

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 998

INTRODUCER: Infrastructure and Security Committee; Community Affairs Committee; and Senators Hutson and Hooper

SUBJECT: Housing

DATE: March 2, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
3.	<u>Babin/Hrdlicka</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 998 addresses several housing issues related to development zoning; the provision of affordable housing; and regulation, ownership, and tenancy related to mobile homes, mobile home parks, and related homeowners' associations.

With respect to zoning and affordable housing, the bill includes provisions that:

- Notwithstanding other laws and regulations, authorize local governments to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use;
- Allow a local government to adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use;
- Require the reporting of impact fee charges data within the annual financial audit report submitted to the Department of Financial Services;
- Require the evaluation of additional local government contribution criteria within applications submitted for State Apartment Incentive Loan Program funding;
- Transition the "pilot" features of a workforce housing program into the Community Workforce Housing Loan Program, administered by the Florida Housing Finance Corporation (FHFC);
- Establish biannual regional workshops for locally elected officials serving on affordable housing advisory committees to identify and share best affordable housing practices;

- Add data reporting within a State Housing Initiatives Partnership Program participant's submissions to the FHFC on affordable housing applications approved and denied; and
- Permit the FHFC to prioritize a portion of the State Apartment Incentive Loan Program funds set aside for persons with special needs, to provide funding for the development of newly constructed permanent rental housing on a campus that provides housing for persons in foster care or persons aging out of foster care.

With respect to housing issues related to mobile homes, the bill includes provisions that:

- Allow a mobile home dealer to display a model of a manufactured home;
- Exempt a recreational vehicle dealer from the garage liability insurance requirements if it only sells park trailers;
- Clarify provisions exempting mobile home park owners from the jurisdiction of the Public Service Commission when the park owners provide water and wastewater;
- Revise when a mobile home park owner can require a mobile home owner to make improvements;
- Require a mobile home park owner to amend the prospectus and increase shared facilities when adding lots;
- Create a strict prohibition to prevent the park owner from passing on to mobile home owners taxes in an amount in excess of what is actually paid to the tax collector;
- Allow the mobile home park owner to give notice of lot rental increases for multiple anniversary dates at the same time;
- Permit a mobile home park damaged or destroyed by wind, water, or other natural force to be rebuilt on the same site with the same density as was approved, permitted, and built before being damaged or destroyed;
- Allow a mobile home buyer to assume the seller's prospectus or be offered a new prospectus by the park owner;
- Require mobile home owner to receive written permission from park owner before exterior modifications or additions;
- Require the mobile home park owner to notify the Department of Business and Professional Regulation, who in turn notifies the Florida Mobile Home Relocation Company, when tenants will be evicted due to a change in land use;
- Revise numerous rights, obligations, and record retention requirements of a mobile home park homeowners' association, including how elections are conducted; and
- Require certain disputes between the homeowners' association and a member to be resolved via mandatory binding arbitration at the Department of Business and Professional Regulation.

With respect to affordable housing, the bill:

- Authorizes counties and municipalities to grant property tax exemptions for property that is being used to provide or being prepared to provide affordable housing;
- Extends a current property tax exemption for affordable housing to vacant units within an affordable housing property, as well as units occupied by persons who no longer meet the income limitations of affordable housing, but who did meet those limitations at the time they became tenants;

- Authorizes a current property tax exemption for affordable housing to apply when owned by multiple limited liability companies or limited partnerships, as long as the ultimate owner is a 501(c)(3) organization; and
- Extends the current tax exemption for housing authority property to instrumentalities of the housing authority.

The bill may have a local mandate and require the approval of two-thirds of the membership in each house of the Legislature. See Section IV.

The Department of Business and Professional Regulation and the FHFC will incur costs to implement the provisions of the bill.

The Revenue Estimating Conference has determined that the provisions of the bill authorizing local governments to grant affordable housing property tax exemptions will reduce local property taxes by an indeterminate, significant amount beginning in Fiscal Year 2021-2022.

Staff estimates that the provisions of the bill:

- Granting tax exemptions to housing authority instrumentalities will reduce local property taxes by an indeterminate, significant amount.
- Granting tax exemptions to vacant units or units occupied by tenants who no longer qualify for affordable housing will reduce local property taxes by an indeterminate amount.
- Authorizing a current property tax exemption for affordable housing to apply when owned by multiple limited liability companies or limited partnerships, as long as the ultimate owner is a 501(c)(3) organization will reduce local property taxes by an indeterminate, significant amount.

The bill has an effective date of July 1, 2020.

II. Present Situation:

The various features of the bill principally address housing issues affecting local government development zoning, impact fees, and affordable housing in chs. 125, 163, 166, 196, 420, and 423, F.S., and statutes governing mobile homes within chs. 320, 367, and 723, F.S. The Present Situation within these general topic groupings is included in the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Bill Sections Addressing Development Zoning, Impact Fees, and Affordable Housing

Zoning for Affordable Housing (Sections 1 and 4)

Present Situation

Comprehensive Plans and Land Use Regulation

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development. 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.

- The land use element of the plan designates proposed future general distribution, location, and extent of the uses of land. Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.¹
- The housing element of the plan sets forth guidelines and strategies for the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, provision of adequate sites for future housing, and distribution of housing for a range of incomes and types.²

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 public hearings, the first held by the local planning board.³ The local government must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council, and adjacent local governments that request to participate in the review process.⁴ The process for approving comprehensive plan amendments is bifurcated. Most plan amendments are placed into the Expedited State Review Process, while plan amendments relating to large-scale developments are placed into the State Coordinated Review Process.⁵

Local governments regulate aspects of land development by enacting ordinances that address local zoning, rezoning, subdivision, building construction, landscaping, tree protection, or sign regulations or any other regulations controlling the development of land.⁶

Sections 125.66 and 166.041, F.S., outline regular and emergency ordinance adoption procedures for counties and municipalities. Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category or ordinances or resolutions initiated by the local government that change the actual zoning map designation of a parcel or parcels of land must follow additional enhanced procedures and requirements.⁷

Affordable Housing

Affordable housing is defined in terms of household income. Housing is considered affordable when monthly rent or mortgage payments including taxes and insurance do not exceed 30 percent of the household income.⁸ Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their

¹ Section 163.3177(6)(a), F.S.

² Section 163.3177(6)(f), F.S.

³ Sections 163.3174(4)(a) and 163.3184, F.S.

⁴ Section 163.3184, F.S.

⁵ See ss. 163.3184 and 380.06, F.S.

⁶ See ss. 163.3164 and 163.3213, F.S. Pursuant to s. 163.3213, F.S., substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the local comprehensive plan.

⁷ See sections 125.66(4) and 166.041(3), F.S.

⁸ Section 420.0004(3), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.

relationship to the 2019 Florida state median of \$65,100 for a family of four (as family size increases or decreases, the income range also increases or decreases):⁹

- Extremely low income – earning up to 30 percent AMI (at or below \$19,550);¹⁰
- Very low income – earning from 30.01 to 50 percent AMI (\$19,551 to \$32,550);¹¹
- Low income – earning from 50.01 to 80 percent AMI (\$32,551 to \$52,100);¹² and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$52,100 to \$78,120).¹³

Statutory Guidance on County and Municipal Affordable Housing

In 2001, the Legislature created ss. 125.01055¹⁴ and 166.04151, F.S.,¹⁵ respectively authorizing a county or municipality, notwithstanding any other provision of law, to “adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.”

“Inclusionary housing ordinances (often called inclusionary “zoning” ordinances) are land use regulations that require affordable housing units to be provided in conjunction with the development of market rate units.”¹⁶ The intent of the ordinances is to increase the production of affordable housing in general and also in specific geographic areas that might otherwise not include affordable housing.¹⁷

Effect of Proposed Changes

Sections 1 and 4 amend ss. 125.01055 and 166.04151, F.S., to – notwithstanding any other law or local ordinance or regulation to the contrary – authorize the board of a county commission and the governing body of a municipality, respectively, to approve the development of affordable housing on any parcel zoned for residential, commercial, or industrial use. This will allow the development of affordable housing on such parcels without regard to the locality’s comprehensive plan.

⁹ U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2019 IL Documentation*, April 24, 2019, available at <https://www.huduser.gov/portal/datasets/il.html#2019> (last visited February 21, 2020).

¹⁰ Section 420.0004(9), F.S.

¹¹ Section 420.0004(17), F.S.

¹² Section 420.0004(11), F.S.

¹³ Section 420.0004(12), F.S.

¹⁴ Section 16, ch. 2001-252, Laws of Fla.

¹⁵ Section 15, ch. 2001-252, Laws of Fla.

¹⁶ *Ross, J. and Outka, U.*, The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, available at <https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf> (last visited February 21, 2020).

¹⁷ *Id.*

Impact Fees (Section 3)

Present Situation

Local Government Impact Fees

Impact fees are amounts imposed by local governments to fund local infrastructure required to provide for increased local services needs caused by new growth.¹⁸ Adopted by ordinance of a county, municipality, or special district, impact fees must meet the minimum criteria, including that the local government adopting the impact fee must account for and report fee collections and expenditures.¹⁹

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees. Impact fees vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

The 2017 Affordable Housing Workgroup²⁰ was charged with providing recommendations for, among other components, a review of land use for affordable housing developments.²¹ The review included fee impacts of fees such as impact fees, exactions, mitigation fees, and development fees.²² To provide context to workgroup members, the Florida Housing Finance Corporation queried local State Housing Initiatives Partnership administrators regarding impact fee calculations and waivers in their locales. Based on responses from approximately two-thirds of those surveyed, nearly 25 percent did not currently assess any impact fees. For the remaining cities and counties that did impose impact fees, the fees were calculated using a combination of methodologies, including by square footage, number of bedrooms, geographic location, resident status as a senior citizen, or as a flat fee. Approximately 30 percent of the reporting entities indicated the existence of mechanisms to waive fees in part or whole for affordable housing development.²³

Local Government Financial and Economic Status Reporting

Counties, district school boards, charter schools, charter technical career centers, and certain municipalities and special districts must submit annual financial audit to the Auditor General no later than 9 months of the close of the entity's fiscal year.²⁴ Additionally, a local government, including a special district, is required to submit an annual financial report to the Department of Financial Services no later than 9 months of the close of the local government's fiscal year.²⁵

¹⁸ Section 163.31801(2), F.S.

¹⁹ Section 163.31801(3), F.S.

