

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 7057 PCB COM 23-03 Natural Emergencies
SPONSOR(S): Appropriations Committee and Commerce Committee, Giallombardo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 250

FINAL HOUSE FLOOR ACTION: 109 Y's 4 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/HB 7057 passed the House on April 26, 2023, as CS/CS/SB 250, as amended. The Senate concurred in the House Amendment to the Senate bill and it subsequently passed as amended on May 1, 2023.

The bill, in part:

- Requires the Division of Emergency Management (DEM) to post on its website a model debris removal contract for the benefit of local governments and encourages local governments to create emergency financial plans in preparation for major natural disasters.
- Provides that counties and municipalities cannot prohibit a resident from placing a temporary residential structure on their property for certain periods of time following a natural emergency under certain circumstances.
- Encourages local governments following a natural disaster to expedite the issuance of certain permits, create specialized building inspection teams, and enter into interlocal agreements for inspection services.
- Requires certain local governments following a natural emergency to approve special processing procedures to expedite certain permits that do not require technical review.
- Increases the extension of certain permits following a declaration of a state of emergency in certain circumstances.
- Prohibits counties and municipalities within areas of a disaster declaration for Hurricane Ian or Hurricane Nicole from increasing building fees until October 1, 2024.
- Allows registered contractors to work outside the local jurisdiction during a state of emergency.
- Prohibits counties and municipalities within 100 miles of landfall of Hurricane Ian or Hurricane Nicole from adopting more restrictive land development regulations under certain circumstances.
- Extends certain portions of the Consultants' Competitive Negotiation Act through December 31, 2023.
- Provides clarification regarding abandoned vessels and their destruction.
- Directs DEM to administer a revolving loan program for local government hazard mitigation projects, and appropriates \$1,000,000 in nonrecurring funds from the General Revenue Fund and \$10,000,000 in nonrecurring funds from the Federal Grants Trust Fund for such activity.
- Extends the date for fire control districts within 50 miles of where Hurricane Ian made landfall to submit performance reviews in certain circumstances.
- Makes the Local Government Emergency Bridge Loan Program a "revolving" program and appropriates \$50 million in nonrecurring funds to the program.
- Provides that public utilities are not liable for damages based on changes in the reliability of utility services arising out of an emergency or disaster.

The bill has a significant fiscal impact on state government and may have an insignificant fiscal impact on local governments. See Fiscal Analysis section for details.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2023 unless otherwise expressly provided in the bill.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Emergency Management – Current Situation

The State Emergency Management Act, chapter 252, F.S., was enacted to be the legal framework for the state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.¹ In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.²

The act creates the Division of Emergency Management (DEM) within the Executive Office of the Governor and grants DEM with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.³ The responsibilities of DEM include:

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.⁴

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency⁵ has occurred or is imminent, he or she must declare a state of emergency.⁶ An executive order or proclamation of a state of emergency shall identify whether the state of emergency is due to a minor,⁷ major,⁸ or catastrophic⁹ disaster.¹⁰ The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.¹¹ Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.¹²

In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. A state of emergency provides the governor with additional authority not otherwise present, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation.¹³ To effectively facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.¹⁴

¹ S. 252.311(1), F.S.

² S. 252.311(2), F.S.

³ Ss. 252.32(1)(a) and 252.34(3), F.S.

⁴ Ss. 252.35(1) and (2), F.S.

⁵ "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. See s. 252.34(4), F.S.

⁶ S. 252.36(2), F.S.

⁷ "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance. See s. 252.34(2)(c), F.S.

⁸ "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. See s. 252.34(2)(b), F.S.

⁹ "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement. See s. 252.34(2)(a), F.S.

¹⁰ S. 252.36(4)(c), F.S.

¹¹ *Supra* note 6.

¹² S. 252.36(3), F.S.

¹³ See s. 252.36(6), F.S.

¹⁴ S. 252.36(1)(b), F.S.

Through this emergency power, the Governor can suspend the provisions of any regulatory statute if compliance would prevent, hinder, or delay necessary action to deal with the emergency. Further, as designated by the Governor or in emergency management plans, state agencies, local governments, and others can make, amend, and rescind orders and rules as necessary for emergency management purposes. However, these orders and rules cannot conflict with orders of the Governor, DEM, or other state agencies delegated emergency powers by the Governor.

