

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 7103 PCB COM 19-01 Property Development
SPONSOR(S): State Affairs Committee, Judiciary Committee, Commerce Committee, Fischer
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee	21 Y, 2 N	Smith	Hamon
1) Judiciary Committee	11 Y, 7 N, As CS	Jones	Poche
2) State Affairs Committee	14 Y, 8 N, As CS	Miller	Williamson

SUMMARY ANALYSIS

Property development in Florida is governed by the Community Planning Act and the Florida Building Code. The Community Planning Act governs local government comprehensive plans, land development regulations, and development orders and permits. Local governments must enforce the Building Code and issue building permits. To fund local infrastructure and expand local services to meet the demands of population growth caused by development, local governments may impose impact fees and concurrency requirements for transportation or public education facilities and infrastructure. The bill:

- Restricts counties and municipalities from imposing certain mandatory affordable housing ordinances.
- Imposes time limits for a county or municipality to review applications for development orders or permits and provides procedures for addressing deficiencies.
- Allows parties to a development order challenge to use summary proceedings under s. 51.011, F.S.
- Expands the scope of work for private providers who review site plans and inspect buildings.
- Reduces the time from 30 business days to five business days for building departments to review permit applications when a private provider approves the plans.
- Limits local government's authority to audit a private provider to four times annually and prohibits a building official from replicating plan reviews or inspections done by a private provider.
- Allows one hiring a private provider to seek judicial relief for noncompliance with the law.
- Amends how local governments impose or give credits for impact fees and clarifies that water and sewer connection fees are not governed as impact fees.
- Authorizes local governments to exempt or waive impact fees for affordable housing projects.
- Requires mobility fee-based funding systems to be governed by the impact fee statutes.
- Requires credits for required contributions for public educational facility development be allocated to reduce applicable impact fees on a dollar-for-dollar basis at fair market value for the entire impact fee imposed rather than just those exactions imposed for a specific educational facility.
- Requires municipal comprehensive plans adopted after January 1, 2019, and their corresponding land development regulations, to incorporate the terms of existing development orders.
- Prohibits a municipality from purchasing or annexing real property within the boundaries of another municipality without the latter's consent.
- Limits the tolling and extension of time to exercise rights under a development order, building permit, certain environmental permits, or the buildout date for a development of regional impact to the time covered by declaration of a state of emergency by the Governor for a natural emergency.
- Provides legislative findings about the need for to develop affordable workforce housing and creates a new definition for "essential services personnel."

The bill may have an indeterminate positive impact on state government revenues and an indeterminate negative impact on local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

THE COMMUNITY PLANNING ACT

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act,¹ also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.² The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. The intent of the Act is that local governments manage growth through comprehensive land use plans that facilitate adequate and efficient provision of transportation, water, sewage, schools, parks, recreational facilities, housing, and other requirements and services.³ A housing element is required as part of every comprehensive plan in the state. Among other things, the housing element must address "the creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."⁴

Municipalities established after the effective date of the Community Planning Act must adopt a comprehensive plan within three years after the date of incorporation.⁵ The county comprehensive plan controls until a municipal comprehensive plan is adopted.⁶

Land Development Regulations

The comprehensive plan is implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.⁷ Local governments are encouraged to use innovative land development regulations⁸ and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.⁹

All local government land development regulations must be consistent with the local comprehensive plan.¹⁰ Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.¹¹ However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.¹²

Some affordable housing ordinances or zoning places restrictions on developments such as rent limitations or requiring a given share of the new development to be "affordable housing." These programs can be mandatory or voluntary and vary in their structure with different set-aside requirements, affordability levels, and control periods. Most programs offer developers incentives, such as density bonuses, expedited approval, and fee waivers.

¹ See ch. 85-55, s. 1, Laws of Fla.

² See ch. 2011-139, s. 17, Laws of Fla.

³ S. 163.3161(4), F.S.

⁴ S. 163.3177(6)(f)1.g., F.S.

⁵ S. 163.3167(3), F.S.

⁶ *Id.*

⁷ S. 163.3202, F.S.