²⁰ Chapter 2017-71, Laws of Fla.

²¹ Section 46, ch. 2017-71, Laws of Fla.

²² Florida Housing Finance Corporation, *Affordable Housing Workgroup Final Report 2017*, December 19, 2017, p. 23, available at https://issuu.com/fhfc/docs/ahwg-report_2017-web (last visited February 21, 2018).

²³ *Id.* at pp. 25-27.

²⁴ Section 218.39, F.S.

²⁵ Section 218.32, F.S.

Local government entities complete and electronically submit their annual financial reports to the Department of Financial Services Bureau of Local Government via the bureau's web-based system called Local Government Electronic Reporting (LOGER).²⁶

In addition to the above local government financial reporting, ch. 2019-56, Laws of Fla., amended ss. 129.03 and 166.241, F.S., to require counties and municipalities respectively to report certain economic status information to the Office of Economic and Demographic Research. This includes information on government spending and debt per resident, median income, average local government employee salary, percentage of budget spent on employee salaries and benefits, and the number of taxing districts.

Effect of Proposed Changes

Section 3 amends s. 163.31801, F.S., to require each county, municipality, and special district to include, in their annual financial reports, the following information pertaining to impact fees imposed:

- The specific purpose of each impact fee, including the specific infrastructure need to be met, such as transportation, parks, water, sewer, and schools.
- The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, and tiered scales based on square footage.
- The amount assessed for each purpose and type of dwelling.
- The total amount of impact fees charged by type of dwelling.

Accessory Dwelling Units (Section 2)

Present Situation

An accessory dwelling unity (ADU) is an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or on the same lot, as the primary dwelling unit.²⁷ Section 163.31771, F.S., finds that encouraging local governments to permit ADUs to increase the availability of affordable rentals serves a public purpose. A local government may adopt an ordinance allowing ADUs in any area zoned for single-family residential use based upon a finding that there is a shortage of affordable rentals in its jurisdiction.²⁸

Each ADU allowed by an ordinance under s. 163.31771, F.S., counts towards the affordable housing component of the housing element in the local government's comprehensive plan.²⁹ An application for a building permit to construct such ADUs must include an affidavit which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income, or moderate-income person or persons.³⁰

²⁶ LOGER is available at <https://apps.fldfs.com/LocalGov/Reports/> (last visited Feb. 21, 2020).

²⁷ Section 163.31771(2)(a), F.S. ADUs are sometimes referred to as "granny flats" to denote their use in accommodating the housing needs of aging parents. ADUs have the potential to make the primary home more affordable by creating rental income for the homeowner, while also providing affordable rental housing.

²⁸ Section 163.31771(3), F.S.

²⁹ Section 163.31771(5), F.S.

³⁰ Section 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.

In 2019, the Florida Housing Coalition published the *Accessory Dwelling Unit Guidebook*.³¹ The stated intent of the guidebook is to address the challenges and benefits a community might face as it considers allowing the implementation of ADUs and the guidebook presents a range of alternatives for local governments and other stakeholders to consider and evaluate. Among other data points, the guidebook found that:

- Of Florida's 67 counties, 16 did not address any ADU in their land development codes; and
- Of the 15 most populous cities in Florida, 11 of them explicitly allow ADUs in single-family districts.³²

Effect of Proposed Changes

Section 2 amends s. 163.31771, F.S., to allow a local government to adopt an ordinance to allow ADUs in any area zoned for single family residential use. The ordinance would not be conditioned upon a finding that there is a shortage of affordable rentals within the local jurisdiction.

Property Taxation (Section 5 and 6)

Present Situation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.³³ The property appraiser annually determines the “just value”³⁴ of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³⁵ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes on real property or tangible personal property³⁶ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.³⁷

The Florida Constitution provides that portions of property used predominately for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.³⁸

³¹ See Florida Housing Coalition, *Accessory Dwelling Unit Guidebook*, May 2019, available at <https://www.flhousing.org/wp-content/uploads/2019/08/ADU-Guidebook.pdf> (last visited February 13, 2020).

³² *Id.* at 19.

³³ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

³⁴ Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise (FLA. CONST. art VII, s. 4). Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³⁵ See s. 192.001(2) and (16), F.S.

³⁶ FLA. CONST. art. VII, s. 1(a).

³⁷ See FLA. CONST. art. VII, s. 4.

³⁸ FLA. CONST. art. VII, s. 3.

Affirmative Steps

In certain instances, Florida exempts property from property taxes when the property owner has begun taking affirmative steps to prepare the property for exempt use. This treatment is authorized for property owned by an educational institution that is being prepared for educational use,³⁹ property owned by an exempt organization that is being prepared as a house of public worship,⁴⁰ and property owned by a 501(c)(3) organization that is being prepared to provide affordable housing to extremely-low- very-low-, low-, and moderate-income persons or families.⁴¹ These properties are exempt from tax while they are being prepared for exempt use if the owner has taken “affirmative steps” to prepare the property for exempt use. As such, this treatment is commonly referred to as “affirmative steps” treatment.

The term "affirmative steps" is defined to mean:

- Environmental or land use permitting activities,
- Creation of architectural or schematic drawings,
- Land clearing or site preparation,
- Construction or renovation activities, or
- Other similar activities that demonstrate a commitment to an exempt use.⁴²

The affirmative steps treatment for affordable housing requires that the property appraiser assess the property owner if the property is transferred for a purpose other than affordable housing or otherwise is not in actual use to provide affordable housing within five years after first being granted affirmative steps treatment.⁴³ The property appraiser may grant an extension if the property owner can demonstrate that the owner is still taking affirmative steps.⁴⁴ Otherwise, the property appraiser is required to assess the unpaid taxes, plus 15 percent interest and a penalty equal to 50 percent of the taxes owed. The taxpayer has 30 days to pay the taxes, penalties, and interest, after which the property appraiser must file a lien against any property owned by the organization.⁴⁵

Exemption of Property Tax for Charitable Purposes and Affordable Housing

In 1999, the Legislature authorized a property tax exemption for property owned by charitable organizations and used to provide affordable housing.⁴⁶ The property must be owned entirely by a nonprofit entity that is a nonprofit corporation qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and used to provide affordable housing through any state housing program under ch. 420, F.S., and serving extremely-low-income, very-low-income, low-income,

³⁹ Section 196.198, F.S.

⁴⁰ Section 196.196(3), F.S. “Public worship” is defined to mean religious worship services and incidental activities such as educational activities, parking, recreation, partaking of meals, and fellowship.

⁴¹ Section 196.196(5)(a), F.S.

⁴² Sections 196.196(3),(5)(a), and 196.198, F.S.

⁴³ Section 196.196(5)(b), F.S.

⁴⁴ Section 196.196(5)(b)4., F.S.

⁴⁵ Section 196.196(5)(b), F.S.

⁴⁶ Section 15, ch. 99-378, Laws of Fla. (creating s. 196.1978, F.S, effective July 1, 1999).

and moderate-income persons or families.⁴⁷ The statute considers such property to be owned by an exempt entity and to be used for a charitable purpose.⁴⁸ In order to qualify for the exemption, the property must comply with s. 196.195, F.S., for determining nonprofit status of the property owner and s. 196.196, F.S., for determining exempt status of the use of the property.

As indicated above, the affordable housing property must be owned by a 501(c)(3) organization; however, if the property is owned by a limited liability company that is disregarded for federal tax purposes and has a sole member, the statute allows the property appraiser to disregard the limited liability company and treat the sole member of the limited liability company as the owner of the property. If that sole member is a 501(c)(3) organization, the property still qualifies for exemption.⁴⁹

The property tax exemption applies to units being used to provide affordable housing. Since vacant units are not currently being used to provide affordable housing, vacant units do not qualify for exemption.⁵⁰

In 2017, the Legislature created s. 196.1978(2), F.S.,⁵¹ to provide that notwithstanding the provisions in s. 196.195, F.S., regarding the nonprofit status of the owner, and the provisions of s. 196.196, F.S., regarding the exempt status of the use of the property, property used as affordable housing will be considered used for a charitable purpose and qualify for a 50 percent property tax discount if the property:

- Provides affordable housing to natural persons or families meeting the extremely-low-, very-low-, or low-income limits specified in s. 420.0004, F.S.;
- Provides housing in a multifamily project in which at least 70 units are provided to the above group; and
- Is subject to an agreement with FHFC to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.⁵²

The discount begins on January 1 of the year following the 15th year of the term of the agreement on those portions of the affordable housing property that provide the housing as described above. The discount terminates when the property is no longer serving extremely-low-, very-low-, or low-income persons pursuant to the recorded agreement. The discount is applied to taxable value prior to tax rolls being reported to taxing authorities and tax rates being set in the annual local government budgeting process.

Effect of Proposed Changes

Section 5 amends s. 196.196, F.S., to provide that the board of county commissioners of any county or the governing authority of a municipality *may* adopt ordinances to grant an ad valorem tax exemption for property used for the charitable purpose of providing affordable housing, if the

⁴⁷ The nonprofit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. s. 501(c)(3) (“charitable purposes” include relief of the poor, the distressed, or the underprivileged, the advancement of religion, and lessening the burdens of government).

⁴⁸ See ss. 196.192 and 196.1978(1), F.S.

⁴⁹ Section 196.1978(1), F.S.

⁵⁰ *Parrish v. Pier Club Apartments, LLC.*, 900 So.2d 683 (Fla. 4th DCA 2005).

⁵¹ Section 6, ch. 2017-26, Laws of Fla.

⁵² Section 196.1978(2)(a), F.S. and s. 6, ch. 2017-36, Laws of Fla.

person owning the property has taken affirmative steps to prepare the property to provide affordable housing to persons or families that meet the extremely-low-, very-low-, low-, or moderate-income limits.

Section 6 amends s. 196.1978, F.S., to allow units to continue to be treated as portions of the property exempt from ad valorem taxation that are:

- Vacant; or
- That are occupied by tenants who were natural persons or families meeting the extremely-low-, very-low-, low-, or moderate-income limits at the time they initially became tenants, but who no longer meet those income limits.

The property must be subject to a recorded land use restriction agreement in favor of the FHFC or any other governmental or quasi-governmental jurisdiction.

In addition, the statute is amended to allow any property owned by *one or more* limited liability companies or *limited partnerships*, each of which is disregarded for federal tax purposes, to be treated as owned by “the ultimate sole member s. 501(c)(3) nonprofit corporation.”

