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 Appropriations

BILL:	SB 1328
INTRODUCER:	Senator Perry
SUBJECT:	Affordable Housing
DATE:	February 26, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.	Hrdlicka	Hrdlicka	ATD	**Recommend: Fav/CS**
3.	Hrdlicka	Hansen	AP	**Pre-meeting**

I. Summary:

SB 1328 creates the Hurricane Housing Recovery Program (HHRP) and the Recovery Rental Loan Program (RRLP) to expedite the creation of additional affordable housing in response to the needs created by the recent hurricanes. For the 2018-2019 fiscal year, an estimated $62.8 million from the Local Government Housing Trust Fund and the State Housing Trust Fund is appropriated to the Florida Housing Finance Corporation for affordable housing hurricane recovery programs. The Florida Housing Finance Corporation will use the appropriation to fund the HHRP and RRLP.

Additionally, the bill requires the Department of Environmental Protection, the Department of Transportation, and the water management districts, in conjunction with the Florida Housing Finance Corporation, to evaluate all nonconservation surplus lands for suitability for residential use and the development of permanent affordable housing and to offer such parcels to the county or municipality where the land is located. The bill provides for additional evaluation criteria intended to address specific needs and characteristics for the development of affordable housing.

The bill prohibits a county or municipality from charging impact fees and mobility fees for the development of affordable housing for a 5-year period beginning July 1, 2018.

The bill also provides for an expedited local permit approval process for affordable housing by reducing the time a local government entity has to approve or deny permit applications from 120 days to 60 days.

The bill takes effect July 1, 2018.

II. Present Situation:

The present situation is included in the effect of proposed changes.

III. Effect of Proposed Changes:

Affordable Housing

Present Situation

Affordable housing is defined in terms of household income. Housing is considered affordable when monthly rent or mortgage payments including taxes and insurance do not exceed 30 percent of the household income.[1] Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2017 Florida state median of $59,000 for a family of four (as family size increases or decreases, the income range also increases or decreases):[2]

- Extremely low income – earning up to 30 percent AMI (at or below $17,700);[3]
- Very low income – earning from 30.01 to 50 percent AMI ($17,701 to $29,500);[4]
- Low income – earning from 50.01 to 80 percent AMI ($29,501 to $47,200);[5] and
- Moderate income – earning from 80.01 to 120 percent of AMI ($47,201 to $70,800).[6]

The two primary state housing assistance programs are the State Housing Initiatives Partnership (SHIP)[7] and the State Apartment Incentive Loan (SAIL)[8] programs. The SHIP program provides funds to eligible local governments, allocated using a population-based formula, to address local housing needs as adopted in the Local Housing Assistance Plan. Eligible local government entities must develop and adopt local housing assistance plans that include, but are not limited to, strategies and incentives for the construction, rehabilitation, repair, or financing of affordable housing production.[9] The SAIL program provides low interest loans on a competitive basis as gap financing for the construction or substantial rehabilitation of multifamily affordable housing developments.[10]

Local Government Surplus Land (Sections 1 and 4)

Present Situation

Since July 1, 2007, all counties and municipalities have been required to prepare, every 3 years, an inventory list of all real property held in fee simple by the respective government entity that is

[1] Section 420.9071(2), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.
[2] U.S. Department of Housing and Urban Development, Office of Policy Research and Development, *FY 2017 HUD Income Limits Briefing Material*, March 21, 2017, p. 41, *available* at https://www.huduser.gov/portal/datasets/il/il17/IncomeLimitsBriefingMaterial-FY17.pdf.
[3] Section 420.0004(9), F.S.
[4] Section 420.9071(28), F.S.
[5] Section 420.9071(19), F.S.
[6] Section 420.9071(20), F.S.
[7] Sections 420.907-9079, F.S.
[8] Section 420.5087, F.S.
[9] Section 420.9071(14), (15), & (16), F.S. These local housing plans must also align with the requirements for housing under the Local Government Comprehensive Planning and Land Development Regulation Act of 1985. Chapter 163, Part II, F.S.
[10] Section 420.5087, F.S.

appropriate for use as affordable housing. The list must be reviewed at a public hearing of the appropriate local governing body and may be revised at the conclusion of the public hearing. The governing body must adopt a resolution that includes the inventory following the meeting.[11]