When there is a disaster in the United States, the Governor of an affected state must request an emergency and major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.¹⁵ All emergency and disaster declarations are made at the discretion of the President of the United States.¹⁶ There are two types of disaster declarations, emergency declarations and major disaster declarations.¹⁷ Both declarations allow for federal assistance to states and local governments, however they differ in scope, types, and amount of assistance available.¹⁸ Primary federal disaster assistance administered by the Federal Emergency Management Agency (FEMA) is provided via the Individual Assistance Program and the Public Assistance Grant Program. The scope of an event will determine which categories within each program are available to affected states.

One component of the Public Assistance Grant Program is the provision of direct assistance or reimbursement to state and local governments for the costs of removing debris and wreckage from public and private property.

Emergency Management – Effect of Bill

Temporary Shelters

The bill provides that a county and a municipality must allow for a resident to place a temporary structure on residential property if the permanent residential structure was damaged and rendered uninhabitable during a natural emergency¹⁹ for which the Governor declared a state of emergency. A temporary structure includes, but is not limited to, a recreational vehicle, trailer, or similar structure. A county or a municipality may not prohibit the placement of a temporary structure on the property for up to 36 months after the date of the declaration of emergency or until a certificate of occupancy is issued for the permanent residential structure, whichever occurs first, if all the following circumstances apply:

- The resident makes a good faith effort to rebuild or renovate the damaged permanent residential structure, including, but not limited to, applying for a building permit, submitting a plan or design to the county, or obtaining a construction loan;
- The temporary shelter is connected to the water and electric utilities and does not present a threat to health and human safety; and
- The resident lives in the temporary structure.

Local Emergency Financial Plans

The bill encourages local governmental entities to develop an emergency financial plan for major natural disasters that may impact its jurisdiction. Each financial plan should be based off the likelihood of each disaster's occurrence and should also include an estimated cost of the impact and evaluation of available financial help to the local government, including backup plans to address any gaps in funding

¹⁵ 2 U.S.C. §§ 5121-5207

¹⁶ FEMA, *How a Disaster Gets Declared*, <https://www.fema.gov/disaster/how-declared> (last visited April 4, 2023.)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. See s. 252.34(8), F.S.

during the event of a natural disaster. Local governmental entities should annually review their emergency financial plans to address changes in conditions.

Division of Emergency Management Requirements – Model Contracts, Technical Assistance, Hazard Mitigation Projects

The bill requires DEM to post an initial model of a local government contract for debris removal to their website no later than June 1, 2023, and to post an updated model no later than June 1 of each subsequent year. The bill also requires DEM to prioritize technical assistance and training to fiscally constrained counties²⁰ as defined in s. 218.67, F.S., on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

In addition, the bill requires DEM to administer a revolving loan program for local government hazard mitigation projects. This provision will allow DEM to receive grant funding from FEMA to administer the Safeguarding Tomorrow Revolving Loan Fund Program, described in more detail below.

This section is effective upon becoming law.

Safeguarding Tomorrow Revolving Loan Fund Program – Current Situation

The Safeguarding Tomorrow through Ongoing Risk Mitigation (“STORM”) Act, which became federal law on January 1, 2021, authorizes FEMA to provide capitalization grants to states and federally recognized tribes to establish revolving loan programs for hazard mitigation. The revolving loan funds will be used by local governments to fund projects to increase resiliency and mitigate the impacts of natural hazards including drought; severe storms, hurricanes, tornadoes, windstorms, cyclones, and severe winter storms; wildfires; earthquakes; flooding; shoreline erosion; high water levels; and storm surges.²¹

Under STORM, local governments can apply to the state entity for such loans with an interest rate of no more than 1 percent, which must be repaid by the local government no later than 20 years after the date the project is completed, or 30 years for projects in low-income areas.²² STORM represents the first time that a revolving loan fund has been set up to fund hazard mitigation.

In December 2022, FEMA released the Notice of Funding Opportunity making available \$50 million for revolving loan program funding.²³ DEM intends to apply to FEMA by April 28, 2023, for a capitalization grant to establish a revolving loan program for Florida.²⁴ DEM issued a public notice seeking proposals from communities to develop a project proposal list to accompany its application to FEMA.²⁵

Safeguarding Tomorrow Revolving Loan Fund Program – Effect of Bill

²⁰ Each county that is entirely within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1, shall be considered a fiscally constrained county. There are currently 29 fiscally constrained counties.

