HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 987 Affordable Housing
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Cortes, B.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N, As CS	Miller	Miller
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

Florida has extensive programs for funding and overseeing the development and delivery of affordable housing to residents qualifying for such services. The recent impacts of hurricanes Irma and Maria have disclosed significant needs for additional affordable housing in this State. The bill revises several key provisions of law and creates additional processes to expedite the creation of affordable housing in Florida. The bill also creates the Hurricane Housing Recovery Program and the Recovery Rental Loan Program to expedite the creation of additional affordable housing in response to the needs created by the recent hurricanes.

The bill creates new provisions on the use of local and state government-owned surplus land, the assessment of impact and mobility fees by local government entities, and local government permitting as it relates to the development of affordable housing.

The bill requires the Departments of Environmental Protection and 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 permanently affordable housing and 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 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 five-year period beginning July 1, 2018. Local government entities are required to include in their annual financial reports data on the specific purpose of each impact fee, the impact fee schedule policy, the method of calculating impact fees, the amount assessed for each purpose and type of dwelling, and each exception and waiver provided for affordable housing developments. 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. Additionally, the bill requires the evaluation of additional components related to local government contribution in the State Apartment Incentive Loan (SAIL) program.

In addition to creating the hurricane recovery programs named above, the bill provides an appropriation of 20 percent of the funds available in the Local Government Housing Trust Fund and State Housing Trust Fund. The August 2017 REC estimated $314.08 million to be available for distribution to the Housing Trust Funds. The estimated impact of this bill is $62.82 million. The bill has a negative fiscal impact on local governments due to the prohibition on collection of impact and mobility fees. SEE FISCAL ANALYSIS AND COMMENTS.

The bill provides an effective date of July 1, 2018.

The bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. *See* Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Affordable housing is defined in terms of household income. Housing is considered affordable when monthly rent or mortgage payments including taxes, insurance and utilities 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

Present Situation

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

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[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, available* at https://www.huduser.gov/portal/datasets/il/il17/IncomeLimitsBriefingMaterial-FY17.pdf (last visited January 4, 2018).
[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 420.907-9089, 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.
[11] Sections 125.379 and 166.0451, F.S.

Properties identified as appropriate for affordable housing may be offered for sale by the local government and the proceeds may be used:

- To purchase land for the development of affordable housing;
- To increase the local government fund earmarked for affordable housing;
- For sale with a restriction that requires the development of the property as permanent affordable housing; or
- For donation to a nonprofit housing organization for the construction of permanent affordable housing.

Alternatively, the county or municipality may make the property available for use for the production and preservation of permanent affordable housing.[12]

Effect of the Bill

The bill requires 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;
- Inclusion in at least one special district meant to revitalize the community;
- Existing infrastructure; and
- Proximity to employment opportunities, public transportation, and existing services.

Transportation Concurrency and Mobility Fees

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]

Level of Services (LOS) is a technical measure of the quality of service provided by a roadway. LOS is graded on an A through F scale based on the average arterial speed of a roadway. An uncongested roadway with a high average arterial speed will receive an A, while a congested roadway with a low average arterial speed will receive an F.[14] Local governments, in conjunction with the Florida Department of Transportation, are responsible for setting LOS standards for roadways.[15]

Proportionate share is the amount of money a developer must contribute to mitigate the transportation impacts of a new development. Proportionate share contributions are triggered when a new development will cause a decrease in the LOS grade below a set standard. When a proportionate share contribution is triggered, a developer must, at minimum, contribute money toward one or several mobility improvements. However, developers are only required to contribute toward deficiencies they create and are not required to correct existing deficiencies.[16]

[12] *Id.*
[13] Fla. Dep't of Community Affairs, *Transportation Concurrency: Best Practices Guide* pg. 5 (2007), retrieved from https://www.cutr.usf.edu/oldpubs/TCBP%20Final%20Report.pdf (1/3/2018).
[14] *Id.* At 53.
[15] Section 163.3180(5)(b), Florida Statutes
[16] Section 163.3180(5)(h), Florida Statutes

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 generated by development projects. The specificity of a mobility fee allows funds to be expended not only on roadways, but also on transit-supportive investments such as bus shelters/amenities and bicycle and pedestrian infrastructure. Mobility fees also may be expended on buses, stations, and rail 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, 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 shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency.[17]

Effect of the Bill

The bill prohibits a local government from charging a mobility fee for the development or construction of affordable housing for a five year period beginning July 1, 2018 and ending June 30, 2023.