State Apartment Incentive Loan (SAIL) Program: Local Government Contributions (Section 12)

Present Situation

The SAIL program provides low-interest loans on a competitive basis to affordable housing developers as gap financing for the construction or substantial rehabilitation of multifamily affordable housing developments.⁵³ Applicant may include individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very-low-income individuals and families. In most cases, the SAIL loan cannot exceed 25 percent of the total development cost and can be used in conjunction with other state and federal programs.

The FHFC administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.⁵⁴

Effect of Proposed Changes

Section 12 amends s. 420.5087(6), F.S., add components to the evaluation criteria related to local government in the review and selection process of applications. The additional components for evaluation are local government policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects.

⁵³ See s. 420.5087, F.S., and Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, for information cited in this section, available at <http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited February 22, 2020).

⁵⁴ Section 420.5087(6)(c), F.S.

Community Workforce Housing Innovation Pilot Program (Section 13)

Present Situation

Established by ch. 2006-69, Laws of Fla., the Community Workforce Housing Innovation Pilot Program (CWHIP) was created for the purpose of providing affordable rental and home ownership community workforce housing for essential services personnel with medium incomes in high-cost and high-growth counties. Designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources, the FHFC administered the program in 2006 and 2007.⁵⁵

The CWHIP targeted households earning higher incomes than traditionally served through other affordable housing programs to create homeowner or rental housing for persons such as teachers, firefighters, healthcare providers, and others as defined by local governments. Households earning up to 140 percent of area median income (AMI) could be served through the program with that provision rising up to 150 percent of AMI in the Florida Keys.⁵⁶

CWHIP provided priority funding consideration to projects in counties where the disparity between the AMI and the median sales price for a single family home was greatest. Priority funding consideration was specified where:⁵⁷

- The local jurisdiction established local incentives such as expedited reviews of development orders and permits and supported development near transportation hubs;
- Financial strategies like tax increment financing were utilized;
- Projects were innovative, including mixed-use elements; and
- Projects set aside at least 80 percent of units for workforce housing and at least 50 percent for essential services personnel.

The CWHIP loans were awarded with a 1 to 3 percent interest rate and could be forgiven where long-term affordability was provided and where at least 80 percent of the units were set aside for workforce housing and at least 50 percent of the units were set aside for essential services.⁵⁸

The FHFC administered two rounds of funding for CWHIP: \$50 million in October of 2006 and \$62.4 million in December of 2007.⁵⁹

Effect of Proposed Changes

Section 13 amends s. 420.5095, F.S., to transition the “pilot” features of a workforce housing program into the Community Workforce Housing Loan Program, administered by the FHFC. Households earning up to 80 percent of AMI will be served through the program with that provision rising up to 120 percent of AMI in the Florida Keys. The FHFC is required to establish

⁵⁵ Section 420.5095(2), F.S. *See also* Specific Appropriation 1658A, s. 5, ch. 2006-25, Laws of Fla.; and Specific Appropriation 1694, s. 5, 2007-72, Laws of Fla.

⁵⁶ Section 420.5095(3)(a), F.S.

⁵⁷ Section 420.5095(8), F.S.

⁵⁸ Section 420.5095(11), F.S.

⁵⁹ *See* Florida Housing Finance Corporation, *2007 Annual Report*, at p. 3, and *2008 Annual Report*, at p. 11, available at <http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2007AnnualReport.pdf> and http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport_CDfile.pdf (both sites last visited February 22, 2020).

a loan application process pursuant to the SAIL program provisions under s. 420.5087, F.S., and all application requirements of the former CWHIP program are repealed.

Priority funding consideration is specified where:

- The local jurisdiction establishes local incentives such as expedited reviews of development orders and permits and supported development near transportation hubs; and
- Financial strategies like tax increment financing are utilized.

The FHFC is required to award loans with a 1 percent interest rate for a term not to exceed 15 years. The FHFC is authorized to adopt rules to implement this program.

Funding Transitional Housing for Persons Aging out of Foster Care (Section 15)

Present Situation

Affordable Housing Funding for Special Needs Populations

For purposes of affordable housing, s. 420.0004(13), F.S., defines a person with special needs as:

- An adult requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition.
- A young adult formerly in foster care who is eligible for services under the Road-to-Independence Program.⁶⁰
- A survivor of domestic violence.
- A person receiving benefits under the Social Security Disability Insurance program or the Supplemental Security Income program or from veterans' disability benefits.

According to the statewide 2019 Rental Market Study, the estimates of rental households with persons with special needs were 2,574 youth aging out of foster care, 7,836 survivors of domestic violence, and 104,273 cost burdened renter households receiving disability-related Social Security, SSI, and veterans' benefits statewide.⁶¹

FHFC is authorized to make SAIL program funds available during the first six months of SAIL funding availability for recipients who set aside at least 20 percent of the units in the project for certain tenant groups, including persons with special needs. Within each notice of fund availability, at least 10 percent must be for the tenant groups.

Section 420.507(48), F.S., requires the FHFC to reserve up to 5 percent of certain annual allocations⁶² for high-priority affordable housing projects for veterans and their families and for other special needs populations. The FHFC must reserve an additional 5 percent of each allocation for affordable housing projects that target persons who have a disabling condition.⁶³ Each local government participating in the State Housing Initiatives Partnership program must

⁶⁰ See s. 409.1451, F.S.

⁶¹ Shimberg Center for Housing Studies, University of Florida, *2019 Rental Market Study*, May 2019, available at http://www.shimberg.ufl.edu/publications/RMS_2019.pdf (last visited February 13, 2020). The Rental Market Study defines "cost burdened" to mean the household is paying at least 40 percent of income toward gross rent.

⁶² These allocations include those for low-income housing tax credits, nontaxable revenue bonds, and SAIL funds appropriated by the Legislature.

⁶³ Section 420.0004(7), F.S., defines "disabling condition."

use a minimum of 20 percent of its local housing distribution to serve persons with special needs.⁶⁴

Services and Support for Youth Aging Out of Foster Care

Sections 39.6251 and 409.1451, F.S., require the Department of Children and Families to administer an array of independent living services to eligible young adults ranging in ages 18-22 (not yet 23), including supports in making the transition to self-sufficiency.⁶⁵

Extended Foster Care (EFC) provides eligible young adults the option of remaining in foster care until the age of 21 or until the age of 22 if they have a disability. EFC is a voluntary program that requires the young adult to agree to participate in school, work, or a work training program in accordance with federal and state guidelines. Exceptions and accommodations are made for young adults with a documented disability.

Effect of Proposed Changes

Section 15 amends s. 420.9073, F.S., related to State Housing Initiatives Partnership distributions, to authorize the FHFC to prioritize a portion of the SAIL program funds set aside under s. 420.5087(3)(d), F.S., for persons with special needs, to provide funding for the development of newly constructed permanent rental housing on a campus that provides housing for persons in foster care or persons aging out of foster care under the Road-to-Independence Program. The housing must promote and facilitate access to community-based supportive, educational, and employment services and resources that assist persons aging out of foster care to successfully transition to independent living and adulthood. The FHFC must consult with the Department of Children and Families to create minimum criteria for such housing.

Affordable Housing Workshops for Locally Elected Officials Utilizing the Catalyst and the State Housing Initiatives Partnership (SHIP) Programs (Sections 14 and 17)

Present Situation

Affordable Housing Catalyst Program

Section 420.531, F.S., directs the FHFC to operate the Affordable Housing Catalyst Program (Catalyst Program) to provide specialized technical support to local governments and community-based organizations to implement the HOME Investment Partnership Program, the SHIP program, and other affordable housing programs.⁶⁶ The FHFC currently contracts with the Florida Housing Coalition to provide Catalyst Program training and technical assistance.⁶⁷

⁶⁴ Section 420.9075(5)(d), F.S.

⁶⁵ Information in this section related to independent living services and extended foster care is drawn from the Department of Children and Families, *Independent Living Services Annual Report*, January 31, 2019, available at <https://www.myflfamilies.com/service-programs/child-welfare/docs/2019LMRs/Independent%20Living%20Services%202018%20Annual%20Report.pdf> (last visited February 22, 2020).

⁶⁶ To the maximum extent feasible, the entity to provide the necessary expertise must be recognized by the Internal Revenue Service as a nonprofit tax-exempt organization. It must have a primary mission of providing training and technical assistance on affordable housing, an ability to provide the services statewide, and a proven track record of providing the services under the Catalyst Program.

⁶⁷ *Contract for Affordable Housing Catalyst Services between Florida Housing Finance Corporation and the Florida Housing Coalition, Inc.*, July 1, 2019, available at <https://www.floridahousing.org/docs/default->

The Florida Housing Coalition's technical assistance team consists of a geographically dispersed network of personnel who provide on-site and telephone or e-mail technical assistance as well as training through workshops and webinars.⁶⁸ This technical assistance targets local governments and nonprofit organizations and includes:⁶⁹

- Leveraging program dollars with other public and private funding sources;
- Working effectively with lending institutions;
- Implementing regulatory reform;
- Training for boards of directors;
- Implementing rehabilitation and emergency repair programs;
- Assisting with the creation of fiscal and program tracking systems; and
- Meeting compliance requirements of state and federally funded housing programs.

State Housing Initiatives Partnership (SHIP) Program

Administered by the FHFC, the SHIP program provides funds to all 67 counties and 52 Community Development Block Grant entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.⁷⁰ The program targets very-low-, low-, and moderate-income families

Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program.⁷¹ Funds are expended per each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies it will use.⁷² Local governments submit their LHAPs to the FHFC for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. The FHFC must approve an LHAP before a local government may receive the SHIP funding.

SHIP Incentive Strategies and Advisory Committee

Within 12 months of adopting a LHAP, each participating local government must amend the plan to include local housing incentive strategies.⁷³ The strategies must:

- Assure that permits for affordable housing projects are expedited;
- Establish an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing; and
- Include a schedule for implementing the incentive strategies.⁷⁴

[source/legal/contracts/2019/014-2019---the-florida-housing-coalition-inc---affordable-housing-catalyst-program-services.pdf?sfvrsn=c09dea7b_2](https://www.flhousing.org/legalservices/contracts/2019/014-2019---the-florida-housing-coalition-inc---affordable-housing-catalyst-program-services.pdf?sfvrsn=c09dea7b_2) (last visited February 22, 2020).