²¹ Division of Emergency Management, *STORM Revolving Loan Fund - FAQ*, <https://www.floridadisaster.org/globalassets/dem/mitigation/storm/storm-rlf-faq-3-13-2023.pdf> (last visited April 13, 2023)

²² *Id.*

²³ Division of Emergency Management, *STORM Revolving Loan Fund*, <https://www.floridadisaster.org/dem/mitigation/safeguarding-tomorrow-through-ongoing-risk-mitigation-storm-revolving-loan-fund/> (last visited April 4, 2023).

²⁴ *Id.*

²⁵ Division of Emergency Management, *Public Notice RE Safeguarding Tomorrow Revolving Loan Fund*, <https://www.floridadisaster.org/globalassets/dem/mitigation/storm/storm-rlf-public-notice-3-13-2023.pdf> (last visited April 4, 2023).

The bill appropriates \$1 million in nonrecurring funds from the General Revenue Fund and \$10 million in nonrecurring funds from the Federal Grants Trust Fund to DEM to fund the Safeguarding Tomorrow Revolving Loan Program. DEM may submit a budget amendment to the Legislative Budget Commission (LBC) to release the funds, which is contingent upon documentation of an award or other approval by FEMA and DEM's approved intended use plan for the funds.

Registered Contractors – Current Situation

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR).²⁶ The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.²⁷ The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.²⁸

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.²⁹

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.³⁰

"Registered contractors" are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.³¹

Registered Contractors – Effect of Bill

The bill allows registered contractors to engage in contracting for the types of work covered by their registration within any area for which a state of emergency has been declared for a natural emergency. This authorization will end 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the contractor for violations occurring outside the licensing jurisdiction under these circumstances.

This section is effective upon becoming law.

Building Permits and Inspections – Current Situation

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.³²

Every local government must enforce the Florida Building Code and issue building permits.³³ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit.³⁴

²⁶ See ss. 489.105, 489.107, and 489.113, F.S.

²⁷ S. 489.107(1), F.S.

²⁸ S. 489.107, F.S.

²⁹ See ss. 489.105(6)-(8) and (11), F.S.

³⁰ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

³¹ S. 489.117, F.S.

³² S. 553.72, F.S.

³³ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

³⁴ Ss. 125.56(4)(a) and 553.79(1), F.S.

A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.³⁵ Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Building Code.³⁶ Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building plans, building inspections, re-inspections, building permit processing, and fire inspections.³⁷ Local governments must post all building permit and inspection fee schedules on their website.³⁸

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections.³⁹ Construction work may not be done beyond a certain point until it passes an inspection.

Current law provides a set of deadlines for ordinary processing of a building permit. The local government must approve, approve with conditions, or deny an application for a building permit within 120 days following receipt of a completed application.⁴⁰ Various laws require or encourage local governments to further expedite the permitting process in certain situations, such as for the construction of public schools, state colleges and universities⁴¹ and affordable housing.⁴²

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.⁴³

Building Permits and Inspections – Effect of Bill

The bill authorizes local governments to create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations following a natural disaster.

The bill encourages municipalities and counties to establish interlocal agreements with other jurisdictions to provide additional inspection services during a state of emergency. The bill also encourages municipalities and counties to adopt plans to provide temporary accommodations to contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. The bill provides that public areas such as fairgrounds and parking lots may be used for tents and trailers for temporary accommodations.

The bill requires local governments to approve special processing procedures to expedite the issuance of permits following a natural emergency for which the Governor has declared a state of emergency. Permits to be expedited are those which do not require technical review, including, but not limited to permits for:

- roof repairs;
- reroofing;
- electrical repairs;
- service changes; or
- the replacement of one window or door.

³⁵ S. 553.80 F.S.

³⁶ *Id.*

³⁷ S. 553.80 (7)(a)(1), F.S.

³⁸ Ss. 125.56 (4)(c) F.S. and 166.222(2), F.S.

³⁹ S. 110 of the Seventh edition of the Florida Building Code (Building).

⁴⁰ S. 553.792(1)(a), F.S.

⁴¹ S. 553.80(6)(b)2., F.S.