⁸ S. 163.3202(3), F.S.

⁹ Ss. 125.01055 and 166.04151, F.S.

¹⁰ S. 163.3194(1)(b), F.S.

¹¹ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

¹² S. 189.081(1), F.S.

Effect of Proposed Changes (Sections 1 & 4)

CS/CS/HB 7103 restricts counties and municipalities from adopting or imposing mandatory affordable housing requirements in any form. This includes comprehensive plan amendments, land development regulation, or as conditions of a development order or permit. Specifically, the bill restricts a local government¹³ from any of the following:

- Mandating or establishing a maximum sales price or lease rental for privately produced dwelling units.
- Requiring the allocation or designation, whether directly or indirectly, of privately produced dwelling units for sale or rental to any particular class or group of purchasers or tenants.
- Requiring the provisions of any on-site or off-site workforce or affordable housing units or a contribution of land or money for such housing, including, but not limited to, the payment of any flat or percentage-based fee whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.

The bill, however, does allow for a county or municipality to create or implement a voluntary density bonus program or other voluntary incentive-based program designed to increase the supply of workforce or affordable housing units.

Issuing Development Orders and Permits

Under the Community Planning Act, a development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.¹⁴ A development order is issued by the local government and grants, denies, or grants with conditions an application for a development permit.¹⁵

When reviewing an application for a development permit, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.¹⁶ Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.¹⁷ If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant can request the county or municipality proceed to process the application for approval or denial.¹⁸ If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.¹⁹

There is no specified timeframe provided in current statute for reviewing a development permit application.

Effect of Proposed Changes (Sections 2 & 3)

CS/CS/HB 7103 imposes requirements and time limits for a county or municipality to review a development order or permit application and provides procedures for addressing deficiencies. Specifically, the bill requires the local government to review and issue a letter to the applicant indicating that either the application is complete or specifying deficiencies within 30 days after receiving an application. If deficiencies are identified, the applicant has 30 days to submit the required additional information. Within 90 days after the initial application, or the supplemental submission, the local government must approve, approve with conditions, or deny the application.

¹³ The Community Planning Act defines "local government" as a county or municipality. S. 163.3164(29), F.S.

¹⁴ S. 163.3164(16), F.S.

¹⁵ See ss. 125.022, 163.3164(15), and 166.033, F.S.

¹⁶ Ss. 125.022(1) and 166.033(1), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Ss. 125.022(2) and 166.033(2), F.S.

All decisions must include written findings supporting either the approval, approval with conditions, or denial of the development permit or order. Currently, only application denials are required to include a written notice citing applicable authority for the denial decision. The bill allows for the new time limits to be waived by the applicant.

The term “development order” is added to the title and throughout the section along with conforming changes.

Purchase of Real Property by Municipality

Section 166.045, F.S., sets forth a process by which municipalities may purchase real property. If a municipality utilizes the provisions of this section, the law requires that all appraisals, offers, or counteroffers be in writing and provides that they are exempt from public record requirements.

The public records exemption is effective until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing body of the municipality. If the contract or agreement is not submitted to the governing body, the public records exemption expires 30 days after the termination of negotiations.

The governing body is required to obtain at least one appraisal for each purchase less than \$500,000. For each purchase in excess of \$500,000, the governing body must obtain at least two appraisals.

A municipality that does not choose to utilize the public records exemption may follow any procedure not in conflict with the provisions of Florida’s public record law for the purchase of real property, which is authorized in its charter or established by ordinance.

Effect of Proposed Changes (Section 5)

The bill prohibits a municipality from purchasing real property within another municipality's jurisdictional boundaries without the other municipality's consent. The bill provides an exception for property annexed by a municipality pursuant to the consent requirements for annexation under an interlocal service boundary agreement.²⁰

Municipal Annexation

Section 2(c), Art. VIII of the Florida Constitution provides that municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities must be as provided by general or special law. This provision authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property.