⁶⁸ Florida Housing Coalition's 2019/2020 *Catalyst Training Schedule* is available at <https://www.floridahousing.org/docs/default-source/programs/special-programs/catalyst/training-schedule-catalyst-2019-2020.pdf?sfvrsn=2>. A link to the Florida Housing Coalition's *Work Shop and Webinar Calendar* is available at https://www.flhousing.org/events/list/?tribe_paged=2&tribe_event_display=list (both sites last visited February 13, 2020).

⁶⁹ See s. 420.531(1), F.S.

⁷⁰ See ss. 420.907-420.9089, F.S.

⁷¹ Section 420.9073, F.S.

⁷² Section 420.9075, F.S.

⁷³ Section 420.9076(1), F.S.

⁷⁴ Section 420.9071(16), F.S.

Local governments must appoint members to an Affordable Housing Advisory Committee (AHAC) to triennially review the established policies and procedures, ordinances, land development regulations, and adopted local government comprehensive plan.⁷⁵ The AHAC is comprised of local citizens representing a range of affordable housing stakeholders.⁷⁶ At a minimum, each AHAC must submit a report to the local governing body on certain affordable housing incentives including:

- The processing of approvals of development orders or permits for affordable housing.
- The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment for affordable housing.
- The allowance of flexibility in densities for affordable housing.
- The allowance of affordable accessory residential units in residential zoning districts.
- The reduction of parking and setback requirements for affordable housing.

Local governments that receive the minimum allocation under the SHIP⁷⁷ must perform the initial incentives review but may elect to not perform the subsequent triennial reviews.

Effect of Proposed Changes

Section 14 amends s. 420.531, F.S., to establish biannual regional workshops for locally elected officials serving on AHACs. The Florida Housing Coalition⁷⁸ will administer and conduct the workshops with the intent of facilitating peer-to-peer identification and sharing of affordable housing best practices. Workshops may be conducted through teleconferencing or other technological means. Annual reports summarizing each region's deliberations and recommendations, as well as local official attendance records, must be submitted to the President of the Senate, the Speaker of the House, and the FHFC by March 31 of the following year.

The bill also amends the Catalyst Program to include SAIL among the programs listed for which the Florida Housing Coalition may provide technical support.

Section 17 amends s. 420.9076, F.S., to modify requirements of the AHACs. Effective October 1, 2020, at least one locally elected official from each participating SHIP county or municipality must serve on the advisory committee. This official, or a locally elected designee, must attend the biannual regional workshops on affordable housing best practices. If a locally elected official fails to attend three consecutive regional workshops, the FHFC may withhold the participating SHIP entity's funds pending the person's attendance at the next regularly scheduled biannual meeting.

The bill also requires annual, rather than triennial, AHAC reviews of local policies and provisions affecting affordable housing. The annual report of advisory committee reviews and recommendations must be submitted to the local governing body and to the Florida Housing Coalition. In addition, the report must include information about all allowable fee waivers provided for affordable housing, instead of the just the modification of impact-fee requirements.

⁷⁵ Section 420.9076(4), F.S.

⁷⁶ Section 420.9076(2), F.S.

⁷⁷ Pursuant to s. 420.9073(3), F.S., the minimum local housing distribution is \$350,000.

⁷⁸ The entity that provides the statewide training and technical assistance under s. 420.531, F.S.

Annual SHIP Entity Reporting Submissions to Florida Housing (Section 16)

Present Situation

Section 420.9075(10), F.S., requires each local government participating in the SHIP to annually submit a report of its affordable housing programs and accomplishments to the FHFC. The local government's chief elected official or his or her designee must certify the report as accurate and complete.⁷⁹ Among the many items included in the report are:

- The number of households served by income category, age, family size, and race, and data regarding any special needs populations;
- The number of units and the average cost of producing units under each local housing assistance strategy;
- By income category, the number of mortgages made, the average mortgage amount, and the rate of default; and
- A description of the status of implementation of each local housing incentive strategy.⁸⁰

If, as a review of the report, the FHFC determines that the local government has a pattern of violation of the criteria for its LHAP or that an eligible sponsor or eligible person has violated the applicable award conditions, then the FHFC reports the violation to its compliance monitoring agent and the Governor. If a violation is deemed to have occurred, the distribution of program funds to the local government must be suspended until the violation is corrected.⁸¹

Effect of Proposed Changes

Section 16 amends s. 420.9075(10), F.S., to require the annual report by the local government to include data on the number of affordable housing applications submitted, approved, and denied.

Housing Projects (Section 18)

Present Situation

Public Housing Authorities

Public housing authorities are created to address a shortage of safe or sanitary dwelling accommodations in local areas that are available at rents that persons of low income can afford.⁸² Florida Statutes provide for the creation of special district, city, county, and regional housing authorities. Of the 119 public housing authorities in Florida,⁸³ 116 are special districts.⁸⁴

Section 421.08, F.S., establishes the powers of a housing authority, including:

- The power to acquire, lease, and operate housing projects.

⁷⁹ Section 420.9075(11), F.S., requires report to be made available for public inspection and comment prior to certifying and transmitting it to the FHFC.

⁸⁰ Section 420.9075(10), F.S.

⁸¹ Section 420.9075(13), F.S.

⁸² Sections 421.04, 421.27, and 421.28, F.S.

⁸³ Florida Housing Finance Corporation, *Public Housing Question* (February 18, 2020), on file with the Senate Committee on Infrastructure and Security.

⁸⁴ Department of Economic Opportunity, *Official List of Special Districts Online*, available at <http://specialdistrictreports.floridajobs.org/webreports/sumfunctionlist.aspx> (last visited February 22, 2020).

- The power to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project.
- The power to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project.

Housing authorities are also granted the power to create a for-profit or nonprofit corporation, limited liability company, or other similar business entity in which the housing authority may hold an ownership interest or participate in its governance in order to develop, acquire, lease, construct, rehabilitate, manage, or operate multifamily or single-family residential projects. These projects may include nonresidential uses and may use public and private funds to serve individuals or families who meet the certain income requirements and who, in the determination of the housing authority, lack sufficient income or assets to enable them to purchase or rent a decent, safe, and sanitary dwelling. These business entities may join partnerships, joint ventures, or limited liability companies or may otherwise engage with other business entities to develop, acquire, lease, construct, rehabilitate, manage, or operate such projects.⁸⁵

Tax Exemption of Housing Authority Property

Chapter 423, F.S., provides state and local government tax and assessment exemptions for housing authorities. Housing projects of housing authorities, including authority property used in connection with or appurtenant to a housing project, is exempt from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state.⁸⁶ Housing projects and the related property are declared to be exclusively for public use, not for profit, and are governmental functions of state concern.⁸⁷

Effect of Proposed Changes

Section 18 amends s. 423.02, F.S., to include a housing authority's nonprofit instrumentality under the housing authority's tax exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state. In addition, a city, town, county, or political subdivision of the state may not rename, modify terminology, or otherwise change a tax or assessment with the intent to circumvent the exemption provided. This provision must be interpreted broadly to protect housing authorities or their nonprofit instrumentalities from taxation or assessment.

Bill Sections Addressing Mobile Homes

Chapter 723, F.S., the "Florida Mobile Home Act" addresses the unique relationship between a mobile home owner and a mobile home park owner.⁸⁸ The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has ten or more lots offered for rent or lease.⁸⁹ Mobile home parks are

⁸⁵ Sections 421.08(8), 421.27(2), and 421.31, F.S.

⁸⁶ In lieu of such taxes or special assessments, a housing authority may agree to make payments to a local government for services, improvements or facilities furnished by the entity for the benefit of a housing project owned by the housing authority.

⁸⁷ Section 423.01(4), F.S.

⁸⁸ Section 723.004, F.S.

⁸⁹ Section 723.002(1), F.S.

regulated by the Division of Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation.⁹⁰

Further, mobile home dealers/brokers, installers, and manufacturers are required to register with the Department of Highway Safety and Motor Vehicles (DHSMV).⁹¹

A mobile home is a structure, transportable in one or more sections, that has a body width of 8 feet or more and which is built on an integral chassis, is designed to be used as a dwelling when connected to utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.⁹² Similarly, under ch. 723, F.S., a mobile home is a residential structure, transportable in one or more sections, that has a body width of 8 feet or more and a length of over 35 feet with the hitch, which is built on an integral chassis, is designed to be used as a dwelling when connected to utilities, includes the plumbing, heating, air-conditioning, and electrical systems, and was not originally sold as a recreational vehicle.

Mobile Home Dealer Display Requirements (Section 7)

Present Situation

A mobile home dealer must hold a license issued by the DHSMV.⁹³ The term “dealer” generally means “any person engaged in the business of buying, selling, or dealing in mobile homes or offering or displaying mobile homes for sale.”⁹⁴

The place of business of the mobile home dealer must be at a permanent location, not a tent or a temporary stand or other temporary quarters. The location of the place of business must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale.⁹⁵

Effect of Proposed Changes

Section 7 amends s. 320.77, F.S., to remove the requirement that a place of business of a mobile home dealer must afford sufficient unoccupied space to store all mobile homes offered and displayed for sale. Under the bill, the place of business of a mobile home dealer must have sufficient space to display a manufactured home as a model home.

⁹⁰ Section 723.003(12), F.S. defines a “mobile home park” or “park” as a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential

⁹¹ See Department of Highway Safety and Motor Vehicles, *Motor Vehicles, Tags & Titles – Dealers, Installers, Manufacturers, Distributors, and Importers*, available at <https://www.flhsmv.gov/motor-vehicles-tags-titles/dealers-installers-manufacturers-distributors-importers/> (last visited February 22, 2020).

⁹² Section 320.1(2)(a), F.S., which provides such definition as used in Florida Statutes.

⁹³ Section 320.77(2), F.S.

⁹⁴ See s. 320.77(1)(b), F.S.

⁹⁵ Section 320.77(3)(h), F.S.

Recreational Vehicle Dealer Requirements (Section 7)

Present Situation

A recreational vehicle dealer must hold a license issued by the DHSMV.⁹⁶ The term “dealer” generally means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale.⁹⁷

A recreational vehicle is a type of motor vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.⁹⁸ One type of a recreational vehicle is known as a “park trailer,” which is a transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.⁹⁹

A recreational vehicle dealer must be insured under a garage liability insurance policy that includes a minimum \$25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and \$10,000 personal injury protection.¹⁰⁰

Effect of Proposed Changes

Section 7 amends s. 320.771, F.S., to exempt a recreational vehicle dealer from the requirement to be insured under a garage liability insurance policy, if the dealer sells only park trailers.