⁴² See ss. 403.973(3), 420.5087(6)(c)8., and 553.80(6)(b)1., F.S.

⁴³ S. 110.3.10 of the Seventh Edition of the Florida Building Code (Building).

Local governments are also permitted to waive application and inspection fees for the expedited permits.

The bill provides that effective January 1, 2023, local governments located in areas with FEMA disaster declarations during Hurricane Ian or Hurricane Nicole may not raise building inspection fees until October 1, 2024. This section expires on June 30, 2025, and is effective upon becoming law.

Suspension of Expiration Dates for Permits During Emergencies – Current Situation

When the Governor declares a state of emergency for a natural emergency, the period to exercise rights under a permit or other government authorization is suspended or tolled for the duration of the emergency. The period remaining to exercise rights in accordance with such permits is extended for 6 months in addition to the suspended or tolled period.

The emergency suspension and extension provisions expressly apply to the following permits and authorizations:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of an environmental resource permit issued by the Department of Environmental Protection (DEP) or a water management district under chapter 373, part IV, F.S.;
- Expiration of consumptive use permits issued by DEP or a water management district under Part II of chapter 373, F.S., related to land subject to a development agreement in which the permittee and developer are the same or a related entity;
- The buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.; and
- Expiration of development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity.⁴⁴

To receive the benefit of such provisions, the holder must follow the procedure outlined in s. 252.363(1)(b), F.S. Specifically, within 90 days after the emergency declaration's termination, the permit holder must provide written notice of the intent to exercise the right to toll or extend such permit. The written notice must identify the specific permit or authorization qualifying for the extension to the issuing authority. Once the permitholder has satisfied this procedure, the tolling and extension are granted automatically or as a matter of law, and no further action on the part of the issuing authority is needed.⁴⁵

The tolling and extension of permits and other authorizations does not apply to the following:

- A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies;
- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers;
- The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action; and

⁴⁴ S. 252.363(1)(a), F.S.

⁴⁵ “Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute.” See Op. Att’y Gen. Fla. 12-13 (2012), <http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDBEC852579EB00743D48> (last visited April 4, 2023).

- A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted due to a state of emergency.⁴⁶

Suspension of Expiration Dates for Permits During Emergencies – Effect of Bill

The bill increases the extension of applicable building permits following a declaration of a state of emergency from 6 to 24 months. The extension is capped at 48 months in the event of multiple natural emergencies. The tolling and extension of permits and other authorizations apply retroactively to September 28, 2022.

Consultants' Competitive Negotiation Act – Current Situation

In 1972, Congress passed the Brooks Act,⁴⁷ which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),⁴⁸ which is modeled after the Brooks Act. The CCNA requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.⁴⁹

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000; or
- A planning or study activity, when the fee for professional services exceeds \$35,000.⁵⁰

During Phase 2 of the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.

During Phase 3 of the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.⁵¹

⁴⁶ S. 252.363(1)(d), F.S.

⁴⁷ Public Law 92-582, 86 Stat. 1278 (1972).

⁴⁸ Chapter 73-19, Laws of Fla., codified as s. 287.055, F.S.

⁴⁹ S. 287.055, F.S.

⁵⁰ S. 287.055(3)(a)1., F.S.

⁵¹ S. 287.055(5), F.S.

The CCNA explicitly states it does not prohibit a continuing contract⁵² between a firm and an agency.⁵³ A continuing contract is a contract for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects.⁵⁴ The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.⁵⁵

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed \$4 million, for study activities if the fee for professional services for each study does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.⁵⁶

Consultants' Competitive Negotiation Act – Effect of Bill

The bill authorizes “continuing contracts” for construction projects in which the estimated construction cost of each project does not exceed \$15 million, if such contracts relate to repairs and remediation due to damage caused by Hurricane Ian if executed through December 31, 2023.

This section is effective upon becoming law.

The bill provides that these changes expire on January 1, 2024 and the statute reverts back to the current law limits on the expiration date. Contracts entered into prior to December 31, 2023 will be permitted to be completed after such date.

Community Planning – Current Situation

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.⁵⁷ Each county and municipality must maintain a comprehensive plan to guide future development.⁵⁸

All development, both public and private, and all development orders approved by local governments must be consistent with the local government’s comprehensive plan.⁵⁹ A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality’s comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.⁶⁰

⁵² S. 287.055(2)(g), F.S.

