to engage in contracting for the types of work covered by their registration within any area for which a state of emergency has been declared for a natural emergency. This authorization will end 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the contractor for violations occurring outside the licensing jurisdiction under these circumstances.

This section is effective upon becoming a law.

Present Situation:

Building Permits and Inspections

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.³²

Every local government must enforce the Florida Building Code and issue building permits.³³ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit.³⁴

A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.³⁵ Such fees shall be used solely for carrying out the local government’s responsibilities in enforcing the Building Code.³⁶ Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building plans, building inspections, reinspections, building permit processing, and fire inspections.³⁷ Local governments must post all building permit and inspection fee schedules on its website.³⁸

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections.³⁹ Construction work may not be done beyond a certain point until it passes an inspection.

³¹ Section 489.117, F.S.

³² Section 553.72, F.S.

³³ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

³⁴ Sections 125.56(4)(a), 553.79(1), F.S.

³⁵ Section 553.80 F.S.

³⁶ *Id.*

³⁷ Section 553.80 (7)(a)(1)

³⁸ Section 125.56 (4)(c) F.S., Section 166.222(2) F.S.

³⁹ Section 110 Seventh edition of the Florida Building Code (Building).

Current law provides a set of deadlines for ordinary processing of a building permit, chief among them that a local government must approve, approve with conditions, or deny an application for a building permit within 120 days following receipt of a completed application.⁴⁰ Various laws require or encourage local governments to further expedite the permitting process in certain situations, such as for the construction of public schools, state colleges and universities⁴¹ and affordable housing.⁴²

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.⁴³

Effect of Proposed Changes:

Section 7 amends s. 252.40, F.S., to encourage municipalities and counties to create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations following a natural disaster, and establish interlocal agreements with other jurisdictions to provide additional building inspection services during a state of emergency.

The bill additionally encourages local governments to develop and adopt plans to provide accommodations for contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. The bill provides that public areas such as fairgrounds and parking lots may be used for tents and trailers for temporary accommodations.

Section 12 creates s. 553.7922, F.S., to require local governments to approve special processing procedures to expedite the issuance of permits following a natural emergency for which the Governor has declared a state of emergency. Permits to be expedited pursuant to this section are those which do not require technical review, including, but not limited to permits for: roof repairs; reroofing; electrical repairs; service changes; or the replacement of one window or door. Local governments are also permitted to waive application and inspection fees for permits expedited under this section.

Section 13 amends s. 553.80, F.S., to, as of January 1, 2023, prohibit local governments located in areas designated in the FEMA disaster declarations for Hurricanes Ian and Nicole⁴⁴ from raising building inspection fees until October 1, 2024.

This section expires on June 30, 2025, and is effective upon becoming law.

⁴⁰ Section 553.792(1)(a), F.S.

⁴¹ Section 553.80(6)(b)2., F.S.

⁴² See sections 403.973(3), 420.5087(6)(c)8., and 553.80(6)(b)1., F.S.

⁴³ S. 110.3.10, Seventh Edition of the Florida Building Code (Building).

⁴⁴ All 67 counties in Florida were designated within the FEMA disaster declaration for Hurricane Ian and 61 counties for Hurricane Nicole.

Present Situation:**Tolling of Permits during Emergencies**

Under s. 252.363, F.S., when the Governor declares a state of emergency for a natural emergency, the period to exercise rights under a permit or other authorization is tolled 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 emergency tolling and extension expressly applies to the following permits and authorizations:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of an environmental resource permit issued by the Department of Environmental Protection (DEP) or a water management district under ch. 373, part IV, F.S.; or
- Expiration of consumptive use permits issued by DEP or a water management district under Part II of ch. 373, F.S. related to land subject to a development agreement in which the permittee and developer are the same or a related entity.
- The buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.
- Expiration of development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity⁴⁵

To receive the benefit of tolling and extension of a permit, the holder must follow the procedure outlined in s. 252.363(1)(b), F.S. Specifically, within 90 days after the emergency declaration's termination, the permit holder must provide written notice of the intent to exercise the tolling and extension. The written notice must identify the specific permit or authorization qualifying for the extension to the issuing authority. Once the permitholder has satisfied this procedure, the tolling and extension are granted as a matter of law, and no further action on the part of the issuing authority is needed.⁴⁶

The tolling and extension of permits and other authorizations does not apply to the following:

- A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies;
- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers;
- The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action; and

⁴⁵ Section 252.363(1)(a), F.S.