Repair and Remodeling Codes for Mobile and Manufactured Homes (Sections 9 and 10)

Present Situation

A manufactured home is a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.¹⁰¹

Sections 320.8232(2), F.S., provides that the provisions of the repair and remodeling code for mobile homes must ensure safe and livable housing and must not be more stringent than those standards required to be met in the manufacture of mobile homes. The provisions of the code must include, but are not limited to, standards for structural adequacy, plumbing, heating, electrical systems, and fire and life safety. Section 320.822(2), F.S., uses the term “Repair and Remodeling Code” and not the term “Mobile Home Repair and Remodeling Code.”

Rule 15C-2.0081, F.A.C, provides more specificity for the Mobile/Manufactured Home Repair and Remodeling Code. The rule provides guidelines for structure additions, anchoring, repair, and remodeling; electrical repair and replacement; and plumbing repair and replacement.

⁹⁶ Section 320.771(2), F.S.

⁹⁷ Section 320.771(1)(a), F.S.

⁹⁸ See s. 320.01(1)(b), F.S.

⁹⁹ Section 320.01(1)(b)7., F.S.

¹⁰⁰ Section 320.771(3)(j), F.S.

¹⁰¹ Section 320.01(2)(b), F.S.

Effect of Proposed Changes

Section 9 amends s. 320.822, F.S., to revise the term “Mobile Home Repair and Remodeling Code” to the “Mobile and Manufactured Home Repair and Remodeling Code.”

Section 10 amends s. 320.8232, F.S., by changing the reference to the “Repair and Remodel Code” to the “Mobile and Manufactured Home Repair and Remodeling Code” which has been adopted by rule by the DHSMV. The bill also requires all repair and remodeling of mobile and manufactured homes be done in accordance with the DHSMV rules.

Jurisdiction of the Public Service Commission: Mobile Home Parks/Subdivisions and Water and Wastewater Service (Section 11)

Present Situation

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and wastewater companies. These privately-owned companies are referred to as “investor-owned utilities.”¹⁰² If the utility is operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.¹⁰³ Currently, the PSC has jurisdiction over 150 water and wastewater IOUs in 38 of 67 counties in Florida.¹⁰⁴

The remaining water and wastewater customers in the state are not subject to PSC regulation and are served either by IOUs in non-jurisdictional counties, by wells and septic tanks, or by systems owned, operated, managed, or controlled by governmental authorities or by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits).¹⁰⁵

Section 367.022(5), F.S., exempts from regulation by the PSC “landlords providing [water or wastewater] service to their tenants without specific compensation for the service.”

Section 367.022(9), F.S., also exempts from regulation any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

A mobile home park is land used by providing lots or spaces rented or leased for the placement of mobile homes for primarily residential use. In a mobile home subdivision, the individual lots are owned by the lot owners and a portion of the subdivision or the amenities exclusively serving the subdivision are owned by the subdivision developer.¹⁰⁶

¹⁰² IOUs can range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to systems owned by large interstate corporations that serve tens of thousands of customers in multiple Florida counties.

¹⁰³ Section 367.171, F.S.

¹⁰⁴ Public Service Commission, *2019 Facts & Figures of the Florida Utility Industry*, at p. 31, June 2019, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/June%202019.pdf> (last visited February 13, 2020).

¹⁰⁵ See s. 367.022, F.S.

¹⁰⁶ Section 723.003(13) and (14), F.S.

Effect of Proposed Changes

Section 11 amends s. 367.022, F.S., to exempt from regulation by the PSC the owner of a mobile home park operating both as a mobile home park and a mobile home subdivision who provides service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation. The bill also amends the current exemption for any person who sells water service to his or her tenants or individual metered residents to provide that the fee charged cannot exceed the actual purchase price of the water and wastewater service.

Prospectus or Offering Circular and Rental Agreements (Sections 19 and 20)

Present Situation

Prospectus

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner.¹⁰⁷ The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to homeowners and prospective homeowners in a mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.¹⁰⁸

The prospectus must include the specified information including a description of the mobile home park property, the number of lots in each section, the maximum number of lots that will use shared facilities, and a description of the recreational and other common facilities to be used by mobile home owners.¹⁰⁹

Section 723.012(7), F.S., requires the prospectus to include a description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.

If the tenancy was in existence on June 4, 1984,¹¹⁰ the mobile home park owner must offer a prospectus or offering circular offered that contains the same terms and conditions as rental agreements offered to all other mobile home owners residing in the park on the same date. However, the prospectus or offering circular may include rent variations based upon lot location and size. The prospectus or offering circular may not require any mobile home owner to install any permanent improvements.¹¹¹

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the Division of Condominiums, Timeshares, and Mobile Homes for approval.¹¹² The park owner must provide a copy of the prospectus with exhibits to each prospective lessee prior to the

¹⁰⁷ Section 723.012, F.S.

¹⁰⁸ Section 723.011(3), F.S.

¹⁰⁹ Section 723.012(4) and (5), F.S.

¹¹⁰ The effective date of ch. 723, F.S. See ch. 84-80, Laws of Fla.

¹¹¹ Section 723.011(4), F.S.

¹¹² Section 723.011(1)(a), F.S.

execution of the lot rental agreement or at the time of occupancy, whichever occurs first.¹¹³ By rule of the division, the prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in certain specified circumstances.¹¹⁴

Effect of Proposed Changes

Section 19 amends s. 723.011, F.S., to provide that a mobile home owner may be required to install permanent improvements to the mobile home as disclosed in the prospectus, with respect to a tenancy in existence on June 4, 1984.

Section 20 amends s. 723.012, F.S., to provide that, if a mobile home park owner intends to include additional property and mobile home lots and to increase the number of lots that will use the shared facilities of the park, the mobile home park owner must amend the prospectus to disclose such additions. If the number of mobile home lots in the park increases by more than 15 percent of the total number of lots in the original prospectus, the mobile home park owner must reasonably offset the impact of the additional lots by increasing the shared facilities. The amendment to the prospectus must include a reasonable timeframe for providing the required additional shared facilities and the costs and expenses necessary to increase the shared facilities may not be passed on or passed through to the existing mobile home owners.

Mobile Home Owner's General Obligations (Section 21)

Present Situation

Section 723.023, F.S., sets forth the mobile home owner's general obligations. A mobile home owner shall at all times:

- Comply with building, housing, and health codes, including compliance with all building permits and construction requirements for construction on the mobile home and lot. The home owner is responsible for all fines imposed by the local government for noncompliance with any local codes.
- Keep the mobile home lot that he or she occupies clean, neat, and sanitary, and maintained in compliance with all local codes.
- Comply with properly promulgated park rules and regulations and require other persons on the premises with his or her consent to comply with such rules and to conduct themselves, and other persons on the premises with his or her consent, in a manner that does not unreasonably disturb other residents of the park or constitute a breach of the peace.

Effect of Proposed Changes

Section 21 amends s. 723.023, F.S., to require the mobile home owner to remove any debris and other property of any kind that is left on the mobile home lot when vacating the premises.

The bill also requires the mobile home owner to receive written approval from the mobile home park owner before making any exterior modification or addition to the home. The bill grants this new authority to the mobile home park owner without conditioning this new power on the

¹¹³ Sections 723.011(2), F.S.

¹¹⁴ See Rule 61B-31.001, F.A.C.

prospectus granting the mobile home park owner such right or on the prospectus being amended upon agreement of the park owner and the mobile home owner to include such power.

Mobile Home Park Rent Increases (Sections 22 and 23)

Present Situation

The rental agreement for a mobile home park lot must contain the lot rental amount and the services included. Generally, lot rental agreements must be for a 1-year term and the lot rental amount may not be increased during the term of the agreement.¹¹⁵ However, the mobile home park owner may pass on ad valorem property taxes and other fees and assessments as long as this is done as a matter of custom between the mobile home park owner and the mobile home owner or as authorized by law. A park owner is deemed to have disclosed the passing on of ad valorem property taxes and non-ad valorem assessments if these were disclosed as a factor for increasing the lot rental amount in the prospectus or rental agreement.¹¹⁶

A mobile home park owner may increase the lot rental amount by providing at least a 90-day notice, generally before the renewal date of the renewal agreement.¹¹⁷ The park owner must give the notice to the affected mobile home owners and the board of directors of the homeowners' association, if one has been formed.¹¹⁸

Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park.¹¹⁹ The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner must provide the names and addresses upon request.¹²⁰

A committee of no more than five people, designated by a majority of the owners or by the board of directors of the homeowners' association (if formed), and the park owner must meet at least 60 days before the effective date of a rent increase to discuss the reasons for the increase.¹²¹ Current law does not specify that the five members of the committee must be mobile home owners in the park. At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount and, with specificity, how those factors justify the increase proposed.¹²²

If the committee disagrees with the lot rental increase reasoning, then the committee and the park owner may continue to meet. However, if subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition the Division of Condominiums, Timeshares, and Mobile Homes to initiate mediation.¹²³ If the mediation does

¹¹⁵ Section 723.031(4) and (5), F.S.

¹¹⁶ *Id.*

¹¹⁷ Section 723.031(5)(d), F.S.

¹¹⁸ Section 723.037(1), F.S.

¹¹⁹ Section 723.031(5), F.S.

¹²⁰ Section 723.037(1), F.S.

¹²¹ Section 723.037(4)(a), F.S.

¹²² Section 723.037(4)(b), F.S.

¹²³ Section 723.037(5)(a), F.S.

not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the lot rental increase as unreasonable.¹²⁴

Effect of Proposed Changes

Section 22 amends s. 723.031, F.S., to add that that a park owner is deemed to have disclosed the passing on of ad property taxes and non-ad valorem assessments if these were disclosed as a *separate charge* for increasing the lot rental amount in the prospectus or rental agreement

Additionally, the bill prohibits a park owner from charging or collecting from the mobile home owners any sum of ad valorem taxes or non-ad valorem tax charges in an amount in excess of the sums remitted by the park owner to the tax collector.

Section 23 amends s. 723.037, F.S., to permit the park owner to give notice of all rent increases for multiple anniversary dates in the same 90-day notice. To conform to this change, the bill requires the committee designated to consider the lot rental increases must address all lot rental amount increases that are specified in the notice of lot rental amount increase, regardless of the effective date of the increase.