⁵³ S. 287.055(4)(d), F.S.

⁵⁴ S. 287.055(2)(g), F.S.

⁵⁵ *Id.*

⁵⁶ S. 287.055(2)(g), F.S.

⁵⁷ S. 163.3167(1), F.S.

⁵⁸ S. 163.3167(2), F.S.

⁵⁹ S. 163.3194(3), F.S.

⁶⁰ S. 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation;

A comprehensive plan is implemented through the adoption of land development regulations⁶¹ that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.⁶² Substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the comprehensive plan.⁶³

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.⁶⁴

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."⁶⁵ When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. 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."⁶⁶ Once a local government has officially granted or denied a development permit, the official action constitutes a development order.⁶⁷ A development order vests certain rights related to the land.⁶⁸

Community Planning – Effect of Bill

The bill provides:

“A county or municipality located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole⁶⁹ made landfall shall not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by Hurricane Ian or Hurricane Nicole; propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations, or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, F.S., before October 1, 2024, and any such moratorium restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio.”⁷⁰

This subsection applies retroactively to September 28, 2022 (the date of Hurricane Ian landfall in Florida). However, the bill provides that any comprehensive plan amendment, land development regulation amendment, site plan, development permit, or development order approved or adopted by a county or municipality before or after the effective date of this section may be enforced if:

recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.

⁶¹ “Land development regulations” means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213. See s. 163.3164(26), F.S.

⁶² S. 163.3202, F.S.

⁶³ S. 163.3213, F.S.

⁶⁴ Ss. 163.3174(4)(a) and 163.3184, F.S.

⁶⁵ S. 163.3164(14), F.S.

⁶⁶ S. 163.3164(16), F.S.

⁶⁷ See s. 163.3164(15), F.S.

⁶⁸ See s. 163.3167(3), F.S.

⁶⁹ All 67 counties in Florida were designated within the federal disaster declaration for Hurricane Ian, and 61 counties for Hurricane Nicole.

⁷⁰ Void ab initio means something was void from the beginning.

- The associated application is initiated by a private party other than the county or municipality; and
- The property that is the subject of the application is owned by the initiating private party.

The section takes effect upon becoming a law and expires on June 30, 2025.

Derelict Vessels – Current Situation

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state.⁷¹ Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws, including regulations related to boating safety, waterway management, vessel maintenance, and marine sanitation. FWC also exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.⁷² These powers include authority with respect to the control and management of nonnative plant and animal species.

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public state waters; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.⁷³

It is unlawful to store, leave, or abandon⁷⁴ a derelict vessel in Florida.⁷⁵ Violations are punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.⁷⁶ State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$75,000 per day.⁷⁷ Each day during any portion of which the violation occurs constitutes a separate offense.⁷⁸

At-risk Vessels

Current law also prohibits vessels that are at risk of becoming derelict from anchoring, mooring, or occupying state waters.⁷⁹ A vessel is considered at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater.
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is listing due to water intrusion.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is

⁷¹ FWC, *Boating*, available at <https://myfwc.com/boating/> (last visited April 7, 2023).

⁷² Art. IV, s. 9, FLA. CONST.

⁷³ S. 823.11(1)(b), F.S.

⁷⁴ S. 705.101(3), F.S., defines “abandoned property” as all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels.

⁷⁵ S. 823.11(2), F.S.

⁷⁶ Ss. 775.082(4)(a) and 775.083(1)(d), F.S.

⁷⁷ S. 376.16(1), F.S.

⁷⁸ *Id.*

⁷⁹ S. 327.4107(1), F.S.

unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.⁸⁰

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on state waters is a noncriminal infraction, for which the civil penalty is \$100 for a first offense, \$250 for a second offense occurring 30 days or more after a first offense, and \$500 for a third or subsequent offense occurring 30 days or more after a previous offense.⁸¹

A vessel that has been the subject of three or more at-risk vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal is deemed a public nuisance.⁸²

Removal of Derelict and At-risk Vessels

The Division of Law Enforcement within FWC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.⁸³

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs, or threatens to obstruct, navigation or in any way constitutes a danger to the environment, property, or persons.⁸⁴ Such law enforcement is also authorized to relocate or remove a vessel declared a public nuisance.⁸⁵