The Legislature established local annexation procedures by general law in 1974, with the enactment of ch. 171, F.S., the “Municipal Annexation or Contraction Act.”²¹ This act describes the way in which property may be annexed or de-annexed by municipalities without legislative action. The purpose of the act is to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits, and criteria for determining when annexations or contractions may take place so as to:

- Ensure sound urban development and accommodation to growth;
- Establish uniform legislative standards for the adjustment of municipal boundaries;
- Ensure efficient provision of urban services to areas that become urban in character; and
- Ensure areas are not annexed unless municipal services can be provided to those areas.²²

²⁰ S. 171.205, F.S.

²¹ Ch. 74-190, s. 1, Laws of Fla.

²² S. 171.021, F.S.

Pursuant to s. 171.042, F.S., before local annexation procedures may begin, the governing body of the municipality must prepare a report containing plans for providing urban services to any area to be annexed. A copy of the report must be filed with the board of county commissioners where the municipality is located. This report must include appropriate maps, plans for extending municipal services, timetables, and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements described by s. 171.043, F.S.:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.²³
- The area to be annexed must be reasonably compact.²⁴
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.²⁵
- Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area or provide a necessary bridge between two urban areas for the extension of municipal services.

The Interlocal Service Boundary Agreement Act (Interlocal Boundary Act)²⁶ authorizes an alternative to these statutory procedures. Intended to encourage intergovernmental coordination in planning, delivery of services, and boundary adjustments, the primary purpose of the Interlocal Boundary Act is to promote establishing boundaries that reduce the costs of local governments, prevent duplication of services, increase local government transparency and accountability, and reduce intergovernmental conflicts.²⁷ An interlocal agreement may provide an annexation process with flexibility for securing the consent of those within the area to be annexed, while continuing the requirement for approval of the proposed annexation by a majority of the registered voters, the land owners, or both, within the proposed annexation area. The alternate process also must provide for certain disclosures pertaining to a privately owned solid waste disposal facility included within the proposed annexation area, including whether the owner of the facility objects to the proposed annexation.²⁸

Effect of Proposed Changes (Section 6)

The bill prohibits a municipality from annexing an area within another municipality's jurisdiction without the other municipality's consent. The bill provides an exception for property annexed by a municipality pursuant to the consent requirements for annexation under an interlocal service boundary agreement.

Existing Land Development Orders

A county or municipality is required to adopt or amend land development regulations within one year after submitting its comprehensive or revised comprehensive plan for review.²⁹ Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;

²³ This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the municipality's boundary by a publicly owned county park, right-of-way, or body of water.

²⁴ S. 171.031(12), F.S., defines "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.

²⁵ An area developed for urban purposes is defined as an area which meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less.

²⁶ Ch. 171, Part II, F.S. See s. 171.20, F.S.

²⁷ S. 171.201, F.S.

²⁸ S. 171.205, F.S.

²⁹ S. 163.3202(1), F.S.

- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Effect of Proposed Changes (Sections 7 & 8)

The bill provides that a municipal comprehensive plan effective after January 1, 2019, and all land development regulations adopted to implement the plan, must incorporate a development order existing before the comprehensive plan's effective date. The new municipal comprehensive plan may not impair a party's ability to complete development in accordance with the development order and must vest the density³⁰ and intensity³¹ approved by the development order without any limitations or modifications. The bill requires land development regulations to incorporate preexisting development orders.

Challenging a Development Order

Section 163.3215, F.S., provides the exclusive methods for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with an adopted comprehensive plan. One method allows a local government to adopt an ordinance establishing minimum requirements and procedures for the local hearing process providing an aggrieved or adversely affected party the opportunity to challenge the proposed decision of a local government granting or denying an application for a development order. Review of the local government's final decision is by petition for writ of certiorari in the circuit court.³²

If a local government has not adopted an established procedures ordinance, any aggrieved or adversely affected party may maintain a de novo action for declaratory, injunctive, or other relief against any local government to challenge any decision granting or denying an application for, or to prevent any action on a development order which materially alters the use or density or intensity of use on a particular piece of property which is inconsistent with the comprehensive plan. The de novo action must be filed in circuit court³³ no later than 30 days following rendition of a development order, or when all local administrative appeals are exhausted, whichever occurs later.³⁴

Under s. 163.3215, F.S., an aggrieved or adversely affected party is any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The term includes the owner, developer, or applicant for a development order.³⁵

³⁰ S. 163.3164(12), F.S., defines "density" as an objective measure of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

³¹ S. 163.3164(22), F.S., defines "intensity" as an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below the ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services.