The bill also provides that the requirement of the park owner to provide, upon request, the identifying information for homeowners affected by a rent increase does not authorize the park owner to release the names, addresses, or other private information of the homeowners to the association or any other person for any other purpose.

Replacing Mobile Homes in a Mobile Home Park (Section 24)

Present Situation

Except as expressly preempted by the requirements of the DHSMV, a mobile home owner or the park owner is authorized to “site any size new or used mobile home and appurtenances on a mobile home lot in accordance with the lot sizes, separation and setback distances, and other requirements in effect at the time of the approval of the mobile home park.”¹²⁵

Effect of Proposed Changes

Section 24 amends s.723.041, F.S., to allow a mobile home park that is damaged or destroyed due to wind, water, or other natural force to be rebuilt on the same site with the same density as was approved, permitted, and built before being damaged or destroyed. The bill also provides that the regulation of the uniform fire safety standards established under s. 633.206, F.S., are not limited by s. 723.041, F.S. However, s. 723.041, F.S., supersedes any other density, separation, setback, or lot size regulation adopted after initial permitting and construction of the mobile home park.

¹²⁴ Section 723.0381, F.S.

¹²⁵ Section 723.041(4), F.S.

Park Owner Disclosures Prior to Residence (Section 25)

Present Situation

A mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed pursuant to s. 723.011, F.S., which requires the park owner to deliver a prospectus to the prospective homeowner before the rental of a mobile home lot.¹²⁶ Section 723.012, F.S., sets forth specific requirements for a prospectus, including that the prospectus must include a “description of all improvements, whether temporary or permanent, which are required to be installed by the mobile home owner as a condition of his or her occupancy in the park.”¹²⁷

Effect of Proposed Changes

Section 25 amends s. 723.042, F.S., to reference subsection (7) of s. 723.012, F.S., relating to the information a mobile park owner must disclose in the prospectus or offering circular. The bill deletes the reference to s. 723.011, F.S., which requires a mobile home park owner or developer file a prospectus with the division and to provide a copy to a prospective tenant, but does not detail the information that must be disclosed in the prospectus. Under the bill, a mobile home park owner or developer may not require a person, as a precondition to occupancy in the mobile home park, to provide any improvement unless the requirement is disclosed in the prospectus as required under s. 723.012(7), F.S.

Purchasers of a Mobile Home within Mobile Home Park (Section 26)

Present Situation

The purchaser of a mobile home has the right to assume the remainder of the term of any rental agreement in effect between the mobile home park owner and the seller. The purchaser is entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.¹²⁸

Upon the expiration of the assumed rental agreement, the mobile home park owner may increase the rental amount if the increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and ch. 723, F.S.¹²⁹

Effect of Proposed Changes

Section 26 amends s. 723.059, F.S., to instead permit the purchaser to assume the seller’s prospectus, instead of entitling the purchaser to rely upon the prospectus of the initial recipient. This change may be to ensure that the purchaser who intends to become a resident of the mobile home park is doing so under the most recent prospectus. However, the bill provides that nothing will prohibit a mobile home park owner from offering the purchaser of a mobile home any approved prospectus.

¹²⁶ Section 723.011(2), F.S.

¹²⁷ Section 723.012(7), F.S.

¹²⁸ Section 723.059(3), F.S.

¹²⁹ Section 723.059(4), F.S.

The bill also allows the mobile home park owner to increase the lot rental amount if the increase is imposed in a manner consistent with the purchaser's prospectus, instead of the initial offering circular or prospectus.

The bill also clarifies the title of s. 723.059, F.S., to more accurately reflect the substance of the statute.

Mobile Home Park Termination of Tenancy (Section 27)

Present Situation

Section 723.061, F.S., provides grounds for the termination of a mobile home park lot rental agreement, including when there will be a change in the use of the land from a mobile home park to some other use. This type of termination and eviction can occur if the park owner gives written notice to the homeowners' association of its right to purchase the park and to the affected mobile home owners and tenant at least 6 months in advance of the eviction of their need to secure other accommodations. The evicted mobile home owners may apply to the Florida Mobile Home Relocation Corporation for payment of moving expenses and the mobile home park owner is required to pay the corporation for the relocation expenses.¹³⁰

Other grounds for termination include a tenant's:¹³¹

- Conviction of a violation of a federal or state law or local ordinance, if the violation is detrimental to the health, safety, or welfare of other residents of the mobile home park.
- Violation of park rules, the rental agreement, or ch. 723, F.S.
- Failure to qualify as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule.

Effect of Proposed Changes

Section 27 amends s. 723.061, F.S., to require, within 20 days after giving an eviction notice to a mobile home owner due to a change in land use, the park owner to provide the Division of Condominiums, Timeshares, and Mobile Homes with a copy of the notice. The division must then provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice.

In addition, the bill provides that a park owner does not waive the right to terminate the rental agreement or the right to bring a civil action for the noncompliance, if a park owner accepts payment for any portion of a lot rental amount with actual knowledge of noncompliance after notice and termination of the rental agreement. This provision applies to violations related to the tenant's conviction as described above; violation of the park rules, the rental agreement, or ch. 723, F.S.; or failure to qualify as a tenant or occupant of the home. Any rent received by the park owner must be accounted for at the final hearing.

¹³⁰ Section 723.06116, F.S.

¹³¹ Section 723.061(1)(b) and (e), F.S.

Homeowners' Association Officers and Members (Section 28)

Present Situation

Mobile home owners can form a homeowners' association, and therefore exercise the rights of an association, in part by getting two-thirds of all the mobile home owners within the park to consent in writing to join.¹³² Upon receiving its certificate of incorporation the association must notify the mobile home park owner in writing of its creation and the names and addresses of the association officers. This notice must be made by personal delivery upon the park owner's representative as designated in the prospectus or by certified mail, return receipt requested.¹³³

Effect of Proposed Changes

Section 28 amends s. 723.076, F.S., to specify that the association must notify the park owner in writing by certified mail, return receipt requested, of the names and addresses of newly elected or appointed officers or members to the association.

Homeowners' Association Bylaws (Section 29)

Present Situation

Voting Requirements and Proxies

Unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum for a meeting of the association.¹³⁴ Members are allowed to vote by limited proxies, not general proxies. However, no votes may be cast by proxy to elect association board members. If a mobile home or subdivision lot is jointly owned, the owners of the mobile home or subdivision lot must be counted as one for the purpose of determining the number of votes required for a majority. Only one vote per mobile home or subdivision lot will be counted.¹³⁵

Board of Directors' and Committee Meetings

Meetings of the board of directors and meetings of its committees at which a quorum is present must be open to all members. This requirement does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney where the contents of the discussion would be governed by the attorney-client privilege.¹³⁶

Member Meetings

The association must conduct at least one member meeting annually during which members of the board of the directors are elected. All nominations for candidates for board membership made from the floor must be made at a meeting of the members held at least 30 days before the annual meeting. Unless waived in writing, the notice of the annual meeting must be mailed, hand delivered, or electronically transmitted to each member to at least 14 days before the meeting.

¹³² Section 723.075(1), F.S.

¹³³ Section 723.076(1), F.S.

¹³⁴ Section 723.078(2)(b)1., F.S.

¹³⁵ Section 723.078(2)(b)2., F.S.

¹³⁶ Section 723.078(2)(c), F.S.

An officer of the association must provide an affidavit affirming that the notices were mailed or hand delivered to each member at the address last furnished to the corporation.¹³⁷

Minutes of Meetings

The minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in writing and approved by the members, board, or committee, as applicable. The minutes of all meetings of members and of the board of directors must be maintained, available for inspection, and retained for at least seven years.¹³⁸

Effect of Proposed Changes

Section 29 amends s. 723.078, F.S., related to mobile home park homeowners' associations bylaws.

Voting Requirements and Proxies

The bill specifies that a proxy may not be used in the election of board members in general elections or elections to fill vacancies caused by recall, resignation, or otherwise. Board members must be elected by written ballot or by voting in person.

Under the bill, elections must be decided by a plurality of the ballots cast. There is no quorum requirement for an election but at least 20 percent of the eligible voters must cast a ballot for an election to be valid. A member is prohibited from allowing any other person to cast his or her ballot; improperly cast ballots are invalid. An election is required only if there are more candidates nominated than vacancies that exist on the board.

The bill requires candidates for the board of directors to appear on the ballot in alphabetical order by surname. Ballots may not indicate if a candidate is an incumbent on the board. Ballots must be uniform in appearance and may not provide a space for the signature of, or any other means of identifying, a voter. If the ballot contains more votes than vacancies or fewer votes than vacancies, the ballot is invalid unless otherwise stated in the bylaws. Write-in candidates and more than one vote per candidate per ballot are not allowed.

The bill requires election oversight by an impartial committee responsible for complying with all ballot requirements. The bill defines "impartial committee" to mean a committee whose members do not include any of the following people or their spouses:

- Current board members.
- Current association officers.
- Candidates for the association or board.

The bill requires the association bylaws provide a method for determining the winner of an election in which there is more than one candidate for the same position receiving the same number of votes.

¹³⁷ Section 723.078(2)(d), F.S.

¹³⁸ Section 723.078(2)(e), F.S.

The bill directs the Division of Condominiums, Timeshares, and Mobile Homes to adopt procedural rules to govern elections, including, but not limited to, rules for providing notice by electronic transmission and rules for maintaining secrecy of ballots.

Board of Directors' and Committee Meetings

The bill provides that meetings between the park owner and the board of directors or any of the board's committees are not required to be open to the association members. The bill clarifies that notices of all board or committee meetings *open to association members* must be posted in a conspicuous place upon the park property at least 48 hours in advance, except in an emergency.

Member Meetings

The bill changes the date for the meeting at which to nominate candidates to the board of directors to 27, rather than 30, days before the annual meeting. Unless otherwise stated in the bylaws, notices may be delivered electronically.

Minutes of Meetings

Under the bill, the minutes of board or committee meetings that are closed to members are privileged, confidential, and not available for inspection or photocopying. The bill clarifies that minutes of meetings *open to association members* must be maintained in writing. All minutes of *open meetings* must be retained within this state for a period of at least five years, rather than seven years as provided in current law which applies to all meetings.

