

THE FLORIDA SENATE
2019 SUMMARY OF LEGISLATION PASSED
Committee on Community Affairs

CS/CS/HB 7103 — Community Development and Housing

by State Affairs Committee; Judiciary Committee; Commerce Committee; and Rep Fischer and others (CS/CS/CS/SB 1730 by Rules Committee; Infrastructure and Security Committee; Community Affairs Committee; and Senator Lee)

CS/CS/HB 7103 amends various provisions of current law pertaining to community planning, land development regulations, affordable housing, and condominium firesafety requirements.

Affordable Housing

Current law authorizes counties and municipalities to impose certain land use mechanisms, such as inclusionary housing ordinances, to increase the supply of affordable housing in the state. The bill provides that a local inclusionary housing ordinance requiring a developer to provide a specified number of affordable housing units or requiring a developer to contribute to a housing fund must provide incentives to fully offset all costs to the developer of its affordable housing contribution. The developer offset provision does not apply in areas of critical state concern in Monroe County and the City of Key West.

The bill also provides legislative findings about the need to develop affordable workforce housing opportunities for “essential services personnel” in areas of critical state concern. The bill defines essential services personnel as persons or families whose total annual household income is at or below 120 percent of the area median income and at least one of whom is employed as police or fire personnel, a child care worker, a teacher or other education personnel, health care personnel, a public employee, or a service worker. This change will allow the Florida Housing Finance Corporation to maintain compliance with federal workforce housing program requirements.

Development Permits and Orders

The bill imposes requirements and time limits for a county or municipality to review an application for a development permit or development order and provides procedures for addressing deficiencies. The bill requires a local government to review an application for completeness and notify the applicant within 30 days that either the application is complete or contains deficiencies. If deficiencies are identified, the applicant has 30 days to submit the required additional information. Within 120 days after an application is deemed complete, or 180 days for applications that require a quasi-judicial hearing or public hearing, a local government must approve, approve with conditions, or deny the application. These timeframes do not apply in areas of critical state concern in Monroe County and the City of Key West.

Other requirements of the bill concerning development permits and orders include:

- Requiring municipal comprehensive plans effective after January 1, 2019 to incorporate development orders existing before the comprehensive plan’s effective date;

- Providing that when an aggrieved or adversely affected party challenges the consistency of a development order with an adopted comprehensive plan, either party is entitled to invoke summary proceedings under s. 51.011, F.S., and the prevailing party is entitled to recover reasonable attorney fees and costs; and
- Providing that the period of time to exercise rights under a building permit or development order may be tolled or extended during a declared state of emergency for a natural emergency only.

Impact Fees

As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth. Examples of capital facilities include the provision of additional water and sewer systems, schools, libraries, parks and recreational facilities. Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

The bill prohibits local governments from requiring the payment of impact fees prior to issuing a property's building permit. The bill also codifies the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to be proportional and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the benefits accruing to the proposed new development.

The bill requires an impact fee ordinance to earmark impact fee funds for capital facilities that benefit new residents and prohibits the use of impact fee revenues to pay existing debt unless specific conditions are met. The bill requires mobility fees to be governed by the impact fee statutes and clarifies that water and sewer connection fees are not governed as impact fees.

Other requirements of the bill concerning impact fees include:

- Requiring a local government to credit against an impact fee any contributions related to public educational facilities. The credit must be based on the total impact fee assessed and not on the impact fee for any particular type of school;
- Providing that if a local government increases its impact fee rates, the holder of any impact fee credits in existence prior to the increase is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established; and
- Authorizing a local government to waive impact fees for the development or construction of affordable housing.

Private Providers

Current law authorizes construction contractors and property owners to hire licensed building code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion. The bill expands the scope of services of private providers by allowing them to approve plans and perform inspections for portions of a project that are not part of the building structure, such as services involving the review of site plans and site work engineering plans. The bill also:

- Prohibits a local building official from replicating plan reviews or inspections done by a private provider, unless expressly authorized;
- Prohibits a local jurisdiction from a charging fee, other than a reasonable administrative fee, for building inspections when a property owner or contractor hires a private provider;
- Reduces the required minimum notification time to a local building official regarding the use of a private provider from 7 days to 2:00 p.m., 2 business days prior to a scheduled inspection;
- Reduces the time period for a local building official to review a permit application from a private provider from 30 business days to 20 business days; and
- Provides that a local building official may not audit a private provider more than 4 times in a calendar year unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare.

Firesafety Requirements for Residential Condominium Associations

The Florida Fire Prevention Code (Fire Code) requires existing multi-family buildings 75 feet or taller to be retrofitted with a fire sprinkler system or an engineered life safety system (ELSS). However, local governments may not require a residential condominium association to retrofit a building before January 1, 2020. The bill makes the following changes relating to firesafety requirements for residential condominiums:

- Extends the deadline to retrofit a building with a fire sprinkler system or an ELSS to January 1, 2024;
- Allows unit owners, by majority vote, to forego retrofitting with a fire sprinkler system;
- Removes a provision allowing a licensed electrician or electrical contractor to certify a condominium is in compliance with the Fire Code;
- Provides that retrofitting requirements in s. 718.112(2)(l), F.S., do not apply to timeshare condominium associations, which are governed by s. 721.24, F.S.;
- Requires a condominium association's bylaws to include a firesafety component, acknowledging that the condominium association must ensure compliance with the Fire Code and comply with applicable retrofitting requirements;
- Specifies that individual balconies are not considered "common areas" and thus not included in mandatory retrofitting requirements;
- Extends the deadline to retrofit condominium common areas with guardrails or handrails from 2014 to 2024; and
- Requires the State Fire Marshal to collect data on specified high-rise condominium buildings that have not been retrofitted with a fire sprinkler system or an ELSS and report such information to the Governor and the Legislature by September 1, 2020.

If approved by the Governor, these provisions take effect upon becoming a law.

Vote: Senate 26-13; House 66-42