

THE FLORIDA SENATE
2019 SUMMARY OF LEGISLATION PASSED

Committee on Community Affairs

CS/HB 9 — Community Redevelopment Agencies

by State Affairs Committee and Rep. LaMarca (CS/CS/SB 1054 by Appropriations Committee; Community Affairs Committee; and Senator Lee)

The Community Redevelopment Act authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas. CRAs are controlled by a governing board that either is composed of members of the local governing body creating the CRA or commissioners appointed by the local governing body. CRAs operate under a community redevelopment plan that is approved by the local governing body and are primarily funded by tax increment financing, calculated based on the increase of property values inside the boundaries of the CRA.

CS/HB 9 increases accountability and transparency for CRAs by:

- Requiring the commissioners of a CRA to undergo four hours of ethics training annually;
- Requiring a CRA to use the same procurement and purchasing processes as the county or municipality that created it;
- Expanding the annual reporting requirements for CRAs to include audit information and performance data and requiring the information and data to be published on the agency website;
- Providing that beginning October 1, 2019, moneys in the CRA redevelopment trust fund may only be expended pursuant to an annual budget adopted by the board of commissioners for the CRA and only for those purposes specified in current law, including overhead and administrative costs;
- Requiring a CRA created by a municipality to provide its proposed budget, and any amendments to the budget, to the board of county commissioners for the county in which the CRA is located 10 days after the adoption of such budget; and
- Requiring a county or municipality that created a CRA to include the CRA's audit report with its submission of the county or municipality's annual financial report to the Department of Financial Services.

The bill also provides a process for the Department of Economic Opportunity to declare a CRA inactive if it has no revenue, expenditures, or debt for six consecutive fiscal years, and provides for the termination of existing CRAs at the earlier of the expiration date stated in the CRA's charter as of October 1, 2019, or on September 30, 2039. The governing board of the creating local government entity may prevent the termination of a CRA by a majority vote. Finally, the bill authorizes any local governing body that created a CRA to adjust the level of tax increment financing available to the CRA. The local governing body may set the level of funding at any amount between 50 percent and 95 percent of the increment.

If approved by the Governor, these provisions take effect October 1, 2019.

Vote: Senate 36-1; House 81-30

Committee on Community Affairs

CS/SB 82 — Vegetable Gardens

by Rules Committee and Senator Bradley

CS/SB 82 prohibits a county, municipality, or other political subdivision of the state from regulating vegetable gardens on residential properties. Any local ordinance or regulation regarding vegetable gardens on residential properties is void and unenforceable. The bill provides an exception for local ordinances or regulations of a general nature that do not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

The bill defines the term “vegetable garden” as a plot of ground where herbs, fruits, flowers, or vegetables are cultivated for human consumption.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 35-5; House 93-16

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CS/HB 127 — Permit Fees

by State Affairs Committee and Rep. Williamson and others (CS/SB 142 by Innovation, Industry, and Technology Committee and Senators Perry and Brandes)

A local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code. The local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida Building Code. The basis for the fee structure must relate to the level of service provided by the local government. The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.

The bill requires the governing body of a local government to post its building permit and inspection fee schedules on its website. The bill also requires that by December 31, 2020, the governing body will post a newly required building permit and inspection utilization report. The report will include costs incurred and revenues derived from the enforcement of the Florida Building Code. After December 31, 2020, a local government must update the utilization report prior to amending its building permit and inspection fee schedule.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 40-0; House 110-0

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CS/HB 207 — Impact Fees

by Local, Federal and Veterans Affairs Subcommittee and Rep. Donalds and others (SB 144 by Senator Gruters)

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.

SB 144 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 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.

Additionally, the bill requires any impact fee ordinance 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 provides that certain statutory provisions related to impact fees do not apply to water and sewer connection fees.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 39-1; House 101-12

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CS/CS/HB 437 — Community Development Districts

by State Affairs Committee; Local, Federal and Veterans Affairs Subcommittee; and Rep. Buchanan (CS/SB 728 by Infrastructure and Security Committee and Senator Lee)

A community development district (CDD) is a “local unit of special-purpose government” which is often created to facilitate the funding and management of new housing developments.