Properties identified as appropriate for affordable housing may be:
- Offered for sale by the local government and the proceeds used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing.
- Sold with a restriction that requires the development of the property as permanent affordable housing.
- Offered for donation to a nonprofit housing organization for the construction of permanent affordable housing.
- Otherwise made available for use for the production and preservation of permanent affordable housing.[12]

Effect of the Bill

Sections 1 and **4** amend ss. 125.379 and 166.0451, F.S., respectively, to require each county and municipality to include the following criteria when preparing the inventory list of real property and evaluating for use as affordable housing:
- Environmental suitability for construction;
- Site characteristics;
- Current land use designation;
- Current or anticipated zoning;
- Whether the property is included in at least one special district;
- Existing infrastructure; and
- Proximity to employment opportunities, public transportation, and existing services.

Transportation Concurrency and Mobility Fees (Section 2)

Present Situation

Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available concurrent with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. If adequate capacity is not available, then the developer must provide the necessary improvements, provide monetary contribution toward the improvements, or wait until government provides the necessary improvements.[13]

A mobility fee is a transportation system charge on development that allows local governments to assess the proportionate cost of transportation improvements needed to serve the demand

[11] Sections 125.379 and 166.0451, F.S.
[12] *Id.*
[13] Department of Community Affairs, *Transportation Concurrency Requirements and Best Practices*, September 2006, p. 1, retrieved from https://www.cutr.usf.edu/oldpubs/TCBP%20Final%20Report.pdf (last visited February 17, 2018).

generated by development projects. The specificity of a mobility fee allows funds to be expended not only on roadways, but also on buses, stations, rail infrastructure, and transit-supportive investments such as bus shelters/amenities and bicycle and pedestrian infrastructure. Statute requires that mobility fee programs meet the following requirements:

- Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government.
- The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the plan which serves as the basis for the fee imposed.
- A mobility fee-based funding system must comply with the rational nexus test applicable to impact fees.
- An alternative system that is not mobility fee-based may not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency.[14]

Effect of the Bill

Section 2 amends s. 163.3180, F.S., to prohibit a local government from charging a mobility fee for the development or construction of affordable housing for a 5-year period beginning July 1, 2018, and ending June 30, 2023.

Local Government Impact Fees (Section 3)

Present Situation

Impact fees are amounts imposed by local governments to fund local infrastructure required to provide for increased local services needs caused by new growth.[15] Adopted by ordinance of a county, municipality, or special district, impact fees must meet the following minimum criteria:

- The fee must be calculated using the most recent 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;
- Administrative charges imposed for the collection of impact fees are limited to the actual costs; and
- All local governments are required to give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. However, counties and municipalities do not need to wait 90 days before decreasing, suspending, or eliminating an impact fee.[16]

[14] Department of Transportation, *A Guidebook: Using Mobility Fees to Fund Transit Improvements*, November 2016, pp. 11-12, at http://www.fdot.gov/transit/Pages/FinalMobilityFeeGuidebook111816.pdf (last visited February 17, 2018). *See* also s. 163.3180(5)(i), F.S.
[15] Section 163.31801(2), F.S.
[16] Section 163.31801(3), F.S.

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees.[17] The courts have found the imposition of impact fees appropriate where the local government meets two fundamental requirements:

- A reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project; and
- A reasonable connection, or nexus, between the expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project.

Meeting the second criteria 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.[18]

Some local governments require payment of impact fees before the issuance of a development or building permit.[19] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[20] 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.[21]

A certificate of occupancy is required before a building or structure may be used or occupied.[22] The certificate is issued by the appropriate local building official after completion of all work and a final inspection of the building or structure shows no violations of the Florida Building Code or other applicable laws.[23]

In 2015, 38 counties reported total impact fee revenues of $503.9 million and 193 cities reported total impact fee revenues of $225.3 million.[24] In 2016, 28 school districts reported total impact fee revenues of $265.3 million.[25]

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[17] Currently, in Florida there are 67 counties, 413 municipalities, 1,059 independent special districts, and 633 dependent special districts. *See* ch. 7, F.S.; Florida House of Representatives, *The Local Government Formation Manual 2017-2018*, Appx. B, at http://www.flsenate.gov/Reference/Publications; Lists of Independent and Dependent Districts available through Department of Economic Opportunity, Special District Accountability Program, at http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (both sites last visited February 17, 2018).