Powers and Duties of Homeowners' Associations (Section 30)

Present Situation

The powers of the association include, but are not limited to, the maintenance, management, and operation of the park property.¹³⁹ The association must maintain the certain items, when applicable, which constitute the official records of the association. These include:¹⁴⁰

- A copy of the articles of incorporation, bylaws, and each amendment.
- A copy of the written rules or policies and each amendment.
- Approved minutes for all meetings of the members, board of directors, and committees of the board, which must be retained within this state for at least seven years.
- A current roster of all members and their mailing address and lot identifications.
- All insurance policies or copies, which must be retained for at least seven years.
- A copy of all contracts or agreements to which the association is a party, which must be retained for at least seven years.
- The financial and accounting records, which must be maintained for at least seven years; and
- All other written records that are related to the operation of the association.

In addition to the specific time and location retention mentioned above for certain official records, the statute also specifies that all official records must be maintained within the state for at least seven years. The official records must be made available to a member for inspection or

¹³⁹ Section 723.079(1), F.S.

¹⁴⁰ Section 723.079(4)(a)-(i), F.S.

photocopying within 10 business days after receipt by the board or its designee of a written request submitted by certified mail, return receipt requested.¹⁴¹

Failure to provide access to the records creates a rebuttable presumption that the association willfully failed to comply with the law.¹⁴² A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are \$10 per day up to 10 days and calculation begins on the 11th business day after receipt of the written request by certified mail, return receipt requested.¹⁴³

Effect of Proposed Changes

Section 30 amends s. 723.079, F.S., modify the retention of certain official records of the association. The following written records must be retained within this state for at least 5 years:

- Approved minutes of all meetings of members of the association and meetings open to members.¹⁴⁴
- Insurance policies (time for retention begins after the expiration date of the policy).
- Contracts and agreements of the association (time for retention begins after the expiration date of the contract or agreement).
- Financial and accounting records.
- Other written records not specified as official records in the statute (described above under the Present Situation) (time for retention begins after the expiration date, as applicable).

The bill repeals the requirement that all official records must be maintained within the state for at least seven years. Thus the association is not required to retain the copy of the articles of incorporation, bylaws, and each amendment;¹⁴⁵ written rules or policies and each amendment; and the current roster of all members and their mailing addresses and lot numbers.

The bill extends the time that the records must be made available for inspection from 10 days to 20 days of receipt of a written request. Under the bill, an association member denied access to association records may recover only \$10 per calendar day up to 10 days, not to exceed \$100, and the calculation for the damages begins on the 21st business day after the association receives the written request for records.

The bill requires a dispute between a member and an association regarding inspecting or photocopying official records to be submitted to mandatory binding arbitration with the Division of Condominiums, Timeshares, and Mobile Homes. The arbitration must be conducted pursuant to s. 723.1255, F.S., (created by the bill) and procedural rules adopted by the division.

¹⁴¹ Section 723.079(5), F.S.

¹⁴² Section 723.079(5)(a), F.S.

¹⁴³ Section 723.079(5)(b), F.S.

¹⁴⁴ Similar to the changes in section 29 of the bill, discussed above under the sub-subheading.

¹⁴⁵ These documents should be available on the Department of State corporate filings website for the association.

Alternative Resolution of Recall, Election, and Inspection and Photocopying of Official Records Disputes (Section 31)

Present Situation

Recall disputes in a mobile home park homeowners' association are subject to mandatory binding arbitration by the Division of Condominiums, Timeshares, and Mobile Homes.¹⁴⁶ In contrast, election, of officers, recall of officers, and other disputes in a condominium association are subject to mandatory nonbinding arbitration.¹⁴⁷ Election disputes in a homeowners' association are subject to mandatory binding arbitration,¹⁴⁸ and all other disputes between a homeowner and a homeowners' association are subject to mandatory mediation before an action may be filed in court.¹⁴⁹ The division has adopted rules of procedure governing arbitration for recall proceedings related to board members of a condominium, cooperative, or mobile home homeowners' association.¹⁵⁰ There is a \$50 filing fee for arbitration of a condominium dispute.¹⁵¹ However, ch. 723, F.S., does not authorize a filing fee as a precondition for mandatory binding arbitration by the division for a recall dispute at a mobile home park homeowners' association.

Effect of Proposed Changes

Section 31 amends s. 723.1255, F.S., to require disputes between a mobile home owner and a homeowners' association regarding the election and recall of officers or directors or the inspection and photocopying of official records to be submitted to a mandatory binding arbitration with the division. The arbitration will be conducted pursuant to procedural rules adopted by the division.

Each party is responsible for paying its own attorney fees, expert and investigator fees, and associated costs. The cost of the arbitrator must be divided equally between the parties regardless of the outcome.

Bill Sections Addressing Reenacting Issues and Effective Date

Effect of Proposed Changes

Section 32 reenacts a portion of s. 420.507, F.S., to incorporate the amendments to the SHIP program in section 12 of the bill.

Section 33 reenacts a portion of s. 193.018, F.S., to incorporate the amendments to the CWHIP program in section 13 of the bill.

Section 34 provides an effective date of July 1, 2020.

¹⁴⁶ Sections 723.078(2)(i)3. and 723.1255, F.S.

¹⁴⁷ See ss. 718.112(2)(j) and (k) and 718.1255(4) and (5), F.S.

¹⁴⁸ See s. 720.303(10)(d), F.S.

¹⁴⁹ Section 720.311, F.S.

¹⁵⁰ Section 723.1255, F.S., and Rule 61B-50, F.A.C.

¹⁵¹ Section 718.1255(4)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that, except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The following sections of the bill alter the ability of local governments to collect ad valorem taxes:

- Section 6 of the bill allows units of affordable housing that are vacant or are occupied by tenants who are no longer considered to be extremely-low-, very-low-, low-, or moderate-income to continue to be tax exempt.
- Section 18 of the bill allows a housing authority's nonprofit instrumentality to receive the same tax exemption from all taxes and special assessments of the state or any city, town, county, or political subdivision of the state as the housing authority.

The amount of revenue reduced due to the exemptions is unknown; therefore the impact to local government revenue is indeterminate.

However, an exemption may apply if these provisions have an insignificant fiscal impact, which for Fiscal Year 2020-2021 is \$2.1 million or less.^{152, 153, 154}

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Mandatory Binding Arbitration

The bill requires mobile home homeowners' associations and members to submit certain disputes to the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. The application of these provisions is unclear and it is unknown how the division will implement these requirements. The bill specifically requires the "cost of the arbitrators" to be paid by the

¹⁵² FLA. CONST. art. VII, s. 18(d).

¹⁵³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate, Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, September 2011.

¹⁵⁴ Based on the Demographic Estimating Conference's population adopted on December 3, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited February 22, 2020).

parties. The amount of the cost for the division's arbitration of disputes is not specified in the bill.

The bill addresses additional subjects unrelated to the requirement that the "cost of the arbitrators" be paid by the parties. To the extent the bill imposes a fee for arbitration of certain disputes while addressing other subjects, the bill may be unconstitutional as a violation the single-subject requirement for the imposition, authorization, or raising of a state tax or fee under Article VII, Section 19 of the Florida Constitution. Under that section, a "state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject." A "fee" is defined by the Florida Constitution to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."¹⁵⁵

E. Other Constitutional Issues:

Ad Valorem Taxes

The Florida Constitution prohibits state ad valorem taxes on real estate and tangible personal property and preempts all other taxing authority to the state.¹⁵⁶ As such, the Legislature needs a constitutional grant of authority to grant a property tax exemption. While the Legislature has constitutional authority to grant property tax exemptions for property used for charitable purposes,¹⁵⁷ it is unclear whether the current grant of authority allows the Legislature permit a local government the **discretion** to grant an exemption for affordable housing (section 5 of the bill). The current statutory property tax exemptions wherein the local governments have discretion have explicit foundations in the constitution.¹⁵⁸

Homeowners' Associations

The may create a conflict with the governing documents of homeowners' associations to the extent the documents set forth procedures and requirements for election of board members (section 29 of the bill), establish open meetings for meetings with the park owner (section 29 of the bill), and set forth procedures for disputes regarding inspection and copying of records (sections 30 and 31 of the bill).

The governing documents of these associations are generally considered contracts.¹⁵⁹ To the extent that the provisions of this bill may be applied retroactively, provisions of the bill may prompt concerns regarding the unconstitutional impairment of contract.

Some contracts forego the impairment of contract analysis by incorporating the relevant governing statute for that particular type of association, including future changes. In the

¹⁵⁵ FLA. CONST. art. VII, s. 19(d)(1).

¹⁵⁶ FLA. CONST. art. VII, s. 1(a).

¹⁵⁷ FLA. CONST. art. VII, s. 3(a).

¹⁵⁸ See, e.g., FLA. CONST. art. VII, s. 3(c) and (d), which involve discretionary property tax exemptions implemented in ss. 196.1995 and 196.1997.

¹⁵⁹ See *Venetian Isles Homeowners' Assoc., Inc., v. Albrecht*, 823 So.2d 813 (Fla. 2nd D.C.A. 2002) and *Cudjoe Gardens Property Owners Assoc., Inc. v. Patne*, 779 So.2d 598 (Fla. 3rd D.C.A. 2001).

context of condominiums, for example, the contract may include what is referred to as the “Kaufman language,” which states that the contract or association “shall be governed by the Condominium Act, as amended from time-to-time.”¹⁶⁰ Without the Kaufman language, newly enacted statutes may only affect new association documents (or amendments to existing documents) or prior association documents in a limited manner.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.¹⁶¹ The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.¹⁶² In *Exxon Corp. v Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

Article I, Section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.¹⁶³ This exception extends to laws that are reasonable and necessary to serve an important public purpose,¹⁶⁴ to include protecting the public’s health, safety or welfare.¹⁶⁵ For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights would be constitutionally suspect.¹⁶⁶

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.¹⁶⁷ The balancing process focuses on whether “the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state’s objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”¹⁶⁸

Mandatory Binding Arbitration

The bill amends ss. 723.079(5) and 723.1255, F.S., to require mobile home homeowners’ associations and members to submit certain disputes to the Department of Business and Professional Regulation for mandatory binding arbitration. The application of these

¹⁶⁰ See *Kaufman v. Shere*, 347 So.2d 627 (Fla. 3 DCA 1977).

¹⁶¹ *Stone v. Mississippi*, 101 U.S. 814 (1880).

¹⁶² *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

¹⁶³ *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980).

¹⁶⁴ *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla. 1982).

¹⁶⁵ *Khoury v Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1st DCA 1981), petition den. 412 So.2d 467 (Fla. 1981).