⁴⁶ “Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute.” See Op. Att’y Gen. Fla. 12-13 (2012), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDDBEC852579EB00743D48> (last visited Mar. 13, 2023).

- A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted due to a state of emergency.⁴⁷

Effect of Proposed Changes:

Section 5 amends s. 252.363(1)(a), F.S., to increase the extension of certain building permits following a declaration of a state of emergency from six to 24 months. The extension is capped at 48 months in the event of multiple natural emergencies.

Present Situation:

Independent Special Fire Control District Performance Reviews

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.⁴⁸ The Independent Special Fire Control District Act⁴⁹ provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.⁵⁰

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.⁵¹ A district also may levy non-ad valorem assessments.⁵² The district board may adopt a schedule of reasonable fees for services performed.⁵³ Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.⁵⁴

In 2021,⁵⁵ the Legislature mandated a performance review schedule of certain independent special districts, which included fire control districts, to evaluate district programs, activities, and functions.⁵⁶ Beginning October 1, 2022, and every five years thereafter, every independent special fire control district must have a performance review conducted.⁵⁷ The Office of Program Policy Analysis and Government Accountability must conduct the performance review for special fire control districts that are located in a rural area of opportunity.⁵⁸ The final report of the performance review must be filed with the governing board of the district, the Auditor

⁴⁷ Section 252.363(1)(d), F.S.

⁴⁸ Section 191.003(5), F.S.

⁴⁹ Chapter 191, F.S.

⁵⁰ Section 191.002, F.S.

⁵¹ Sections 191.009(1), F.S. *see* art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage “authorized by law approved by vote of the electors.”)

⁵² Section 191.009(2), F.S.

⁵³ Section 191.009(3), F.S.

⁵⁴ Section 191.009(4), F.S.

⁵⁵ Chapter 2021-226 Laws of Fla.

⁵⁶ Section 189.0695, F.S.

⁵⁷ Section 189.0695(2)(d), F.S.

⁵⁸ Section 189.0695 (2)(b), F.S.

General, the President of the Senate, and the Speaker of the House of Representatives no later than 9 months from the beginning of the district's fiscal year (i.e., July 1st).⁵⁹

Effect of Proposed Changes:

Section 3 amends s. 189.0695, F.S., to allow independent special fire control districts to submit performance reviews 15 months after the beginning of the district's fiscal year in the event of a natural disaster, or 24 months after the beginning of the fiscal year in the event of a hurricane rated category 3 or higher. This section applies retroactively to the reviews required to have been conducted by October 1, 2022, and the final report otherwise due by July 1, 2023.

Present Situation:

Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,⁶⁰ which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),⁶¹ which is modeled after the Brooks Act. The CCNA requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.⁶²

CCNA Procurement Process

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000; or
- A planning or study activity, when the fee for professional services exceeds \$35,000.⁶³

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. During

⁵⁹ Section 189.0695(2)(c), F.S. The fiscal years of each independent special fire control district begins October 1 of a calendar year.

⁶⁰ Public Law 92-582, 86 Stat. 1278 (1972).

⁶¹ Chapter 73-19, Laws of Fla., codified as s. 287.055, F.S.

⁶² Section 287.055, F.S.