³² S. 163.3215(4), F.S.

³³ See s. 26.012, F.S.

³⁴ S. 163.3215(3), F.S.

³⁵ S. 163.3215(2), F.S.

Effect of Proposed Changes (Section 11)

CS/CS/HB 7103 entitles either party to a development order challenge to invoke summary proceedings under s. 51.011, F.S. However, if either party shows, by clear and convincing evidence, that summary procedure is inappropriate, the court may decline to apply summary procedure.

Summary procedure³⁶ applies to actions specified by statute or rule. Expediting timeframes under summary procedure allows a case to proceed quickly and efficiently. When summary procedure governs, the following procedures apply:

- **Pleadings.** Pleadings are limited to plaintiff's initial pleading, defendant's answer and counterclaim, if necessary, and plaintiff's response to defendant's counterclaim, if necessary.
 - Plaintiff's initial pleading must contain all elements required by the applicable statute or rule, or otherwise state a cause of action.
 - Defendant's answer must be filed within 5 days after defendant is served with plaintiff's initial pleading, and the answer must contain all defenses of law or fact.
 - If the answer contains a counterclaim, plaintiff must respond within 5 days after defendant serves the counterclaim.
 - The court must hear all defensive motions before trial.
- **Discovery.** The parties can take depositions at any time. No other discovery or admissions may be conducted except by court order. Discovery does not postpone the time for trial unless a party shows good cause.
- **Jury.** Either party may demand jury trial, if authorized by law, within 5 days after the action comes to issue. The action can be tried immediately if the jury is in attendance at the close of pleading.
- **New Trial.** Either party can move for new trial within 5 days of the verdict.
- **Appeal.** Either party can appeal within 30 days of rendition of the judgment.

In an action governed by summary procedure, the Florida Rules of Civil Procedure apply, except where the statute or rule provides otherwise. Some especially complicated cases may be inappropriate for summary procedure. If a party shows by clear and convincing evidence that summary procedure is inappropriate, the court may decline to apply summary procedure.

The Florida Supreme Court has held that the summary procedure statute, even though it sets judicial procedures, is a valid exercise of legislative authority.³⁷

IMPACT FEES AND CONCURRENCY

Impact fees are amounts imposed by local governments³⁸ to fund local infrastructure required to provide for increased local services needs caused by new growth.³⁹ Impact fees must meet the following minimum criteria when adopted by ordinance of a county, municipality, or special district:

- 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 must be limited to the actual costs.
- All local governments must 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.⁴⁰

³⁶ S. 51.011, F.S. Summary procedure may apply to actions in circuit court and is not analogous to the procedure for small claims in county court to which the Florida Small Claims Rules apply. See R. 7.010, Fla. Sm. Cl.

³⁷ See, e.g., *Crocker v. Diland Corp.*, 593 So. 2d 1096 (Fla. 5th DCA 1992); *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2008) (approving *Crocker*, 593 So. 2d 1096, and addressing the interplay between the Florida Rules of Civil Procedure and s. 51.011, F.S.).

³⁸ S. 163.31801, the impact fee statute, uses "local government" inclusively to refer to counties, municipalities, and special districts. The statute distinguishes school districts from other local governments. See s. 163.31801(4), F.S.

³⁹ S. 163.31801(2), F.S.

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees.⁴¹ The courts have found the imposition of impact fees appropriate where the local government meets two fundamental requirements known as the dual rational nexus test, which requires impact fees to have a reasonable connection, or nexus, between the:

- Need for additional capital facilities and the population growth generated by the project.
- Expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project.⁴² Meeting this criterion 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.