[18] This is known as the dual rational nexus test. *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).

[19] *See*, e.g., Roads Impact Fee, ch. 2, art. VI, div. 2, s. 2-267(a), Land Development Code Lee County, Florida; Transportation Impact Fee, ch. 56, Part I, s. 56.15.C.1, City of Orlando Code of Ordinances; Road Impact Fees, Miami-Dade County Code of Ordinances, s. 33E-6.1(c), at https://library.municode.com/fl (last visited February 17, 2018).

[20] Section 553.79, F.S.

[21] Section 163.3164(16), F.S.

[22] Section 111.1, Florida Building Code – Building (6th ed. 2017), at https://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration (last visited February 17, 2018).

[23] Section 111.2, Florida Building Code – Building (6th ed. 2017). *See also* Broward County Amendments to the 5th Edition (2014) Florida Building Code (Effective June 30, 2015, with amendments through March 2017), s. 110, "Inspections," p. 1.38, at http://www.broward.org/CodeAppeals/AboutUs/Documents/ch%201-5thEdition%20-PAssed%2003-09-2017.pdf (last visited February 17, 2018).

[24] Office of Economic and Demographic Research, The Florida Legislature, *Impact Fees*, at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited February 17, 2018). County revenues were updated July 25, 2017, and city revenues were updated September 28, 2017.

[25] *Id*. School district revenues were updated October 5, 2017.

The Affordable Housing Workgroup, created in ch. 2017-71, Laws of Florida, was charged with providing recommendations for, among other components, a review of land use for affordable housing developments.[26] The review of land use included the impact of fees, including impact fees, exactions, mitigation fees, and development fees.[27] In an effort to provide context to workgroup members, staff at the Florida Housing Finance Corporation queried local SHIP Administrators regarding impact fee calculations and waivers in their locales. Based on responses from approximately two-thirds of those surveyed, nearly 25 percent do not currently assess any impact fees. For the remaining cities and counties that do impose impact fees, the fees are calculated using a combination of methodologies, including by square footage, number of bedrooms, geographic location, resident status as a senior citizen, or as a flat fee. Approximately 30 percent of the reporting entities indicated the existence of mechanisms to waive fees in part or whole for affordable housing development. Based on their review and discussion, the workgroup report recommends that local governments' currently assessing impact fees either waive fees for affordable housing or establish local dedicated funds to make such waivers possible.[28]

Effect of the Bill

Section 3 amends s. 163.310801, F.S., to prohibit a local government from charging an impact fee for the development or construction of affordable housing for a 5-year period beginning July 1, 2018, and ending June 30, 2023.

The bill also requires each local government entity to include, in their annual financial reports, the following information pertaining to impact fees imposed:

- The specific purpose of each impact fee, including the specific infrastructure need to be met, such as transportation, parks, water, sewer, and schools;
- The impact fee schedule policy, describing the method of calculating impact fees, such as flat fee, tiered scale based on number of bedrooms, and tiered scale based on square footage;
- The amount assessed for each purpose and type of dwelling;
- The total amount of impact fees charged by type of dwelling; and
- Each exception and waiver provided for affordable housing developments.

Local Permit Approval Process (Section 5 and 10)

Present Situation

Local governments may enforce requirements to obtain building or development permits, including the processing applications and granting building permits.[29]

[26] Section 46, ch. 2017-71, L.O.F.
[27] Florida Housing Finance Corporation, *Affordable Housing Workgroup Final Report 2017*, December 19, 2017, p. 23, at https://issuu.com/fhfc/docs/ahwg-report_2017-web (last visited February 17, 2018).
[28] *Id*. at pp. 25-27.
[29] Sections 553.79 and 553.792, F.S.