⁶³ Section 287.055(3)(a)1., F.S.

this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.⁶⁴

Continuing Contracts under the CCNA

The CCNA explicitly states it does not prohibit a continuing contract⁶⁵ between a firm and an agency.⁶⁶ A continuing contract is a contract for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects.⁶⁷ The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.⁶⁸

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed \$4 million, for study activities if the fee for professional services for each study does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.⁶⁹

Effect of Proposed Changes:

Section 8 amends s. 287.055(2)(g), F.S., to temporarily allow continuing contracts under the CCNA for construction projects related to Hurricane Ian site specific response or remediation that do not exceed \$15 million per project. This provision applies to contracts executed through December 31, 2023, and is effective upon becoming a law.

Section 9 provides for the future expiration and reversion of statutory text in section 8 on July 1, 2026.

⁶⁴ Section 287.055(5), F.S.

⁶⁵ Section 287.055(2)(g), F.S.

⁶⁶ Section 287.055(4)(d), F.S.

⁶⁷ Section 287.055(2)(g), F.S.

⁶⁸ *Id.*

⁶⁹ Section 287.055(2)(g), F.S.

Present Situation:

Community Planning

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.⁷⁰ Each county and municipality must maintain a comprehensive plan to guide future development.⁷¹

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.⁷² A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.⁷³

A comprehensive plan is implemented through the adoption of land development regulations⁷⁴ that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.⁷⁵ Such regulations must, among other prescriptions, regulate the subdivision of land and the use of land for the land use categories in the land use element of the comprehensive plan.⁷⁶ Substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the comprehensive plan.⁷⁷

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.⁷⁸

⁷⁰ Section 163.3167(1), F.S.

⁷¹ Section 163.3167(2), F.S.

⁷² Section 163.3194(3), F.S.

⁷³ Section 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.

⁷⁴ "Land development regulations" means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213. See s. 163.3164(26), F.S.

⁷⁵ Section 163.3202, F.S.

⁷⁶ *Id.*

⁷⁷ Section 163.3213, F.S.

⁷⁸ Sections 163.3174(4)(a) and 163.3184, F.S.

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."⁷⁹ When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. 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."⁸⁰ Once a local government has officially granted or denied a development permit, the official action constitutes a development order.⁸¹ A development order vests certain rights related to the land.⁸²

Effect of Proposed Changes:

Section 14 provides that a county or municipality in an area designated as a disaster declaration for Hurricane Ian or Hurricane Nicole⁸³ shall not adopt more restrictive or burdensome procedures to its comprehensive plan or land development regulations concerning the review, approval or issuance of a site plan, development permit, or development order, or propose any such adoption of amendment before October 1, 2024. This subsection applies retroactively to September 29, 2022. Any comprehensive plan amendment, land development regulation, development permit, or development order approved by a county or municipality under procedures adopted before the effective date of this act may be enforced.

Present Situation:

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent.⁸⁴ It is unlawful to store, leave, or abandon any derelict vessel in this state.⁸⁵

Abandoned Vessels

"Abandoned property"⁸⁶ means all tangible personal property that does not have an identifiable owner and that has been disposed of on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels, as defined in state law.

⁷⁹ Section 163.3164(14), F.S.

⁸⁰ *Id.* at (16).

⁸¹ *See id.* at (15).

⁸² *See* s. 163.3167(3), F.S.

⁸³ All 67 counties in Florida were designated within the federal disaster declaration for Hurricane Ian, and 61 counties for Hurricane Nicole.

⁸⁴ Section 823.11(1)(b), F.S.

⁸⁵ Section 376.15, F.S.; s. 823.11(2), F.S.

⁸⁶ Section 705.101(3), F.S.