Some local governments impose impact fees specifically for local school facilities.⁴³ School districts have authority to impose ad valorem taxes within the district for school purposes⁴⁴ but are not general purpose governments with home rule power⁴⁵ and are not expressly authorized to impose impact fees.⁴⁶ Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into an account segregated for funding those improvements.⁴⁷ The ordinances creating the impact fee also require the funds be used only for education capital improvement projects.⁴⁸

Some local governments require payment of impact fees prior to the issuance of a development or building permit.⁴⁹ In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.⁵⁰ 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.⁵¹

Local comprehensive plans must contain a capital improvements element designed to provide for the construction, extension, or increase in capacity of public facilities necessary to implement the plan. The purpose is to ensure the availability and adequacy of public facilities to meet established acceptable levels of service.⁵² The capital improvements element must estimate the costs for such public facilities and when they will be needed.⁵³ The only public facilities subject to the concurrency requirement statewide are

⁴⁰ S. 163.31801(3), F.S.

⁴¹ Currently, in Florida there are 67 counties, 413 municipalities, 1,091 independent special districts, and 637 dependent special districts. See ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appx. B, <http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&Committeeld=3025&Session=2019&DocumentType=GeneralPublications&FileName=2018-2020LocalGovernmentFormationManualFinal.pdf> (last visited Apr. 3, 2019); Lists of Independent and Dependent Districts available through Dept. of Economic Opportunity, Special District Accountability Program, <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Apr. 3, 2019).

⁴² *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)).

⁴³ See, e.g., Miami-Dade County Code of Ordinances ch. 33K, "Educational Facilities Impact Fee Ordinance"; Orange County Code of Ordinances ch. 23, art. V, "School Impact Fees."

⁴⁴ Art. VII, s. 9(a), art. IX, s. 4(b), Fla. Const.; s. 1011.71, F.S. See also *St. Johns County*, *supra* at 583 So. 2d 642.

⁴⁵ See art. VIII, ss. 1(f)-(g), (2), Fla. Const.

⁴⁶ S. 163.31801(2), F.S.

⁴⁷ In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(1). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues must be deposited. Orange County Code of Ordinances, ss. 23-142.

⁴⁸ See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

⁴⁹ See, e.g., Roads Impact Fee, ch. 2, art. VI, div. 2, s. 2-267(a), Land Development Code Lee County, Florida, https://library.municode.com/fl/lee_county/codes/land_development_code?nodeId=LADECO_CH2AD_ARTVIIMFE (last visited Apr. 3, 2019); Transportation Impact Fee, Ch. 56, Part I, s. 56-15.C.1, City of Orlando Code of Ordinances, https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH56IMFE (last visited Apr. 3, 2019); Road Impact Fees, Miami-Dade County Code of Ordinances, s. 33E-6.1(c), https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIICCOOR_CH33EROIMFEOR_S33E-6.1PAROIMFE (last visited Apr. 3, 2019).

⁵⁰ S. 553.79, F.S.

⁵¹ S. 163.3164(16), F.S.

⁵² S. 163.3177(3), F.S.

⁵³ S. 163.3177(3)(a)2., F.S.

sanitary sewer, solid waste, drainage, and potable water.⁵⁴ Local governments are authorized to extend the concurrency requirement to additional types of public facilities.

A local government applying the concurrency requirement to transportation facilities must comply with the statutory requirements in order to achieve and maintain the level of service standard adopted in the comprehensive plan.⁵⁵ A local government that later repeals transportation concurrency is encouraged to apply statutory criteria to an alternative mobility funding system. A mobility fee-based funding system adopted by a local government must comply with the dual rational nexus test applicable to impact fees.⁵⁶

Local governments may also apply concurrency to public education facilities.⁵⁷ With certain exceptions, when establishing such concurrency requirements the local government must enter into an interlocal agreement with the school district.⁵⁸ The interlocal agreement may authorize a contribution of land, construction, expansion, or payment for land acquisition, construction or expansion of a public school, or construction of a charter school, as proportionate-share mitigation. If so, the local government must credit such contribution towards any other impact fee or exaction on a dollar-for-dollar basis at fair market value.⁵⁹

Effect of Proposed Changes (Sections 9 & 10)

CS/CS/HB 7103 prohibits a local government from requiring payment of impact fees prior to the issuance of a building permit. The bill codifies the dual rational nexus test by requiring an impact fee to have a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction. Local governments must designate the funds collected by the impact fees for acquiring, constructing, or improving capital facilities to benefit new users. Impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction.