Local Government Impact Fees

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.[18] 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 and localized data.
- The local government adopting the impact fee must account for and report fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees are limited to the actual costs.
- 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. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.[19]

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees.[20] The courts have found appropriate the imposition of impact fees 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

[17] Fla. Department of Transportation, *A Guidebook: Using Mobility Fees to Fund Transit Improvements* pg. 11-12 (2016), retrieved from http://www.fdot.gov/transit/Pages/FinalMobilityFeeGuidebook111816.pdf (1/3/2018)
[18] Section 163.31801(2), F.S.
[19] Section 163.31801(3), F.S.
[20] Currently, in Florida there are 67 counties, 413 municipalities, 1,056 independent special districts, and 634 dependent special districts. *See* ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf (accessed 12/27/2017); Lists of Independent and Dependent Districts available through Dept. of Economic Opportunity, Special District Accountability Program, at http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (accessed 12/27/2017).

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.[21]

Some local governments require payment of impact fees prior to the issuance of a development or building permit.[22] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[23] 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.[24]

A certificate of occupancy is required before a building or structure may be used or occupied.[25] 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.[26]

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.[27] Included in the discussion of land use was the impact of fees, including impact fees, exactions, mitigation fees and development fees.[28] 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, they are calculated using a combinations 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.[29]

Effect of the Bill

The bill prohibits a local government from charging an impact fee for the development or construction of affordable housing for a five year period beginning July 1, 2018 and ending June 30, 2023.

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[21] 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).

[22] *See*, e.g., Roads Impact Fee, ch. 2, art. VI, div. 2, s. 2-267(a), Land Development Code Lee County, Florida, at https://library.municode.com/fl/lee_county/codes/land_development_code?nodeId=LADECO_CH2AD_ARTVIIMFE (accessed 12/17/2017); Transportation Impact Fee, Ch. 56, Part I, s. 56-15.C.1, City of Orlando Code of Ordinances, at https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH56IMFE (accessed 12/17/2017); Road Impact Fees, Miami-Dade County Code of Ordinances, s. 33E-6.1(c), at dade_county/codes/code_of_ordinances?nodeId=CD_MIAMI-DADE_CO_FLORIDA_CH33EROIMFEOR_S33E-6.1PAROIMFE (accessed 12/17/2017).

[23] Section 553.79, F.S.

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

[25] Section 111.1, Florida Building Code – Building (6th ed. 2017), athttps://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration (accessed 12/27/2017) .

[26] Section 111.2, Florida Building Code (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. 1.39, at http://www.broward.org/CodeAppeals/AboutUs/Documents/ch%201-5thEdition%20-PAssed%2003-09-2017.pdf (accessed 12/26/2017).

[27] Section 46, Ch. 2017-71, L.O.F.

[28] Florida Housing Finance Corporation, *Affordable Housing Workgroup Final Report 2017* pg. 23 (2017), retrieved from https://issuu.com/fhfc/docs/ah-study_commission_2017-web?e=16933686/56642924 (1/4/2017).

[29] *Id.* pg. 25-27

The bill also requires each local government entity to include, in their annual financial reports, the following pertaining to impact fees imposed for construction other than affordable housing:

- 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; and
- Each exception and waiver provided for affordable housing developments.

Local Permit Approval Process

Present Situation

As noted in the previous section, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building. 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. Local governments may enforce these requirements, including the processing of applications and granting building permits.[30]

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.[31] For certain types of building permit applications[32] the local government must meet certain deadlines:

- Within ten 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 forty-five 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 from receiving a completed application, the local government must approve, approve with conditions, or deny the application.[33]

Effect of the Bill

The bill creates s. 420.0007, F.S., providing a new process for local government consideration of applications for development or building permits or for certificates of occupancy pertaining to affordable housing construction. A local government receiving an application for permit to develop, build, or occupy an affordable housing construction must comply with the following requirements and deadlines:

- The local government has fifteen days from receiving the application to notify the applicant of any errors or omissions. The local government may require any additional information to be submitted within ten days from the date of this notice, and may extend this time for good cause shown.
- Failure to request additional information within this time prevents the local government from denying the permit if the applicant fails to correct an error or omission or to supply additional information.
- Once the application is completed, the local government has sixty days to approve or deny the application unless a shorter period is provided by law.