When a derelict vessel or a vessel declared to be a public nuisance is on the waters of the state, a law enforcement officer must place a notice of removal on the vessel. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner, and must mail a copy of the notice to the owner.⁸⁷

If, after 21 days of posting and mailing the notice, the owner has not removed the vessel from the waters of the state or shown reasonable cause for failure to do so, the law enforcement agency may remove, destroy, or dispose of the vessel.⁸⁸ A person may not be charged with a violation by law enforcement within 45 days after a hurricane has passed over the state.⁸⁹

The owner of a derelict vessel or a vessel declared to be a public nuisance who does not remove the vessel after receiving notice, is liable to the law enforcement agency for all costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal.⁹⁰ Upon the final disposition of the vessel, the law enforcement officer must notify the owner of the amount owed. A person who neglects or refuses to pay the amount owed is not entitled to be issued a certificate of registration for the vessel, or any other vessel, until such costs have been paid.⁹¹

Local governments are authorized to enact and enforce regulations to implement the procedures for abandoned or lost property that allow a local law enforcement agency, after providing written notice, to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property.⁹²

Removal of Derelict Vessels

The FWC's Division of Law Enforcement and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.⁹³ Sections 376.15 and 823.11, F.S., both address the treatment of derelict vessels. Much of the language between the two statutes is duplicative.⁹⁴

Both state and local law enforcement are authorized and empowered to relocate, remove, store, destroy, or dispose of a derelict vessel from waters of the state if the derelict vessel threatens navigation or is a danger to the environment, property, or persons.⁹⁵ The FWC officers and other law enforcement agency officers or contractors who perform relocation or removal activities at the FWC's direction are required to be licensed, insured, and properly equipped to perform the services to be provided.⁹⁶

⁸⁷ Section 705.103(2), F.S.

⁸⁸ *Id.*

⁸⁹ Section 823.11 (2)(b)2.b, F.S.

⁹⁰ Section 705.103(4), F.S.

⁹¹ *Id.*

⁹² Section 327.60(5), F.S.

⁹³ Section 327.70, F.S.

⁹⁴ Section 376.15, F.S.; s. 823.11, F.S.

⁹⁵ Section 823.11(3), F.S.; s. 376.15(3)(a), F.S.

⁹⁶ Section 823.11(3)(c), F.S.; s. 376.15(3)(c), F.S.

The costs incurred by the FWC or another law enforcement agency for relocating or removing a derelict vessel are recoverable against the vessel owner.⁹⁷ A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by its disposal, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.⁹⁸

The FWC has the authority to provide grants, funded from the Marine Resource Conservation Trust Fund or the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of this state, if funds are appropriated for the grant program.⁹⁹ However, each fiscal year, if all program funds are not requested by and granted to local governments for the removal of derelict vessels by the end of the third quarter, the FWC may use the remainder of the funds to remove, or pay private contractors to remove, derelict vessels.¹⁰⁰ Pursuant to this, the FWC established the Derelict Vessel Removal Grant Program in 2019.¹⁰¹ Grants are awarded based on a set of criteria outlined in FWC rules.¹⁰²

Effect of Proposed Changes:

Section 16 amends s. 823.11(2), F.S., to provide clarification regarding the 45 day grace period following a hurricane owners have to bring a derelict vessel into compliance before they will be charged with a violation and the vessel will be removed.

Present Situation:

Local Government Emergency Response Bridge Loan

Early in 2023, the Legislature created s. 288.066, F.S., to establish the Local Government Emergency Response Bridge Loan within the Department of Economic Opportunity (DEO)¹⁰³ to provide financial assistance to local governments impacted by Hurricane Ian or Hurricane Nicole. The purpose of the loan program is to assist these local governments in maintaining operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.¹⁰⁴

The loans may be issued during the 2022-2023 fiscal year or the 2023-2024 fiscal year, subject to appropriation.¹⁰⁵ The loans are interest-free with the loan amount determined based upon

⁹⁷ Section 823.11(3)(a), F.S.; s. 376.15(3)(a), F.S.

⁹⁸ Section 705.103(4), F.S.

⁹⁹ Section 376.15, F.S.

¹⁰⁰ Section 376.15, F.S.

¹⁰¹ FWC, *FWC Derelict Vessel Removal Grant Program Guidelines*, 2 (2019), available at <https://myfwc.com/media/22317/dv-grant-guidelines.pdf> (last visited March 11, 2023). Incorporated by reference in Fla. Admin. Code R. 68-1.003.

¹⁰² *Id.*

¹⁰³ Section 288.066 F.S.