The bill also requires the local government to credit against the collection of the impact fee any contributions related to public educational facilities, whether provided in a proportionate share agreement or any other form of exaction. Any such contributions must be applied to reduce impact fees on a dollar-for-dollar basis at fair market value. If the local government adjusts the amount of impact fees, outstanding and unused credits must be adjusted accordingly. The holder of impact or mobility fee credits in existence before an impact fee or mobility fee rate increase is entitled to a proportionate increase in his or her credit balance.

The bill authorizes counties, municipalities, and special districts to provide exceptions or waivers of impact fees to encourage the development or construction of affordable housing. Providing such an exception or waiver does not require the local government to use other revenues to offset the impact. The bill also clarifies that water and sewer connection fees are not treated as impact fees.

The bill amends s. 163.3180, F.S., to require a mobility fee-based funding system to comply with the revisions to s. 163.31801, F.S., governing impact fees. The bill requires a credit for impact fees imposed for public educational facilities to be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.

TOLLING AND EXTENSION OF PERMITS

When the Governor issues a declaration of emergency, the period to exercise rights under a permit or other authorization is tolled for the duration of the emergency. The period remaining to exercise such rights is extended for six months in addition to the tolled period. The tolling and extension applies to the:

⁵⁴ S. 163.3180(1), F.S.

⁵⁵ S. 163.3180(5), F.S.

⁵⁶ S. 163.3180(5)(i), F.S.

⁵⁷ S. 163.3180(6)(a), F.S.

⁵⁸ Ss. 163.31777(1), 163.3180(6)(i), F.S.

⁵⁹ S. 163.3180(6)(h)2.b., F.S.

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of a permit issued by the Department of Environmental Protection or a water management district under ch. 373, part IV, F.S.; or
- Buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.⁶⁰

The statute recognizes two types of emergencies. A “manmade emergency” is caused by actions against persons or society, including without limitation enemy attack, sabotage, terrorism, civil unrest, or other action impairing the orderly administration of government.⁶¹ A “natural emergency” is caused by natural events including without limitation hurricane, storm, flood, severe wave action, drought, or earthquake.⁶²

Effect of Proposed Changes (Section 12)

The bill limits the tolling and extension for permits or other authorizations to declarations of a state of emergency for natural emergencies.

AFFORDABLE WORKFORCE HOUSING POLICY

The Florida Housing Finance Corporation (FHFC) administers the financing of affordable housing in the state.⁶³ FHFC is authorized to participate in various federal housing grant programs, including drawing and administering certain funds and other resources made available to Florida.⁶⁴ However, FHFC may be out of compliance with certain federal programs providing funding for workforce housing because its governing statute has neither an express statement of intent to create a statewide strategy to provide affordable workplace housing nor an applicable definition of “essential services personnel.”

Effect of Proposed Changes (Sections 13, 14, & 15)

The bill creates a statement of intent to create a state housing finance strategy to provide affordable workplace housing in specific areas of critical state concern. The statement includes findings on the reason for the continuing lack of affordable workforce housing and the detrimental impacts of such lack on essential services personnel. The bill replaces an old definition of “essential services personnel” with one more broadly applicable to all FHFC programs. The new definition applies to police or fire personnel, child care workers, teachers or other education personnel, health care personnel, public employees, and service workers.

THE FLORIDA BUILDING CODE

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public’s health, safety, and welfare.⁶⁵ Every local government must enforce the Florida Building Code and issue building permits.⁶⁶ It is unlawful for an entity to construct, alter, repair, or demolish any building without first obtaining a permit from the local enforcing agency.⁶⁷

Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the building code. The building code requires certain

⁶⁰ S. 252.363(1)(a), F.S.