[30] Sections 553.79 & 553.792, F.S.
[31] *See* s. 120.52(1), F.S.
[32] 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, lot grading and site alteration associated with the permit application. *See* s. 553.792(2), F.S.
[33] Section 553.792(1), F.S.

- Failure of the local government to approve or deny the application within the sixty day or shorter period means the permit is considered approved and must be issued by the local government, subject to reasonable conditions authorized by law.
- The bill further provides that an applicant seeking to assert a permit received by default due to the failure of the local government to meet the sixty day or shorter deadline may not act upon the default permit until the applicant receives notice or a receipt showing the local government received the applicant's notice of relying on the default permit.

State Apartment Incentive Loan Program Local Government Contribution

Present Situation

The State Apartment Incentive Loan (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, not-for-profit or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.[34]

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 in this program. The evaluation criteria considered include, but are not limited to, local government contributions and local government comprehensive planning and activities that promote affordable housing.[35]

Effect of the Bill

The bill requires the evaluation of additional components related to local government contribution, 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

Present Situation

The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees),[36] the five water management districts (WMDs), and the Department of Transportation (DOT) may each acquire and hold real property for various public purposes.[37] Each agency must follow certain procedures to dispose of property that is no longer needed.

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.[38]

[34] Florida Housing Finance Corporation, State Apartment Incentive Loan, Background, http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan (last visited 1/3/2018).
[35] Section 420.5087(6)(c), F.S.
[36] The Board of Trustees consists of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. Art. IV, s. 4(f), Fla. Const., 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.
[37] Sections 253.001, 253.02, 337.25(1), and 373.089, F.S.
[38] Section 253.0341(1), F.S.

"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.[39]

At least every ten years, the land manager evaluates and indicates whether state lands are still being used for the purposes for which they were originally leased from the Board of Trustees. For conservation lands, the Acquisition and Restoration Council (ARC)[40] reviews the land manager's findings and then provides a recommendation to the Board of Trustees whether the lands can be surplused. For nonconservation lands, the Division of State Lands (DSL), within the Department of Environmental Protection (DEP), reviews the findings and then provides a recommendation to the Board of Trustees whether the lands may be surplused.[41] The Board of Trustees may surplus lands that are not actively being managed or when a land management plan has not been adopted, if recommended by the Acquisition and Restoration Council.[42]

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 ARC within 90 days. ARC 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.[43]

Before a building or parcel of land is offered for lease or sale, DSL must first offer the land for lease to state agencies, state universities, and Florida College System institutions. Within 60 days of such offer, the interested state agencies, state universities, or Florida College System institutions must submit a plan outlining the intended use, including future use, of the building or parcel of land for review by the Board of Trustees before approval of a lease. The Board of Trustees must then compare the estimated value of the building or parcel to any submitted business plan to determine if the lease or sale is in the best interest of the state.[44]

DSL 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, DSL may use a comparable sales analysis or broker's opinion.[45] DSL 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 DSL may sell the property by any reasonable means.[46]

Water Management Districts

A WMD may sell lands its governing board determines to be surplus at any time.[47] 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.[48] Such sales must be in cash and on the terms set by the governing board of the WMD.[49] 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

[39] Section 253.034(2)(c), F.S.
[40] Section 259.035, F.S.
[41] Section 253.0341(4), F.S.
[42] Section 253.0341(5), F.S.
[43] Section 253.0341(11), F.S
[44] Section 253.0341(7), F.S.
[45] Section 253.0341(8), F.S.
[46] Section 253.0341(9), F.S.
[47] Section 373.089(1), F.S.
[48] Section 373.089(1), F.S.
[49] Section 373.089(2), F.S.