¹⁰⁴ Section 288.066 (1), F.S.

¹⁰⁵ Section 288.066 (6)(a), F.S.

demonstrated need.¹⁰⁶ The loans must be paid back within one year, unless extended by up to six months by the DEO based on the local government's financial condition.¹⁰⁷

To be eligible a local government must be a county or municipality located in an area designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole.¹⁰⁸ Also, the local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the hurricane and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations.¹⁰⁹

A local government may only use loan funds to continue local governmental operations or to expand and modify such operations to meet disaster-related needs.¹¹⁰ The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure. The DEO must coordinate with the Division of Emergency Management to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.¹¹¹

This program expires June 30, 2027. As loans are repaid, the DEO will remit the payments back to the General Revenue Fund and upon expiration, the DEO must return all unencumbered funds and loan payments back to the General Revenue Fund.¹¹²

Effect of Proposed Changes:

Section 10 amends s. 288.066, F.S., requiring the Local Government Emergency Bridge Loan Program to become a revolving program and make funds available for local governments impacted by federally declared disasters until July 1, 2038. The program is renamed the Local Government Emergency Revolving Bridge Loan Program.

Upon the issuance of a federal disaster declaration, the DEO shall provide notice of application requirements and the total amount of funds available and make loan information available to eligible local governments. The eligible local government must submit a loan application within 12 months from the date that a federal disaster was declared. The section further creates an application process and sets forth the conditions that must be met by a local government in order to receive funds under the program. Reasons for a loan application denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs. Lastly, this section sets forth the obligations of the DEO to administer the program and manage repayments.

Section 19 appropriates \$50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the bridge loan program. This section also

¹⁰⁶ Section 288.066 (3), F.S.

¹⁰⁷ Section 288.066 (3)(c), F.S.

¹⁰⁸ Section 288.066 (2), F.S.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Section 288.066 (6)(b), F.S.

¹¹² Section 288.066(8), F.S.

directs any funds that have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, to be transferred to the Economic Development Trust Fund to be used for the Local Government Emergency Revolving Bridge Loan Program established by the bill. Lastly, all loans made pursuant to the existing Local Government Emergency Bridge Loan Program must be repaid into the Economic Development Trust Fund and be made available for loans under the revolving loan program provided in the bill.

Present Situation:

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.¹¹³ As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.¹¹⁴ The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.¹¹⁵ As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.¹¹⁶ The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.¹¹⁷

Each insurer must file with the OIR their basic insurance policy or annuity contract forms and any application form that is to be made a part of the policy or contract.¹¹⁸ These forms may not be delivered or issued for delivery unless the form has been filed with the office.¹¹⁹ All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the OIR containing various financial data, including audited financial statements, actuarial opinions, and certain claims data.¹²⁰

Market Conduct Examinations

The OIR is authorized to perform a market conduct examination of, among other entities, any authorized insurer.¹²¹ The purpose of the examination is to determine the entity's compliance with Florida law.¹²² The costs of the examination are to be paid by the subject entity.¹²³

¹¹³ Section 20.121(3)(a), F.S. The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the Financial Services Commission appoints the commissioner of the Office of Insurance Regulation.

¹¹⁴ Section 624.418, F.S.

¹¹⁵ Section 624.316(1)(a), F.S.

¹¹⁶ Section 624.318(2), F.S.

¹¹⁷ Section 624.3161, F.S.

¹¹⁸ Section 627.410, F.S.

¹¹⁹ *Id.*

¹²⁰ Section 624.424, F.S.

¹²¹ Section 624.3161(1), F.S.

¹²² *Id.*

¹²³ Section 624.3161(4), F.S.