When a law enforcement officer determines that a derelict vessel or a vessel declared a public nuisance is present on state waters, the officer is required to place a notice on the vessel stating the vessel is unlawfully upon state waters and must be removed within 21 days.⁸⁶ The notice must also specify that if the vessel is not removed by the owner within 21 days, the vessel will be removed and disposed of and that the owner or party deemed legally responsible for the vessel being in a derelict condition will be liable for costs of removal, destruction, and disposal if not removed.⁸⁷

The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.⁸⁸

FWC may provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels from state waters if funds are appropriated for such grants.⁸⁹ Grants are awarded based on a set of criteria outlined in FWC rules.⁹⁰ Removal or relocation of the vessel on private

⁸⁰ S. 327.4107(2), F.S.

⁸¹ S. 327.73(1)(aa), F.S.

⁸² *Id.*

⁸³ S. 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁸⁴ Ss. 327.70(4), 327.4107, and 823.11(3), F.S.

⁸⁵ *Id.*

⁸⁶ S. 705.103(2)(a)(1)(b), F.S.

⁸⁷ *Id.*

⁸⁸ S. 705.103(4), F.S.

⁸⁹ S. 823.11(4), F.S.

⁹⁰ Rule 68-1.003, F.A.C.

property is not eligible for grant funding.⁹¹ The grants provided to local governments for the removal, storage, destruction, and disposal of derelict vessels may also be used for the removal, storage, destruction, and disposal of vessels declared a public nuisance.

A person who owns or operates a vessel that becomes derelict upon state waters solely as a result of a boating accident that is reported to law enforcement, a hurricane, or another sudden event outside of his or her control may not be charged with a violation if:⁹²

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon state waters; and
- The vessel has been removed from state waters or has been repaired or addressed such that it is no longer derelict upon state waters within 7 days after a boating accident or other sudden event outside of his or her control or within 45 days after a hurricane has passed.

This sudden accident or event exception does not apply to a vessel that was derelict upon state waters before the stated accident or event.

Derelict Vessels – Effect of Bill

The bill clarifies that the FWC, an officer of the FWC, a law enforcement agency, or during a state of an emergency declared by the Governor, DEM or its designee, may immediately begin the procedure,⁹³ such as posting a notice of removal on the vessel and ascertaining the owner of the vessel. The bill provides that a person who owns or operates a vessel that becomes derelict upon state waters solely as a result of a hurricane, or another sudden event outside of his or her control has an extended 45-day deadline to bring derelict vessels into compliance or remove them from state waters. Final removal and destruction of the vessel may only occur if the vessel remains derelict after the completion of the procedure process and the end of the 45-day grace period.

Local Government Emergency Response Bridge Loan Program – Current Situation

Early in 2023, the Legislature establish the Local Government Emergency Response Bridge Loan Program within the Department of Economic Opportunity (DEO)⁹⁴ to provide financial assistance to local governments impacted by Hurricane Ian or Hurricane Nicole. The purpose of the loan program is to assist these local governments in maintaining operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.⁹⁵ The Legislature appropriated \$50 million from the General Revenue Fund to DEO to fund the program.

The loans may be issued during the 2022-2023 fiscal year or the 2023-2024 fiscal year, subject to appropriation.⁹⁶ The loans are interest-free with the loan amount determined based upon demonstrated need.⁹⁷ The loans must be paid back within one year, unless extended by up to 6 months by the DEO based on the local government's financial condition.⁹⁸

To be eligible, a local government must be a county or municipality located in an area designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole.⁹⁹ Also, the local government must show that it may suffer or has suffered substantial loss of its tax or

⁹¹ National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Nov. 18, 2021).

⁹² S. 823.11 (2)(b)2.b, F.S.

⁹³ See s. 705.103(2)(a), F.S.

⁹⁴ S. 288.066, F.S.

⁹⁵ S. 288.066 (1), F.S.

⁹⁶ S. 288.066 (6)(a), F.S.

⁹⁷ S. 288.066 (3), F.S.

⁹⁸ S. 288.066 (3)(c), F.S.