⁶¹ S. 252.34(7), F.S.

⁶² S. 252.34(8), F.S.

⁶³ S. 420.504(1), F.S.

⁶⁴ S. 420.507, F.S.

⁶⁵ S. 553.72, F.S.

⁶⁶ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

⁶⁷ See ss. 125.56(4)(a) and 553.79(1), F.S.

building, electrical, plumbing, mechanical, and gas inspections. In addition to required inspections, a local building official may require other inspections of any work to ensure it complies with the building code.⁶⁸

Private Providers

In 2002, the Legislature created s. 553.791, F.S., allowing 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.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. Auditing a private provider does not require a building official to replicate a private provider's plan review or inspection, but it does not prohibit it. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the building code. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.⁶⁹

When a property owner or a contractor elects to use a private provider, he or she must notify the building official at the time of the permit application or no less than seven business days before the next scheduled inspection.⁷⁰

A private provider who approves building plans must sign by sworn affidavit, on a form adopted by the commission, that the plans comply with the Building Code and the private provider is authorized to review the plans.⁷¹

Upon receipt of a building permit application from a private provider, a building official has 30 business days to grant or deny the permit. Denying a permit automatically tolls the remaining 30 business days. If an applicant resubmits, the building official has the remainder of the tolled 30 business days plus five additional business days to grant or deny the permit. If the building official denies the permit a second time, the building official has five additional business days to review the resubmittal by the applicant.⁷²

Before a private provider performs building inspections, he or she must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.⁷³

Upon completion of all required inspections, a private provider must give the building official a record of all the inspections, a request for a certificate of completion, and a sworn statement stating the building complies with the building code. Upon receipt, the building official has two business days to issue the certificate of completion, deny the request for a certificate of completion, or issue a stop work order.⁷⁴

⁶⁸ Ss. 107, 110.1, and 110.3, Sixth edition of the Florida Building Code.

⁶⁹ S. 553.791(1), (13), and (18), F.S.

⁷⁰ S. 553.791(4)-(5), F.S.

⁷¹ S. 553.791(6), F.S.

⁷² S. 553.791(7), F.S.

⁷³ S. 553.791(8) and (18), F.S.

⁷⁴ S. 553.791(11)-(12), F.S.

Effect of Proposed Changes (Section 16)

CS/CS/HB 7103 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. As part of this expansion, the bill includes two new definitions, as follows:

- “Site-work” means the portion of a construction project that is not part of the building structure, including but not limited to, grading, excavation, landscape irrigation and the installation of driveways.
- “Plans” means building plans, site engineering plans, site plans, or their functional equivalent submitted by a fee owner or fee owner’s contractor to a private provider or duly authorized representative for review.

This expansion allows private providers to review applications and inspect work related to all aspects of development from site plan approval through vertical building construction.

The bill provides that a building official may not audit a private provider more than four times in a calendar year unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. The bill prohibits a building official from replicating the plan review or inspection performed by the private provider, unless expressly authorized.

The bill reduces the required minimum notification time to a local building official regarding the use of a private provider to two business days from seven business days prior to a scheduled inspection.

Timing of the permit application process is reduced to five business days, rather than 30 business days, for building officials to review an application from a private provider and either:

- Issue a permit;
- Provide the applicant written notice of deficiencies; or
- Allow the application to be deemed approved as a matter of law, if a deficiency notice was not provided.

If the applicant submits revisions, the bill provides three business days, rather than the current five business days, from the date of resubmittal for the building official to either issue the requested permit or provide a second written notice stating the remaining deficiencies. Additionally, the bill provides that a building official’s review of a resubmitted permit application from a private provider is limited to the deficiencies cited in the written notice.

Currently, private providers performing plan reviews must certify that the plans comply with the Building Code on a form adopted by the commission. The bill changes the form requirement to one “reasonably acceptable” to the commission.

The bill allows the fee owner’s contractor, which requested use of a private provider, to petition the circuit court for a writ of injunctive relief or other equitable relief if they believe the building official is not complying with the alternate plan review and inspection provisions of the statute.