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.[50]

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 purposes and when:

- The land is located in a county with a population of 75,000 or fewer or within a county with a population of 100,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; and
- More than 50 percent of the lands within the county boundary are federal lands and lands titled in the name of the state, a state agency, a WMD, or a local government.[51]

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.[52]

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.[53] For all other lands, the governing board of the WMD must determine by a majority vote that the land is no longer needed.[54]

Prior to selling land, a WMD must first offer title to lands acquired in whole or in part with Florida Forever funds[55] to the Board of Trustees unless:

- The land will be used for linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances;
- The WMD will sell the fee interest in the land and retain a conservation easement to fulfill the conservation objectives for which the land was acquired;
- The land will be exchanged for other lands that meet or exceed the conservation objectives for which the original land was acquired;
- The land will be used by a governmental entity for a public purpose; or
- The portion of an overall purchase deemed surplus at the time of the acquisition.[56]

If the Board of Trustees declines to accept title to the land, the WMD may dispose of the land.[57]

A WMD may expedite the disposal of land valued at $25,000 or less. If a parcel of land is no longer essential or necessary for conservation purposes and is valued at $25,000 or less as determined by a certified appraisal obtained within 360 days before the effective date of a contract for the sale, the governing board of the WMD may determine that the parcel of land is surplus. Unlike other surplus parcels, the WMD must publish the notice of intention to sell in the newspaper in the county where the land is located only one time. The WMD must send the notice of intention to sell the parcel to adjacent property owners by certified mail and publish the notice on its website. Fourteen days after publication of notice, the WMD may sell the parcel to an adjacent property owner. If there are two or more owners of adjacent property, the WMD may accept sealed bids and sell the parcel to the highest bidder or reject all offers. Thirty days after publication of notice, the WMD must accept sealed bids and may sell the parcel to the highest bidder or reject all offers.[58]

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[50] Section 373.089(3), F.S.
[51] Section 373.089(5), F.S.
[52] *Id.*
[53] Section 373.089(6)(a), F.S.
[54] Section 373.089(6)(b), F.S.
[55] *See* ss. 259.105, 259.1051, F.S.
[56] Section 373.089(7), F.S.
[57] Section 373.089, F.S.
[58] Section 373.089(8), F.S.

Department of Transportation

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. 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. DOT must advertise the sale of property valued by DOT at greater than $10,000.[59] DOT may not sell property for less than DOT's current estimate of value, except when:

- The property was donated to the state for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor. The governmental entity may authorize reconveyance of the donated property for no consideration to the original donor or the donor's heirs, successors, assigns, or representatives;[60]
- The property will be used for a public purpose. In this situation, the property may be conveyed without consideration to a governmental entity;[61]
- DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects. As compensation for the conveyance, the state must receive at least its investment in such property or DOT's current estimate of value, whichever is lower. DOT may only extend this benefit to persons actually displaced by the project. Dispositions to any other person must be for at least DOT's current estimate of value;[62] or
- DOT determines that continued ownership of the property will cause DOT to incur significant costs or exposes DOT to significant liability risks. DOT may use the projected maintenance costs over the next 10 years to offset the property's value in establishing a value for disposal of the property, even if that value is zero.[63]

DOT may afford a right of first refusal to the local government or other political subdivision in the jurisdiction where the parcel is situated, except when:

- The property was donated to the state for transportation purposes and a transportation facility has not been constructed for at least five years, plans have not been prepared for the construction of such facility, and the property is not located in a transportation corridor;[64]
- DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects;[65] or
- DOT determines a sale to a person other than an abutting owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.[66]

Effect of the Bill

The bill 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 the behalf of the Board of Trustees, the WMDs, and 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. WMDs must only identify nonconservation surplus lands originally acquired using state funds.

[59] Section 337.25(4), F.S.
[60] Section 337.25(4)(a), F.S.
[61] Section 337.25(4)(b), F.S.
[62] Section 337.25(4)(c), F.S.
[63] Section 337.25(4)(d), F.S.
[64] Section 337.25(4)(a), F.S.
[65] Section 337.25(4)(c), F.S.
[66] Section 337.25(4)(e), F.S.