If the examination reveals that the “insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders,” the OIR may order the insurer to file its claims-handling practices and procedures with the OIR for review and inspection.¹²⁴ The practices and procedures are to be held by the OIR for 36 months and are considered public records, not trade secrets, during the 36-month period.¹²⁵ The term, “claims-handling practices and procedures,” is defined as “any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured’s claims for benefits under any policy will be processed.”¹²⁶

Effect of Proposed Changes:

Section 15 creates s. 627.4108, F.S., to provide that in the interest of ensuring that property insurers are able to properly handle insurance claims during natural disasters, catastrophes, and other emergencies, each authorized property insurer and eligible surplus lines property insurer conducting business in this state must submit any and all claims handling manuals to the OIR:

- On or before August 1, 2023;
- Annually thereafter, on or before May 1 of each calendar year; and
- Within 30 days of any updates or amendments to such manual.

The insurer must include with each such submission an attestation on a form prescribed by the OIR stating that the insurer's claims handling manual complies with the requirements of Florida Insurance Code and comports to usual and customary industry claims handling practices, and that the insurer maintains adequate resources available to implement the requirements of its claims handling manual at all times, including during extreme catastrophic events.

The OIR may, as often as it deems necessary, conduct market conduct examinations under s. 624.3161, F.S., of insurers to ensure compliance with claims such claims manual provisions.

Section 18 appropriates \$971,331 in recurring funds and \$37,456 in nonrecurring funds from the Insurance Regulatory Trust Fund and provides 8 new positions to the Office of Insurance Regulation for hurricane related market conduct activity.

Effective Date

Section 20 provides that the bill will take effect on July 1, 2023, unless otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹²⁴ Section 624.3161(6), F.S.

¹²⁵ *Id.*

¹²⁶ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may have a positive, yet indeterminate fiscal impact on private sector businesses that provide professional services under the CCNA, by allowing those entities to enter into larger contracts for specified disaster relief projects under a continuing contract.

Registered contractors who are able to work outside of their jurisdiction during a state of emergency may see increased positive fiscal impact due to increased business.

There may be a negative fiscal impact on property insurers in the state to comply with claims manual submittal and market conduct review activities, but is likely insignificant.

C. Government Sector Impact:

The bill will likely have an insignificant negative fiscal impact on local governments, as many of the bill provisions are permissive rather than mandatory. Provisions that limit a local government's ability to raise building fees for a defined period of time or that require local governments to expedite building permits during emergencies may have a negative, but likely insignificant, fiscal impact.

By allowing state and local governments to enter into larger contracts for specified disaster relief construction projects under a continuing contract, the state or a local government may save on contractual and workload expenditures associated with the procurement of such projects.

The bill appropriates \$50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the Local Government Emergency Revolving Bridge Loan Program.

The bill appropriates \$971,331 in recurring funds and \$37,456 in nonrecurring funds from the Insurance Regulatory Trust Fund to the OIR to fund eight new positions for hurricane-related market conduct activity.

The bill appropriates \$1,000,000 in nonrecurring funds from the General Revenue Fund and \$10,000,000 in nonrecurring funds from the Federal Grants Trust Fund to the Division of Emergency Management to fund the Safeguarding Tomorrow Revolving Loan Program. Such funds will be held in reserve, contingent upon FEMA approval and release by the Legislative Budget Commission.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 189.0695, 252.35, 252.363, 252.391, 252.40, 287.055, 288.066, 489.117, 553.7922, 553.80, and 823.11.

The bill creates the following sections of the Florida Statutes: 125.023, 166.0335, and 627.4108,

The bill creates undesignated sections of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on March 23, 2023:

The committee substitute:

- Clarifies the cap increase for continuing contracts to be Hurricane Ian specific.
- Directs the Division of Emergency Management to administer a revolving loan program for local government hazard mitigation projects and provides an appropriation.
- Requires property insurers doing business within the state to submit a claims handling manual to the OIR annually.
- Makes an appropriation to the OIR to fund eight positions for hurricane-related market conduct activity.

CS by Community Affairs on March 15, 2023:

The committee substitute makes clarifying changes as it relates to temporary residential structures, tolling and extension of permits, expedited approval of certain permits, registered contractors, and the prohibition on adopting procedures to comprehensive plans and land development regulations.

B. Amendments:

None.