EFFECTIVE DATE

The bill has an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.01055, F.S., relating to county affordable housing requirements.

Section 2: Amends s. 125.022, F.S., relating to development permits issued by counties.

Section 3: Amends s. 166.033, F.S., relating to development permits issued by municipalities.

- Section 4:** Amends s. 166.04151, F.S., relating to municipal affordable housing requirements.
- Section 5:** Amends s. 166.045, F.S., relating to purchase of real property by municipalities.
- Section 6:** Amends s. 171.042, F.S., relating to annexation of real property by municipalities.
- Section 7:** Amends s. 163.3167, F.S. relating to local comprehensive plans of new municipalities.
- Section 8:** Amends s. 163.3202, F.S., relating to land development regulations.
- Section 9:** Amends s. 163.3180, F.S., relating to concurrency.
- Section 10:** Amends s. 163.31801, F.S., relating to impact fees; short title; intent; definitions; ordinances levying impact fees.
- Section 11:** Amends s. 163.3215, F.S., relating to standing to enforce local comprehensive plans through development orders.
- Section 12:** Amends s. 252.363, F.S., relating to tolling and extension of permits and other authorizations.
- Section 13:** Amends s. 420.502, F.S., relating to legislative findings for affordable workforce housing.
- Section 14:** Amends s. 420.503, F.S., relating to definitions pertaining to affordable housing.
- Section 15:** Amends s. 420.5095, F.S., removing a definition.
- Section 16:** Amends s. 553.791, F.S., relating to alternative plans review and inspection by private providers.
- Section 17:** Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive indeterminate impact on funds for affordable workplace housing received from federal sources, subject to federal appropriations.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may delay when impact fees are collected, but it does not change the amount of such fees; thus, it does not restrict the amount of revenue local governments may raise nor require they expend additional amounts. Reflecting the possibility that payments may be delayed into later fiscal years than under current law, the Revenue Estimating Conference estimates the bill will have a negative indeterminate impact on local government revenues. The bill also clarifies that water and sewer connection fees are not governed as impact fees.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive indeterminate impact on property development by establishing a timeframe for the issuance of development permits and orders and reducing the timeframes of plans inspections and reviews by private providers. The bill may impact the private sector by affecting private financing of the change in timing of collecting the impact fees. The bill also may have a positive indeterminate impact on property development by requiring a mobility fee-based funding system to be governed by the same statute governing impact fees and by requiring credits given for contributions to public educational facilities under the concurrency statute be based on the total impact fee assessed.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 3, 2019, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibits collecting an impact fee earlier than the time a building permit is issued.
- Codifies the “dual rational nexus test” for impact fees.
- Requires a local government to earmark impact fee revenue for capital facilities that benefit new residents.
- Prohibits using impact fee revenue to pay existing debt, except as specified.
- Requires a local government to credit contributions related to public education facilities against impact fees.
- Provides full credit for prepaid impact fees at the value when paid.
- Prohibits a local government from imposing concurrency mitigation under certain conditions.

On April 10, 2019, the State Affairs Committee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibits municipalities from purchasing real property located within the boundaries of another municipality without that municipality’s consent.
- Prohibits municipalities from annexing land within the area of another municipality without that municipality’s consent.
- Requires the comprehensive plan of a new municipality adopted after January 1, 2019, to incorporate all existing development orders, including vesting the density and intensity approved by such orders.
- Makes mobility fee-based funding systems subject to s. 163.31801, F.S., governing impact fees.
- Requires credits for public educational facilities provided as proportionate share mitigation to be based on the total impact fee assessed.
- Authorizes a county, municipality, or special district to exempt or waive impact fees for affordable housing development or construction.
- Expressly exempts water and sewer connection fees from being treated as impact fees.
- Limits the tolling and extension of time to exercise rights under certain permits during a state of emergency declared by the Governor to natural emergencies.
- Provides additional legislative findings about the need for affordable workforce housing.
- Revises the definition of “essential services personnel” for purposes of affordable workforce housing.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