Counties, municipalities, and most special districts are not required to comply with the notice and procedural requirements of ch. 120, F.S., the Administrative Procedure Act.[30] For certain types of building permit applications,[31] the local government must meet certain deadlines:

- Within 10 days of the application being submitted, the local government must inform the applicant in writing of what information is needed to complete the application, if any.
- If no written notice of deficiency is provided, the application is deemed properly completed and accepted.
- Within 45 days of receiving a completed application, the local government must notify the applicant if additional information is needed to determine whether the application is sufficient.
- Within 120 days after receiving a completed application, the local government must approve, approve with conditions, or deny the application.[32]

Effect of the Bill

Section 5 creates s. 420.0007, F.S., to establish a new process for local government permit approval for affordable housing. A local government has 15 days after receiving an application for a development permit, construction permit, or certificate of occupancy for affordable housing to examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the local government is authorized by law to require.

The local government may require any additional required information to be submitted within 10 days after the date it gives notice to the applicant. The local government must grant a request for an extension of time for submitting the additional information for good cause.

If a local government does not timely request addition information, it may not deny the development permit, construction permit, or certificate of occupancy for affordable housing if the applicant fails to correct an error or omission or to supply additional information.

An application is complete when the local government has received all of the requested information and the correction of any error or omission as necessary or when the time for notification has expired.

The local government must approve or deny an application for a development permit, construction permit, or certificate of occupancy for affordable housing within 60 days after receipt of a completed application, unless a shorter period of time for local government is provided by law. If the local government does not approve or deny within the time period, the application is considered approved, and the local government must issue the development permit, construction permit, or certificate of occupancy.

[30] *See* s. 120.52(1), F.S.
[31] The list includes permits for the following types of construction: accessory structure, alarm, nonresidential buildings less than 25,000 square feet, electric, irrigation, landscaping, mechanical, plumbing, residential units other than a single family unit, multifamily residential not exceeding 50 units, roofing, signs, site-plan approvals and subdivision plats not requiring public hearings or public notice, and lot grading and site alteration associated with the application. *See* s. 553.792(2), F.S.
[32] Section 553.792(1), F.S.

An applicant for a development permit, construction permit, or certificate of occupancy seeking to receive a permit by default must notify the local government in writing of its intent to rely upon the default approval. However, the applicant may not take any action based upon the default development permit, construction permit, or certificate of occupancy until the applicant receives notification or a receipt acknowledging that the local government received the notice. The applicant must retain the notification or receipt.

Section 10 amends s. 420.9071, F.S., to revise the definition of "local housing incentive strategies" to include expediting permits for affordable housing projects provided in s. 420.0007, F.S. Local housing incentive strategies are included in local housing assistance plans and must be included in various reports as required in the SHIP program provisions in part VII, ch. 420, F.S.

State Apartment Incentive Loan Program Local Government Contribution (Section 6)

Present Situation

The SAIL program provides low-interest loans on a competitive basis to affordable housing developers each year. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.[33]

The Florida Housing Finance Corporation administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.[34]

Effect of the Bill

Section 6 amends s. 420.5087, F.S., to require the evaluation of additional components related to local government contributions, including policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects.

Using Surplus State Lands for Affordable Housing (Sections 9, 11, 12, and 13)

Present Situation

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees),[35] the five water management districts (WMDs), and the Department of Transportation (DOT) may each

[33] Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, at http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited February 17, 2018).
[34] Section 420.5087(6)(c), F.S.
[35] The Board of Trustees consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. Art. IV, s. 4(f), Fla. Const., and s. 253.02(1), F.S. The Department of Environmental Protection, through its Division of State Lands, performs all staff duties and functions related to the acquisition, administration, and disposition of state lands. Section 253.002(1), F.S.

acquire and hold real property for various public purposes.[36] Each agency must follow certain procedures to dispose of property that is no longer needed (surplus).

Board of Trustees

The Board of Trustees may determine which state lands may be surplused. To dispose of conservation lands, the Board of Trustees must determine whether the land is no longer needed for conservation purposes and may dispose of such lands by an affirmative vote of at least three members. To dispose of nonconservation lands, the Board of Trustees must determine whether the land is no longer needed and may dispose of such lands by an affirmative vote of at least three members.[37]

"Conservation lands" are lands managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation, except those lands acquired solely to facilitate the acquisition of other conservation lands. Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation are "nonconservation lands." Nonconservation lands include the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, State University or Florida College System institution campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that possess no significant natural or historical resources.[38]