⁹⁹ S. 288.066 (2), F.S.

other revenues as a result of the hurricane and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations.¹⁰⁰

A local government may only use loan funds to continue local governmental operations or to expand and modify such operations to meet disaster-related needs.¹⁰¹ The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure. The DEO must coordinate with DEM to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.¹⁰²

This program expires June 30, 2027. As loans are repaid, the DEO will remit the payments back to the General Revenue Fund and upon expiration, the DEO must return all unencumbered funds and loan payments back to the General Revenue Fund.¹⁰³

Local Government Emergency Revolving Bridge Loan Program – Effect of Bill

The bill extends the Local Government Emergency Bridge Loan Program for 11 additional years by making it a revolving program and renaming it the “Local Government Emergency Revolving Bridge Loan Program”. The revolving loan program will make funds available for local governments impacted by federally declared disasters until July 1, 2038.

Upon the issuance of a federal disaster declaration, the DEO shall provide notice of application requirements and the total amount of funds available and make loan information available to eligible local governments. The eligible local government must submit a loan application within 12 months from the date that a federal disaster was declared. The section further creates an application process and sets forth the conditions that must be met by a local government in order to receive funds under the program. Reasons for a loan application denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government’s eligibility for other federal programs. Moreover, this section sets forth the obligations of the DEO to administer the program and manage repayments. The bill provides that funds appropriated to the program are not subject to reversion.

The bill appropriates \$50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the revolving bridge loan program. This section also directs any funds that have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, to be transferred to the Economic Development Trust Fund to be used for the Local Government Emergency Revolving Bridge Loan Program established by the bill. Lastly, all loans made pursuant to the existing Local Government Emergency Bridge Loan Program must be repaid into the Economic Development Trust Fund and be made available for loans under the revolving loan program provided in the bill. The cumulative effect of these changes is that \$100 million in total will be available for the revolving bridge loan program.

Public Utilities – Current Situation

Jurisdiction of Public Service Commission

The Public Service Commission (PSC), which serves as an arm of the legislative branch of government,¹⁰⁴ has broad jurisdiction over the rates and service of public (i.e., investor-owned) utilities (IOUs) that provide retail electric or natural gas service in Florida.¹⁰⁵ Further, the PSC has jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² S. 288.066 (6)(b), F.S.

¹⁰³ S. 288.066(8), F.S.

¹⁰⁴ S. 350.01, F.S.

¹⁰⁵ See, e.g., ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S.

Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida.¹⁰⁶ In exercising its jurisdiction, the PSC must balance safety, affordability, and reliability of services.

Florida law requires the PSC to oversee planning and preparation by public electric utilities for extreme weather events. Under the law, each public utility that provides electric service must submit a transmission and distribution storm protection plan to the PSC for consideration.¹⁰⁷ Each plan must cover a 10-year planning period and must explain the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Each plan must be updated and submitted for PSC consideration at least once every 3 years. The PSC must determine whether it is in the public interest to approve, approve with modification, or deny each plan. Separately, the PSC conducts an annual proceeding to determine whether a utility's costs to implement its approved transmission and distribution storm protection plan were prudently incurred. Prudently incurred costs are recovered through the utility's rates.¹⁰⁸

In addition, the PSC conducts annual hurricane preparedness workshops prior to the start of each hurricane season.

Declared States of Emergency

Florida law requires the Governor to declare a state of emergency by executive order or proclamation if the Governor finds an emergency¹⁰⁹ has occurred or that the occurrence or the threat of an emergency is imminent. The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation. A state of emergency may not continue for longer than 60 days unless renewed by the Governor.¹¹⁰

During a declared state of emergency, the Governor may take measures to limit or suspend lighting devices and appliances, gas and water mains, electric power distribution, and all other utility services in the general public interest.¹¹¹

Public Utilities – Effect of Bill

The bill provides that a public utility is not liable for damages based in whole or in part on changes in the reliability, continuity, or quality of utility services which arise in any way out of an emergency or disaster, including but not limited to a state of emergency declared by the Governor. The bill further provides that issues relating to the sufficiency of a public utility's disaster preparedness and response shall be resolved by the PSC. These provisions apply both to electric and natural gas public utilities.

The bill provides that these provisions do not create a new cause of action. In the event that there is a conflict between these provisions and any other section of the Florida Statutes, the bill provides that these provisions control.

Independent Special Fire Control District Performance Reviews – Current Situation

¹⁰⁶ S. 366.04(5), F.S.