¹⁶⁶ *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1st DCA 1984).

¹⁶⁷ *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

¹⁶⁸ *Id.* at 780.

provisions is unclear and it is unknown how the department will implement them. However, it appears that the outcome of the arbitration is meant to be the final action on the dispute; the bill may prevent a party to the dispute from appealing or taking other legal recourse, thereby limiting a party's access to courts.

This provision may implicate concerns related to the constitutional right of access to courts. Article I, Section 21 of the Florida Constitution, provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." No similar provision exists in the federal constitution. If the Legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation. In *Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc.*, the Florida Supreme Court held that requiring mandatory binding arbitration of medical expense claims under the no-fault law without also providing for an appeal to the circuit court for a trial de novo is an unconstitutional denial of access to court.¹⁶⁹ Alternatively, in *Lasky v. State Farm Ins. Co.*,¹⁷⁰ the Florida Supreme Court upheld the constitutionality of the state's no-fault automobile insurance statute, although the statute restricted access to the courts. Unless medical expenses reached a certain level, the statute restricted an injured party from bringing a tort action to recover for pain and suffering. The court reasoned that because the statute required every owner of a motor vehicle to obtain insurance, a reasonable alternative to traditional tort actions was available. The court concluded that the statute did not deprive the appellants of their right to a trial by jury because it only abolished the right of recovery in narrow circumstances where it left "nothing to be tried by jury"¹⁷¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the provisions of the bill authorizing local governments to grant affordable housing property tax exemptions will reduce local property taxes by an indeterminate, significant amount beginning in Fiscal Year 2021-2022 (section 5).¹⁷²

Staff estimates that the following provisions of the bill will reduce local property taxes by an indeterminate amount:

- Granting tax exemptions to housing authority instrumentalities (section 18).
- Granting tax exemptions to vacant units or units occupied by tenants who no longer qualify for affordable housing (section 6).

¹⁶⁹ *Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc.*, 753 So.2d 55 (Fla. 2000).

¹⁷⁰ *Lasky v. State Farm Ins. Co.*, 296 So.2d 9 (Fla. 1974).

¹⁷¹ *Id.* at 22. See generally Mark M. Hager, *No Fault Drives Again: A Contemporary Primer*, 52 U. Miami L. Rev. 793 (1998).

¹⁷² Office of Economic and Demographic Research, Revenue Estimating Conference, *Affordable Housing Charitable Exemption – CS/CS/998*, February 18, 2020, link to consensus estimate and backup materials available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page505-509.pdf (last visited February 23, 2020).

- Authorizing a current property tax exemption for affordable housing to apply when owned by multiple limited liability companies or limited partnerships, as long as the ultimate owner is a 501(c)(3) organization (section 6).

B. Private Sector Impact:

An owner of housing providing property as affordable housing may see a positive fiscal impact from potential savings through an ad valorem tax exemption.

While the extent to which the prioritizing of SAIL funding for youth aging out of foster care will lead to the development of such housing, any housing created will be to the benefit of such youth and any campus that provides such housing.

The Florida Housing Coalition, as provider of the Catalyst Program, will incur new costs related to the administration of statewide regional affordable housing workshops for locally elected officials and required reporting as specified in sections 14 and 17 of the bill. The coalitions estimates that the workshops and report may cost approximately \$72,900 to \$101,000, depending on the number of regions and whether the method of delivery is by teleconference or in person.¹⁷³ SB 2500 includes an appropriation of \$500,000 in nonrecurring funds to the Catalyst Program.¹⁷⁴

A recreational vehicle dealer may avoid the costs of obtaining a garage insurance policy, if the dealer sells only park trailers.

Mobile home dealers may benefit by only being required to have enough space to display a manufactured home as a mobile home.

Mobile home park homeowners' associations may incur costs to change bylaws and related policies to meet the requirements of the bill, including those related to elections, and costs related to notifications required to the park owner by certified mail.

Mobile home owners and homeowners' associations will bear the costs of any disputes about elections, recalls, or inspection and copying of records that must be submitted to mandatory binding arbitration.

C. Government Sector Impact:

Local governments will likely see a reduction in ad valorem revenues under the provision of the bill and may incur expenses to comply with certain provisions related to affordable housing and reporting information about impact fees.

There is currently no appropriation in SB 2500, the Senate's General Appropriations Bill for Fiscal Year 2020-2021, for the Community Workforce Housing Innovation Pilot Program (CWHIP) or its successor program under the bill. It is unknown if the FHFC

¹⁷³ Kody Glazer, Legal Director, Florida Housing Coalition, *Senate Bill 998: Cost Estimate of Proposed Catalyst Additions*, February 14, 2020 (on file with the Senate Appropriations Committee).

¹⁷⁴ Specific Appropriation 2282, s. 6, SB 2500 (2020).

would dedicate funds to the program without a specific appropriation in the General Appropriations Act (section 13 of the bill)

The amount of funds set aside for persons with special needs that the FHFC would prioritize for the housing for youth aging out of foster care as provided in section 15 of the bill is unknown. The cost to the FHFC and the Department of Children and Families to create minimum criteria can likely be absorbed within existing resources.

Local governments may incur travel expenses linked to elected official attendance at regional affordable housing workshops.

The costs to the Department of Business and Professional Regulation to conduct the mandatory binding arbitration required under section 31 of the bill is unknown at this time. However, the bill does require the costs to be borne by the parties.

VI. Technical Deficiencies:

Lines 259-268 of the bill grant a property tax exemption “for property *used* for the charitable purpose of providing affordable housing, if the person owning such property has taken affirmative steps ... to prepare the property to provide affordable housing” (emphasis added).

Affirmative steps is a statutory term utilized to describe a situation where property that is not yet being used in an exempt manner is nonetheless being prepared for such use. In some instances, the Legislature has exempted the property during the preparation phase.

The sponsor may wish to clarify whether the property tax exemption created by the bill is intended to apply while the property is being prepared to provide affordable housing, after it is being used to provide affordable housing, or both.

Sections 9 and 10 of the bill change references to a repair and remodeling code for mobile and manufactured homes. Currently, Rule 15C-2.0081, F.A.C., references the “Mobile/Manufactured Home Repair and Remodeling Code,” not the “Mobile and Manufactured Home Repair and Remodeling Code” referenced by the bill. Additionally, the title of s. 320.8232, F.S., is currently “Establishment of uniform standards for used recreational vehicles and repair and remodeling code for mobile homes.” The sponsor may wish to amend the bill to update the title of the statute to include “manufactured homes.”¹⁷⁵

Lines 135 and 136 of the title state that the amendment to s. 723.042, F.S., is a conforming change; however, the change to that statute is substantive in nature. The title should be amended to reflect this amendment to the statute.¹⁷⁶

¹⁷⁵ Department of Highway Safety and Motor Vehicles, *2020 Agency Legislative Bill Analysis SB 998*, February 12, 2020 (on file with the Senate Committee on Infrastructure and Security).

¹⁷⁶ See FLA. CONST. art. III, s. 6.

VII. Related Issues:

Section 15 of the bill amends s. 420.9073, F.S., related to State Housing Initiatives Partnership distributions, to authorize the FHFC to prioritize a portion of the SAIL program funds for certain purposes. This section may be more appropriate to be incorporated into s. 420.5087, F.S.

The FHFC is authorized to adopt rules to implement the Community Workforce Housing Loan Program created in section 13 of the bill.

The Division of Condominiums, Timeshares, and Mobile Homes is required to adopt procedural rules to:

- Govern mobile home park homeowners' association elections, including, but not limited to, rules for providing notice by electronic transmission and rules for maintaining secrecy of ballots in section 29 of the bill.
- Govern mandatory binding arbitration for disputes of election of homeowners' association officers, recall of officers, and inspection and photocopying of official records in section 31 of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01055, 163.31771, 163.31801, 166.04151, 196.196, 196.1978, 320.77, 320.771, 320.822, 320.8232, 367.022, 420.5087, 420.5095, 420.531, 420.9073, 420.9075, 420.9076, 423.02, 723.011, 723.012, 723.023, 723.031, 723.037, 723.041, 723.042, 723.059, 723.061, 723.076, 723.078, 723.079, and 723.1255.

The bill reenacts the following sections of the Florida Statutes: 193.018 and 420.507.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Infrastructure and Security on February 17, 2020:

- Reverts accessory dwelling units back to optional instead of mandatory for local governments.
- Allows property used for certain purpose to be eligible for exemption from ad valorem taxes.
- Modifies the CWHIP program into a loan program, and removes workforce housing set aside requirements.
- Modifies numerous issues related to the mobile home park owners, mobile home owners, and mobile home homeowners' associations.
- Allows a mobile home park to be rebuilt to same density as was approved, permitted, and built prior to destruction from natural force. The bill allows for "same density as was approved, permitted, or built."
- Changes mobile home eviction notification back to current law requiring certified or registered mail, return receipt requested.

CS by Community Affairs on January 13, 2020:

- Removes a provision prohibiting local governments from collecting impact fees and specified other fees for the development or construction of affordable housing.
- Restores language set for removal in the original bill providing that local governments granting impact fee waivers for affordable housing do not have to use revenues to offset such waivers.
- Provides that the bill's required local government ordinance allowing ADUs applies in areas zoned for single-family residential use rather than areas zoned for any residential use.
- Removes a newly proposed process for local government approvals of development permits, construction permits, or certificates of occupancy which would apply specifically for affordable housing.
- Changes an intended priority funding criteria within the Workforce Housing Loan Program to set aside "at least 50 percent of units" for workforce housing.
- Removes a newly proposed Rental to Homeownership Program tied to the awarding of rental funding in ch. 420, F.S.
- Authorizes the FHFC to withhold up to 5 percent of annual Local Government Housing Trust Fund distributions to fund transitional housing for persons aging out of foster care.
- Removes proposed changes to funding reservation percentage categories and administrative cost caps in the SHIP Program.
- Adds data reporting within a SHIP entity's submissions to the FHFC on applications received, approved and denied.
- Changes the frequency of proposed locally elected regional workshops on affordable housing from quarterly to biannually and permits three absences (rather than one) before the FHFC may withhold a local government's SHIP funding.
- Removes some cross references and statutory reenactments made unnecessary by the other changes in the bill.
- Clarifies provisions exempting mobile home park owners from the jurisdiction of the PSC when they provide water and wastewater.

B. Amendments:

None.