Any public or private entity or person may ask the Board of Trustees to surplus lands. The lead managing agency must review the request and make a recommendation to Acquisition and Restoration Council within 90 days. The council must immediately schedule a hearing to review the request at the next regularly scheduled hearing for any surplusing requests that have not been acted upon within 90 days.[39]

Before a building or parcel of land is offered for lease or sale, the Division of State Lands within the Department of Environmental Protection (DEP) must first offer the land for lease to state agencies, state universities, and Florida College System institutions.[40]

The division must determine the sale price of the land by considering an appraisal. If the value of the land is estimated at $500,000 or less, division may use a comparable sales analysis or broker's opinion.[41] The division must offer parcels valued at more than $500,000 by competitive bid first. If the parcel is not successfully sold by competitive bid, or the parcel is valued at $500,000 or less, then division may sell the property by any reasonable means.[42]

[36] Sections 253.001, 253.02, 337.25(1), and 373.089, F.S.
[37] Section 253.0341(1), F.S.
[38] Section 253.034(2)(c), F.S.
[39] Section 253.0341(11), F.S. The Acquisition and Restoration Council assists the Board of Trustees in reviewing the recommendations and plans for state-owned conservation lands. Section 259.035, F.S.
[40] Section 253.0341(7), F.S.
[41] Section 253.0341(8), F.S.
[42] Section 253.0341(9), F.S.

Water Management Districts

A WMD may sell lands its governing board determines to be surplus at any time. These lands must be sold at the highest price obtainable, but not less than the appraised value of the land determined by a certified appraiser 360 days before the sale.[43] Such sales must be in cash and on the terms set by the governing board of the WMD.[44] The WMD must publish notice of its intent to sell the land in a newspaper in the county where the land is located. The notice of intent must be published three times for three successive weeks at least 30 days, and not more than 360 days, before any sale. The notice of intent must describe the land or the interest or rights to be sold.[45]

Public and private entities may request that a WMD make its lands available for purchase when those lands are not essential or necessary to meet conservation. If so requested and the lands are determined to be surplus, the WMD must give priority consideration to public or private buyers who are willing to return the property to productive use so long as the property can reenter the county ad valorem tax roll.[46]

When deciding whether to sell lands designated as acquired for conservation purposes, the governing board of the WMD must determine by a two-thirds vote that the land is no longer needed for conservation purposes.[47] For all other lands, the governing board of the WMD must determine by a majority vote that the land is no longer needed.[48]

Prior to selling land, a WMD must generally first offer title to lands acquired in whole or in part with Florida Forever funds[49] to the Board of Trustees.[50] If the Board of Trustees declines to accept title to the land, the WMD may dispose of the land.[51]

Department of Transportation

The DOT may convey any land, building, or other property, real or personal, when it determines the property is not needed for the construction, operation, and maintenance of a transportation facility. The DOT may dispose of its surplus property through negotiations, sealed competitive bids, auctions, or any other means it deems to be in its best interest. The DOT must advertise the sale of property valued by the DOT at greater than $10,000.[52] The DOT may generally not sell property for less than the DOT's current estimate of value.[53]

The DOT may afford a right of first refusal to the local government or other political subdivision in the jurisdiction where the parcel is situated in certain circumstances.[54]

[43] Section 373.089(1), F.S.
[44] Section 373.089(2), F.S.
[45] Section 373.089(3), F.S.
[46] Section 373.089(5), F.S.
[47] Section 373.089(6)(a), F.S.
[48] Section 373.089(6)(b), F.S.
[49] *See* ss. 259.105 and 259.1051, F.S.
[50] Section 373.089(7), F.S.
[51] Section 373.089, F.S.
[52] Section 337.25(4), F.S.
[53] Exceptions provided in Section 337.25(4)(a)-(d), F.S.
[54] Exceptions provided in Section 337.25(4)(a), (c), and (e), F.S.

Effect of the Bill

Section 9 creates s. 420.56, F.S., to make all surplus lands designated as nonconservation available for affordable housing before making the parcels available for purchase by other governmental entities or the public. As nonconservation land becomes available for surplus, the DEP (acting on behalf of the Board of Trustees), WMDs, and the DOT must notify the Florida Housing Finance Corporation (FHFC) that the land is available for surplus before making the parcel available for any other use, including for purchase by other governmental entities or the public. The WMDs must only identify nonconservation surplus lands originally acquired using state funds.