Expanding a CDD involves a different process depending on its original size. For CDDs that began as less than 2,500 acres in size, a person must file a petition with the county. For larger CDDs, a person must file a petition, along with a \$1,500 filing fee, with the Florida Land and Water Adjudicatory Commission. Then, in either case, a public hearing must be held. However, special requirements apply if someone is seeking a particularly large expansion of a CDD. Any expansion of more than 50 percent of the initial size of the CDD or more than 1,000 acres must be processed according to the statute that governs creation of a new CDD.

CS/CS/HB 437 authorizes CDDs of less than 2,500 acres and solely in one county or municipality to include a list of parcels in the CDD’s establishment petition to the county that the CDD expects to add within the next 10 years. A parcel may only be included with the consent of the landowner. The bill provides a process for expanding the boundaries of the CDD to include these additional parcels. The bill also provides that the expansion of CDD boundaries to include these parcels does not alter the time period for transition from a landowner board to a board composed of qualified electors under s. 190.006, F.S., and states that the parcels may be added even if the resulting CDD is greater than 2,500 acres.

The bill also provides that a CDD may also merge with another type of special district created by special act, pursuant to the terms of that special act. A CDD is authorized to enter into a merger agreement to address transition issues, including the allocation and retirement of existing debt.

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

Vote: Senate 40-0; House 106-9

Committee on Community Affairs

CS/CS/HB 447 — Construction

by Commerce Committee; Business and Professions Subcommittee; and Rep. Diamond and others (CS/SB 902 by Rules Committee and Senators Perry, Hutson, and Bracy)

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. Local governments enforce the Florida Building Code, issue building permits, review building plans, and perform building inspections. CS/CS/HB 447 creates provisions related to building permits and fees as well as the enforcement and updating of the Florida Building Code.

The legislation establishes a number of processes and related procedures for property owners and local governments to close open and expired building permits. Specifically, the bill:

- Allows local governments to provide written notice to a property owner and contractor no less than 30 days before a building permit is set to expire;
- Creates a procedure for property owners to close open or expired building permits by retaining the original contractor or a different contractor to perform the work necessary and obtain the inspections required to close the permit;
- Clarifies that a subsequent contractor is only liable for the work she or he performs when working to close a permit;
- Allows the owner of a residential property to close a permit by assuming the role of an owner-builder upon approval from the local government;
- Provides a local government may close a building permit after 6 years, if the agency determines that no apparent safety hazards exist;
- Prohibits a local government from penalizing or denying issuance of a building permit to a subsequent arms-length purchaser solely because a previous owner applied for a permit which was not closed;
- Prohibits a local government from denying issuance of a building permit to a contractor solely because the contractor is listed on other building permits that are not closed; and
- Limits a local government to only charge one search fee for identifying building permits for a particular tax parcel.

The bill also:

- Prohibits a local government from carrying forward an amount greater than its average cost for enforcing the Florida Building Code for the previous four fiscal years;
- Requires a local government to use any excess code enforcement funds to rebate or reduce code enforcement fees; and
- Prohibits a local government from charging surcharges or similar fees not directly related to enforcing the Florida Building Code.

In addition, the bill clarifies the risk horizon of construction industry participants by providing that a notice of claim authorized within ch. 558, F.S., to resolve construction defects does not toll any statute of repose under ch. 95, F.S., on limitations of actions and adverse possession. This effectively reverses a September 2018 4th DCA decision in *Gindel v. Centex Homes*, (43 Fla. L.

Weekly D2112d) that held that a service of pre-suit construction defect notice pursuant to s. 558.004, F.S., constitutes an “action” for purposes of initiating an action within the ten year statute of repose for actions founded upon the improvement of real property under s. 95.011(3)(c), F.S.

Finally, the bill allows the Florida Building Commission, during the triennial update process of the Florida Building Code, to approve certain amendments without a finding that the amendments are needed in order to accommodate the specific needs of the state. This provision takes effect July 1, 2020.

If approved by the Governor, these provisions take effect July 1, 2019, except where otherwise provided.