¹⁰⁷ S. 366.96, F.S.

¹⁰⁸ *Id.*

¹⁰⁹ "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. S. 252.34(4), F.S.

¹¹⁰ S. 252.36, F.S.

¹¹¹ *Id.*

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.¹¹² The Independent Special Fire Control District Act¹¹³ provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.¹¹⁴

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.¹¹⁵ A district also may levy non-ad valorem assessments.¹¹⁶ The district board may adopt a schedule of reasonable fees for services performed.¹¹⁷ Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.¹¹⁸

In 2021,¹¹⁹ the Legislature mandated a performance review schedule of certain independent special districts, which included fire control districts, to evaluate district programs, activities, and functions.¹²⁰ Beginning October 1, 2022, and every five years thereafter, every independent special fire control district must have a performance review conducted.¹²¹ The Office of Program Policy Analysis and Government Accountability must conduct the performance review for special fire control districts that are located in a rural area of opportunity.¹²² The final report of the performance review must be filed with the governing board of the district, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives no later than nine months from the beginning of the district's fiscal year (i.e., July 1st).¹²³

Independent Special Fire Control District Performance Reviews – Effect of Bill

The bill allows an independent special fire control district located entirely or partially within 50 miles of where Hurricane Ian made landfall that was required to submit its final report of the performance review by July 1, 2023, may file such report no later than January 1, 2024.

Effective Date

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2023 unless otherwise expressly provided in the bill

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

¹¹² S. 191.003(5), F.S.

¹¹³ Ch. 191, F.S.

¹¹⁴ S. 191.002, F.S.

¹¹⁵ Ss. 191.009(1), F.S. see art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage "authorized by law approved by vote of the electors.")

¹¹⁶ S. 191.009(2), F.S.

¹¹⁷ S. 191.009(3), F.S.

¹¹⁸ S. 191.009(4), F.S.

¹¹⁹ Ch. 2021-226 Laws of Fla.

¹²⁰ S.189.0695, F.S.

¹²¹ S. 189.0695(2)(d), F.S.

¹²² S. 189.0695 (2)(b), F.S.

¹²³ S. 189.0695(2)(c), F.S. The fiscal years of each independent special fire control district begins October 1st of a calendar year.

2. Expenditures:

The bill appropriates \$1 million in nonrecurring funds from the General Revenue Fund and \$10 million in nonrecurring funds from the Federal Grants Trust Fund to DEM for the Safeguarding Tomorrow Through Ongoing Risk Mitigation Act Revolving Loan Program. Such funds will be held in reserve, contingent upon FEMA approval and release by the LBC.

The bill extends the Local Government Emergency Bridge Loan Program until July 1, 2038 and appropriates \$50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the revolving bridge loan program. The bill provides that the funds appropriated to the program are not subject to reversion.

The bill also directs any funds that have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, to be transferred to the Economic Development Trust Fund to be used for the Local Government Emergency Revolving Bridge Loan Program. Lastly, all loans made pursuant to the existing Local Government Emergency Bridge Loan Program must be repaid into the Economic Development Trust Fund and be made available for loans under the new revolving bridge loan program. The cumulative effect of these appropriations and changes is that \$100 million in total will be available for the revolving bridge loan program.

By allowing the state government to enter into larger contracts for specified disaster relief construction projects under a continuing contract, the state or a local government may save on contractual and workload expenditures associated with the procurement of such projects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will likely have an insignificant negative fiscal impact on local governments, as many of the bill provisions are permissive rather than mandatory. Provisions that limit a local government's ability to raise building fees for a defined period of time or that requires local governments to expedite building permits during emergencies may have a negative, but likely insignificant, fiscal impact.

2. Expenditures:

The bill will likely have an insignificant negative fiscal impact on local governments, as many of the bill provisions are permissive rather than mandatory.

By allowing local governments to enter into larger contracts for specified disaster relief construction projects under a continuing contract, the state or a local government may save on contractual and workload expenditures associated with the procurement of such projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive, yet indeterminate fiscal impact on private sector businesses that provide professional services under the CCNA, by allowing those entities to enter into larger contracts for specified disaster relief projects under a continuing contract.

Registered contractors who are able to work outside of their local jurisdiction during a state of emergency may see increased positive fiscal impact due to increased business.

D. FISCAL COMMENTS:

None.