The bill requires the FHFC to evaluate, in consultation with the DEP, WMDs, and the DOT, whether the surplus lands identified by the DEP, WMDs, and the DOT are suitable for affordable housing based on the following characteristics of the property:

- Environmental suitability for construction;
- Current and anticipated land use and zoning;
- Inclusion in one or more special districts meant to revitalize the community;
- Existing infrastructure on the land such as roads, water, sewer, and electricity;
- Access to grocery stores within walking distance or by public transportation;
- Access to employment opportunities within walking distance or by public transportation;
- Access to public transportation within one-half mile; and
- Access to community services such as public libraries, food kitchens, and employment centers.

If the FHFC determines that the nonconservation surplus land is suitable for affordable housing, the bill requires the Board of Trustees, the WMDs, and the DOT to first offer the land to the county and municipality where the land is located to be used for affordable housing before the entity offers the land to other governmental entities or the public. If the county and municipality where the parcel is located do not wish to use the parcel for affordable housing, the Board of Trustees, WMDs, or the DOT may dispose of the parcel using the procedures in existing law.

The bill authorizes the Board of Trustees, WMDs, and the DOT to sell the parcels identified as suitable for affordable housing for less than the appraised value to any party. If the agency sells the parcels for less than appraised value, the agency must place an encumbrance on the parcels to ensure the purchaser uses the land for affordable housing for a period of not less than 99 years.

The bill exempts the Board of Trustees, WMDs, and the DOT from certain disposal procedures to expedite the sales of surplus land for affordable housing, specifically:

- The Board of Trustees does not need to follow appraisal and competitive bidding procedures;
- The WMDs do not need to follow their appraisal and advertising requirements and the procedures for selling land valued at $25,000 or less; and
- The DOT does not need to follow its disposal procedures.

The bill authorizes the Board of Trustees, WMDs, and the DOT to determine the sale price of the parcels. The bill requires Board of Trustees, WMDs, and the DOT to consider at least one appraisal, or if the estimated value of the land is $500,000 or less, a comparable sales analysis or a broker's opinion of value.

Section 11 amends s. 253.0341, F.S., to require the land manager of Board of Trustees owned land to evaluate and indicate whether state lands it manages are still being used for the purpose for which they were originally leased from the Board of Trustees every 3 years instead of every 10 years.

Section 11 also requires the Board of Trustees to offer nonconservation surplus lands to the county and municipality where the land is located for use for the construction of affordable housing as identified by the FHFC before offering it to other potential buyers. This allows those counties and municipalities the opportunity to purchase nonconservation lands for affordable housing prior to state agencies, state universities, and Florida College System institutions, who currently have the first opportunity to either lease or buy surplus lands. All lands not needed for affordable housing will still be offered first to state agencies, state universities, and Florida College System institutions before other being offered to other entities. If the surplus land is not used for affordable housing and not leased by a state agency, state university, or Florida College System institution, the Board of Trustees shall offer the parcel for lease or sale to a local or federal unit of government or a private party.

Section 12 amends s. 337.25, F.S., to require the DOT to evaluate all of its land not within a transportation corridor or within the right-of-way of a transportation facility at least every 10 years on a rotating basis to determine whether the DOT should retain the property. This change is consistent with the Board of Trustee's current duty to review the management of its lands every 10 years in s. 253.0341(4), F.S., to determine if the lands should be kept.

Section 12 also requires the DOT to offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the FHFC before offering it to other potential buyers except when:

- The property was donated to the state for transportation purposes and a transportation facility has not been constructed for at least 5 years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor (then the donated property is returned to the donor or his or her heirs, successors, assigns, or representatives);
- The DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects (then the DOT may negotiate for the sale of such property as replacement housing); or
- The DOT determines a sale to a person other than an abutting owner would be inequitable (then the property may be sold to the abutting owner for the DOT's current estimate of value).

Section 13 amends s. 373.089, F.S., to require the WMDs to review all lands and interests or rights in lands every 10 years on a rotating basis to determine whether the lands are still needed for the purpose for which they were acquired. This change is consistent with the Board of Trustee's current duty to review the management of its lands every 10 years in s. 253.0341(4), F.S., to determine if the lands should be kept.