Vote: Senate 40-0; House 109-0

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CS/HB 521 — Wetland Mitigation

by Agriculture and Natural Resources Subcommittee; and Reps. McClure, Overdorf, and others (CS/SB 532 by Community Affairs Committee and Senators Lee and Farmer)

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker) to provide mitigation for unavoidable wetland impacts within a defined region (mitigation service area). The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, which represents the wetland ecological value equivalent to the complete restoration of one acre. The number of potential credits permitted for the bank and the credit debits required for impact permits are determined by the Department of Environmental Protection or one of the state's water management districts. A banker must apply for a mitigation bank permit before establishing and operating a mitigation bank.

In 2012, the Legislature prohibited a governmental entity from creating or providing for mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136, F.S.

CS/HB 521 authorizes a local government to allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes if state and federal mitigation credits are not available. Such mitigation must conform to the permitting requirements for mitigation banks.

The bill also creates an exemption allowing a local government to provide mitigation credits for proposed projects when credits are not available at regional mitigation bank and the mitigation area to be utilized was created by a local government prior to December 31, 2011, using the Uniform Mitigation Assessment Method.

The bill may have a positive fiscal impact on local governments who allow a public or private mitigation project to be created on conservation lands owned by the local government. The bill has no fiscal impact on state government.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 39-1; House 72-42

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HB 861 — Local Government Financial Reporting

by Reps. Roach and Fernandez-Barquin (SB 1616 by Senators Baxley and Albritton)

HB 861 specifies time periods for which budget documents must appear on county and municipal websites and requires annual reporting of final budget and economic status information to the Office of Economic and Demographic Research (EDR). The bill requires counties and municipalities to post their annual budgets to their respective websites for at least two years and tentative budgets to their websites for at least 45 days. Information to report to EDR includes government spending and debt per resident, median income within the county or municipality, average local government employee salary, percentage of budget spent on employee salaries and benefits, and the number of taxing districts within the local government's jurisdiction. Annual reporting of information must begin on October 15, 2019. EDR must develop the format and forms for reporting by July 15, 2019.

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

Vote: Senate 37-1; House 115-1

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CS/HB 1159 — Private Property Rights

by State Affairs Committee and Reps. LaRosa and Sabatini (CS/CS/SB 1400 by Judiciary Committee; Community Affairs Committee; and Senator Albritton)

Local government tree maintenance regulations vary but can require property owners to obtain a permit or pay a fee prior to trimming or removing trees on residential property. CS/HB 1159 prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the tree presents a danger to persons or property, as documented by a certified arborist or licensed landscape architect. A local government may not require a property owner to replant a tree that has been pruned, trimmed, or removed in accordance with the bill provisions. The bill does not apply to mangrove trees, which the trimming and alteration of is regulated statewide by the Department of Environmental Protection.

As it pertains to maintaining vegetation within a utility right-of-way, current law requires a utility to give five business days' advance notice to a local government prior to conducting vegetation maintenance activities within a right-of-way. No advance notice is required for service restoration, to avoid an imminent vegetation caused outage, or when performed at the request of a property owner adjacent to the right-of-way, provided the owner has obtained any required approval from the local government. The bill removes the requirement that a property owner receive approval by the local government before requesting an electric utility to prune trees and maintain vegetation in an adjacent right-of-way.

Finally, the bill requires each county property appraiser to post a Property Owner Bill of Rights on its website and specifies the text to be included in the bill of rights. The website must list the seven property rights declared in the bill and must state that the bill of rights does not represent all property rights under Florida law and does not create a civil cause of action.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 22-16; House 77-36

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HB 6017 — Small-scale Comprehensive Plan Amendments

by Rep. Duggan (SB 1494 by Senator Perry)

Comprehensive plans are intended to provide for the orderly and balanced future economic, social, physical, environmental, and fiscal development in a county or municipality. Small-scale comprehensive plan amendments involve less than 10 acres of land, do not impact land in an area of critical state concern, preserve the internal consistency of the overall local comprehensive plan, and do not require substantive changes to the text of the plan. The local government is authorized to adopt a cumulative total of 120 acres of small-scale comprehensive plan amendments in a calendar year. HB 6017 repeals the 120-acre cumulative annual limit on small-scale development amendments that may be approved by a local government.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 39-0; House 108-5

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

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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

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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