The bill requires FHFC to evaluate, in consultation with DEP, the WMDs, and DOT, whether the surplus lands identified by DEP, the WMDs, and 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 FHFC determines the nonconservation surplus land is suitable for affordable housing, the bill requires the Board of Trustees, the WMDs, and 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 want the parcel for affordable housing, the Board of Trustees, the WMDs, or DOT may dispose of the parcel using the procedures in existing law.

The bill authorizes the Board of Trustees, the WMDs, and DOT to sell the parcels 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, the WMDs, and 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 the 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
- DOT does not need to follow its disposal procedures.

The bill authorizes the Board of Trustees, the WMDs, and DOT to determine the sale price of the parcels. The bill requires Board of Trustees, the WMDs, and 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.

The bill amends s. 253.0341(4), 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 three years instead of every ten. This change appears to be inconsistent with the Board of Trustee's duty to review the management of its lands at least every ten years in s. 253.034(5), F.S.

The bill amends s. 253.0341(7), F.S., to require the Board of Trustees 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 will give 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.

The bill amends s. 337.25(3), F.S., to require 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 ten years on a rotating basis to determine whether 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 ten years in s. 253.0341(4), F.S., to determine if the lands should be kept.

The bill creates s. 337.25(12), F.S., to require 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;
- DOT originally acquired the property specifically to provide replacement housing for persons displaced by transportation projects; or
- DOT determines a sale to a person other than an abutting owner would be inequitable, the property may be sold to the abutting owner for DOT's current estimate of value.

The bill amends s. 373.089(1), F.S., to require the WMDs review all lands and interests or rights in lands every ten 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 ten years in s. 253.0341(4), F.S., to determine if the lands should be kept.

The bill creates s. 373.089(9), F.S., to require 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

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. A Work Group recommended at that time, and the Legislature subsequently funded, the Hurricane Housing Recovery Program and the Rental Recovery Loan Program.

Hurricane Housing Recovery Program (HHRP)

The Hurricane Housing Recovery Program (HHRP) 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. HHRP funds were distributed to local governments using a need-based formula to allow local communities to evaluate and address needs as appropriate. Eligible uses of the funds included, but were not limited to:

- Repair and replacement of site built housing;
- Land acquisition, through community land trusts or other means, for properties that may include scattered sites, community revitalization sites, and older manufactured home parks;
- Construction and development financing;
- Down payment, closing cost, and purchase price assistance for site-built and post-1994 manufactured homes where the wind load rating is sufficient for the location;
- Repair, replacement, and relocation assistance for post-1994 manufactured homes where the wind load rating is sufficient for the location, including those on leased land in stable park situations;
- Limited repair and relocation assistance on a case by case basis to pre-1994 manufactured homes;
- The acquisition of building materials for home repair and construction;
- Implementation of long-term recovery plans prepared through a locally initiated collaborative community partnership or in conjunction with the Department of Community Affairs and FEMA;

- Housing re-entry assistance, such as security deposits, utility deposits, and temporary storage of household furnishings;
- Foreclosure eviction prevention, including monthly rental assistance for limited periods of time; and
- Capital to leverage other private and public resources.[67]

Rental Recovery Loan Program

The Rental Recovery Loan Program (RRLP) 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

The bill creates the Hurricane Housing Recovery Program and the Rental Recovery Loan Program 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 outlining proposed recovery actions, income levels and number of units to be served, and funding requests. Program funds will be used as follows:

- To serve households with incomes up to 120 percent of the area median income (AMI), except that at least thirty percent of program funds should be reserved for households with incomes up to fifty percent AMI and an additional thirty percent of program funds reserved for households with incomes up to eighty percent AMI.
- At least sixty-five percent of the funds shall be used for homeownership.
- Up to fifteen 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. The bill requires that each participating local entity submit a report of its housing recovery program and accomplishments by September 15, 2019 and each year thereafter. The bill provides FHFC the authority to adopt emergency rules pursuant to s. 120.54, F.S. for the purpose of implementing these programs.

The bill also provides for an appropriation from the Local Government Housing Trust Fund and State Housing Trust Fund to implement these programs. (SEE FISCAL COMMENTS).