Section 13 also requires WMDs to offer nonconservation surplus lands to the county and municipality where the land is located for use as affordable housing as identified by the FHFC before offering it to other potential buyers. This requirement only applies to nonconservation surplus lands originally acquired using state funds.

Hurricane Recovery Programs (Section 7)

Present Situation

Following the 2004 hurricane season, a statewide Hurricane Housing Work Group was created to recommend how best to leverage funding recommended by the Governor for hurricane housing recovery needs. The work group recommended, and the Legislature subsequently funded, the Hurricane Housing Recovery Program (HHRP) and the Rental Recovery Loan Program (RRLP). As a result of the work group's recommendation, the 2005 Legislature appropriated $250 million for housing recovery: $208 million for the HHRP and another $42 million for the RRLP.[55] With those resources, and an additional $93 million appropriation in 2006 for hurricane rental funding, the FHFC states that it assisted over 10,000 families with the HHRP and created over 1,600 units with the RRLP.

Hurricane Housing Recovery Program

The Hurricane Housing Recovery Program was created as a local housing recovery program and modeled after the existing State Housing Incentive Program (SHIP) aimed at assisting homeowners with post-hurricane recovery efforts. The HHRP funds were distributed to local governments using a need-based formula to allow local communities to evaluate and address needs as appropriate.[56]

Rental Recovery Loan Program

The Rental Recovery Loan Program was created to provide affordable rental units needed to promote the housing recovery needs of local communities. Modeled in part after the State Apartment Incentive Loan (SAIL) Program, the RRLP program allowed the state to leverage existing federal rental financing programs to provide units that served a range of incomes, including extremely low income households, throughout the areas impacted by the hurricanes.

Effects of the Bill

Section 7 creates s. 420.54, F.S., to establish the Hurricane Housing Recovery Program (HHRP) and the Recovery Rental Loan Program (RRLP) to provide funds to local governments for affordable housing recovery efforts due to impacts of Hurricanes Irma and Maria.

The HHRP will provide resources to local governments according to a need-based formula that reflects affordable housing damage estimates. Eligible local governments must submit a strategy

[55] Florida Housing Finance Corporation, *Bill Analysis for SB 1328*, p. 3, January 10, 2018. Chapter 2006-69, L.O.F.
[56] Florida Housing Finance Corporation, *Hurricane Housing Recovery Program*, at http://floridahousing.org/webdocs/disasterrelief/HHRP/HHRPPage.PDF (last visited February 17, 2018).

outlining proposed recovery actions, income levels and number of units to be served, and funding requests. Program funds must be used as follows:

- To serve households with incomes up to 120 percent of the AMI, except that at least 30 percent of program funds should be reserved for households with incomes up to 50 percent AMI and an additional 30 percent of program funds reserved for households with incomes up to 80 percent AMI.
- At least 65 percent of the funds *must* be used for homeownership.
- Up to 15 percent *may* be used for administrative expenses.

The RRLP will provide resources to build additional rental housing and allow the state to leverage federal rental financing similar to the SAIL program.

Each participating local entity will be required submit a report of its housing recovery program and accomplishments by September 15, 2019, and each year thereafter. The bill provides the FHFC the authority to adopt emergency rules pursuant to s. 120.54, F.S. for the purpose of implementing these programs.

Section 8 appropriates funds from the Local Government Housing Trust Fund and State Housing Trust Fund to implement these programs. Specifically, for the 2018-2019 fiscal year, 20 percent of the most recent revenue estimate from the Revenue Estimating Conference for both the Local Government Housing Trust Fund and the State Housing Trust Fund is appropriated to the FHFC for the purpose of affordable housing hurricane recovery efforts. Funds from the Local Government Housing Trust Fund must be used for the Hurricane Housing Recovery Program and funds from the State Housing Trust Fund must be used for the Recovery Rental loan Program. Additionally, the FHFC must use $100,000 from the funds appropriated from the State Housing Trust Fund to provide technical assistance and training.

The Revenue Estimating Conference's most recent revenue estimate was about $314 million for the affordable housing trust funds, meaning the 20 percent appropriation would be approximately $62.8 million.[57]

Effective Date (Section 14)

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits the collection of certain impact fees for construction or development of affordable housing.

[57] Email from staff of the Office of Economic and Demographic Research to staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Housing Trust Fund Balances*, February 19, 2018.

However, there are several exemptions and exceptions to the mandate requirements. The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was approximately $2.05 million or less.[58,59,60]

This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The prohibition of impact fees for affordable housing may act as catalysts for affordable housing by mitigating development costs.

C. Government Sector Impact:

Local governments may need to replace the funds that would normally be derived from impact and mobility fees with other sources of revenue.

The bill directs 20 percent of the estimate by the Revenue Estimating Conference for the Local Government Housing Trust Fund and the State Housing Trust Fund be appropriated to the FHFC for affordable housing hurricane recovery efforts. Based on the estimate, approximately $62.8 million would be provided. The FHFC stated in its analysis of the bill that typically approximately 30 percent of revenues come from the State Housing Trust Fund, and so for perspective, about $18.8 million would be used for the Recovery Rental Loan Program (30 percent of $62.8 million); the FHFC states that this amount would allow it to fund about 3 rental developments.[61]

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[58] FLA. CONST. art. VII, s. 18(d).
[59] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf.
[60] Based on the Demographic Estimating Conference's population adopted on April 1, 2017. The executive summary is available at http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf.
[61] Florida Housing Finance Corporation, *Bill Analysis for SB 1328*, p. 6, January 10, 2018.

The bill also provides $100,000 to the FHFC from the State Housing Trust Fund to provide technical and training assistance for affordable housing hurricane recovery efforts.

The bill requires the FHFC to evaluate nonconservation surplus lands for suitable for the construction of affordable housing. Currently, the FHFC requires anyone proposing to develop affordable housing to demonstrate that the property is suitable for such purpose. This bill would require the FHFC to develop a new program and develop or contract for expertise to evaluate surplus lands. The cost for such activity it unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 11 amends s. 253.0341(4), F.S., to require the land manager of land owned by the Board of Trustees of the Internal Improvement Trust Fund to evaluate and indicate whether state lands it manages are still being used for the purpose for which they were originally leased every 3 years instead of every 10 years. This change appears to be inconsistent with the Board of Trustee's duty to review the management of its lands at least every 10 years in s. 253.034(5), F.S., and the changes in this bill to require the WMDs and the DOT to review their lands every 10 years to determine if the lands are still needed.

Section 1 adds as a new criterion in s. 125.379, F.S., for evaluating land for affordable housing purposes whether the land is located within a special district. Section 9 creates a similar criterion to evaluate land but refers to lands located in "special districts meant to revitalize the community." It is unclear whether the language in the two sections should be the same. Additionally, in its bill analysis, the FHFC noted that the corporation promotes new housing opportunities in economically vibrant areas not in need of revitalization and that the criterion may be more inclusive if it was expanded to properties suitable for residential use.[62]

Related to section 9, the FHFC notes that local governments, developers, and others may still conduct their own analysis and evaluations of the property for suitability for affordable housing, instead of only relying upon the evaluation by the state. Local governments would likely still rely upon their own local zoning and land use compatibility analysis and developers would still continue their own "due diligence" reviews to determine if a property was right for their purposes. The FHFC recommended that it might be more efficient for the local governments to evaluate the property to make the determination if the land is suitable for affordable housing and decide to purchase the land from the Board of Trustees, WMD, or the DOT.

The FHFC states that it is required to conduct compliance monitoring activities on local programs, and recommended that Section 7, creating the hurricane recovery programs, include authority for the FHFC to use up to 1 percent of the funds for this purpose.

[62] Florida Housing Finance Corporation, *Bill Analysis for SB 1328*, p. 6, January 10, 2018.

Section 5 creates an expedited permit approval process for affordable housing in ch. 420, F.S. It may be more appropriate to put such language within the local government permitting chapters, for example in chs. 163 and 559, F.S., or to add references to the new process in ch. 420, F.S., in those chapters to give notice of the new expedited process.

The bill provides the FHFC the authority to adopt emergency rules pursuant to s. 120.54, F.S. for the purpose of implementing the hurricane recovery programs.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.379, 163.3180, 163.31801, 166.0451, 420.5087, 420.9071, 253.0341, 337.25, and 373.089.

This bill creates the following sections of the Florida Statutes: 420.0007, 420.54, and 420.56.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.