B. SECTION DIRECTORY:

Section 1: Amends s. 125.379, F.S., requiring certain evaluation criteria of real property by counties when developing surplus land inventory lists.

Section 2: Amends s. 163.3180, F.S., prohibiting a local government from charging a mobility fee for the development of affordable housing for a five year period beginning July 1, 2018.

Section 3: Amends s. 163.31801, F.S., prohibiting a local government from charging impact fees for the development of affordable housing for a five year period beginning July 1, 2018; requiring additional annual financial reporting requirements

[67] Hurricane Housing Work Group, "Recommendations to Assist in Florida's Long Term Housing Recovery Efforts," 14 (Feb. 2015), at https://www.floridahousing.org/press/publications/hurricane-housing-work-group-recommendations-february-2005 (accessed 1/16/2018). *See also* ch. 2006-69, Laws of Fla.

Section 4: Amends s. 166.0451, F.S., requiring certain evaluation criteria of real property by municipalities when developing surplus land inventory lists.

Section 5: Creates s. 420.0007, F.S., providing a local permit approval process for affordable housing.

Section 6: Amends s. 420.5087, F.S., requiring consideration of certain criteria when evaluating applications under the State Apartment Incentive Loan (SAIL) program.

Section 7: Creates s. 420.56, F.S., providing a process for the disposal of surplus lands for use as affordable housing.

Section 8: Amends s. 420.9071, F.S., correcting a technical cross-reference.

Section 9: Amends s. 253.0341, F.S., requiring nonconservation surplus state lands be offered for affordable housing purposes first to the county or municipality where the land is located before generally offering the land to state universities, etc.

Section 10: Amends s. 337.25, F.S., requiring certain surplus state lands within a transportation corridor be offered for affordable housing purposes first to the county or municipality where the land is located.

Section 11: Amends s. 373.089, F.S., requiring nonconservation surplus state lands within a water management district be offered for affordable housing purposes first to the county or municipality where the land is located. The nonconservation lands affected by this section are only those originally acquired using state funds.

Section 12: Creates the Hurricane Housing Recovery Program and Rental Loan Recovery Program; provides emergency rulemaking authority for Florida Housing Finance Corporation.

Section 13: Provides an appropriation for the Hurricane Housing Recovery Program and Rental Loan Recovery Program.

Section 14: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Revenue for the Local Government Housing Trust Fund and State Housing Trust Fund are provided from allocations of the Documentary Stamp Tax Collections. The August 2017 Revenue Estimating Conference estimated $314.08 million to be available for distribution to these trust funds for Fiscal Year 2018-19.

   The bill directs twenty percent of this estimate be appropriated to Florida Housing Finance Corporation for affordable housing hurricane recovery efforts. Based on the estimate, $62.82 million would be provided.

The bill also provides $100,000 to Florida Housing Finance Corporation from the State Housing Trust Fund to provide technical and training assistance.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill prohibits local governments from collecting impact fees and mobility fees for a five-year period beginning July 1, 2018 and ending June 30, 2023. 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.[68] In 2016, 28 school districts reported total impact fee revenues of $265.3 million.[69]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides Florida Housing Finance Corporation with emergency rulemaking authority pursuant to s. 120.54, F.S., to adopt rules necessary to implement the hurricane recovery programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill 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 three years instead of every ten years. This change appears to be inconsistent with the Board of Trustee's duty to review the management of its lands at least every ten years in s. 253.034(5), F.S., and the changes in this bill to require the WMDs and DOT to review their lands every ten years to determine if the lands are still needed.

[68] Office of Economic and Demographic Research, The Florida Legislature, *Impact Fees*, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm. County Revenues were updated July 25, 2017, and City Revenues were updated September 28, 2017.
[69] *Id.* School District Revenues were updated October 5, 2017.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and approved the bill as a committee substitute. The amendment made clarifying technical changes, including conforming references to special districts meant to revitalize communities and expressly referencing the statutory definition of “permits” in s. 163.3164(16), F.S., for use in conjunction with the expedited local permitting process created in the bill.

This analysis is drawn to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.