

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 Budget Committee

BILL: SB 176

INTRODUCER: Senator Bennett

SUBJECT: Affordable Housing

DATE: March 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	Roberts	Roberts	GO	Favorable
3.	Martin	Meyer, C.	BC	Favorable
4.				
5.				
6.				

I. Summary:

In response to ongoing litigation, this bill reenacts certain sections of law created by ch. 2009-96, Laws of Florida, (SB 360 from 2009) that are most related to the subject of affordable housing in order to eliminate any possible question that it could be subjected to a single subject¹ challenge or struck down as an unconstitutional unfunded mandate.² The bill does not change the law, but reaffirms the following changes to the law made in 2009 by SB 360 relating to affordable housing:

- Limiting the Florida Housing and Finance Corporation’s (FHFC) access to the state allocation pool.
- Providing additional requirements for property receiving the low-income housing tax credit and property owned by a community land trust that is used to provide affordable housing.
- Providing that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.
- Providing additional authorized uses of the local infrastructure surtax for residential housing projects with at least 30 percent of units set aside for affordable housing.
- Revising definitions relating to the state’s affordable housing programs.
- Directing the FHFC to establish preference criteria for developers and contractors based in Florida or who have substantial experience developing or building affordable housing.
- Including certain projects with green building principles, storm-resistant construction, or other elements reducing the long-term maintenance costs as projects eligible for funding under the state’s State Apartment Incentive Loans (SAIL) affordable housing program.

¹ Art. III, § 6, Fla. Const.

² Art. VII, § 18(a), Fla. Const.

- Directing the FHFC and certain state and local agencies to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving foster care.
- Modifying the distribution of funds from the Local Government Housing Trust fund by authorizing set-asides for specific purposes and repealing another section of law providing for the state administration of remaining local housing distribution funds.
- Revising certain criteria related to local housing assistance plans and affordable housing incentive strategies under the State Housing Initiatives Partnership (SHIP) Program.
- Expands the situations in which a district school board can provide affordable housing to include essential services personnel in areas of critical concern.

This bill substantially reenacts parts of the following sections of the Florida Statutes: 159.807, 193.018, 196.196, 196.1978, 212.055, 163.3202, 420.503, 420.507, 420.5087, 420.622, 420.628, 420.9071, 420.9072, 420.9073, 420.9075, 420.9076, 420.9079, and 1001.43. This bill also reenacts the repeal of s. 420.9078, F.S.

II. Present Situation:

In 2009, the Legislature passed, and the Governor signed into law, Senate Bill 360, titled “An Act Relating to Growth Management” or “The Community Renewal Act” (SB 360).³ This bill made a wide array of changes to Florida’s growth management laws. The law was challenged by a number of local governments on constitutional grounds. Specifically, the complaint raises two counts: first, that SB 360 violates the single subject provision of the Florida Constitution; and, second, that the bill is an unfunded mandate on local governments.⁴ The circuit court found that the single subject issue was moot but granted a verdict of summary judgment striking down SB 360 as an unconstitutional mandate.⁵ The court ordered the Secretary of State to expunge the law from the official records of the state. The case is being appealed to the First District Court of Appeal and the law is in effect while the appeal is pending. A motion to expedite the proceedings has been granted.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC)⁶ is a state entity primarily responsible for encouraging the construction and reconstruction of new and rehabilitated affordable housing in Florida.⁷ It was created in 1997, when the Legislature enacted chapter 97-167, Laws of Florida, to streamline implementation of affordable housing programs by reconstituting the agency as a corporation. The FHFC is a public corporation housed within the Department of Community Affairs (DCA), but is a separate budget entity not subject to the control, supervision, or direction of the DCA. Instead, it is governed by a nine member board of directors comprised of the Secretary of DCA, who serves as an ex officio voting member, and eight members appointed by the Governor, subject to confirmation by the Senate.

³ Chapter 2009-96, L.O.F.

⁴ *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

⁵ *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

⁶ Formerly the Florida Housing Finance Agency

⁷ Housing is determined to be affordable when a family is spending no more than 30 percent of its total income on housing. See Florida Housing Finance Corporation Handbook, *Overview of Florida Housing Finance Corporation’s Mission and Programs*, at 3 (Sept. 2009) (on file with the Senate Committee on Community Affairs).

The corporation operates several housing programs financed with state and federal dollars, including:

- The State Apartment Incentive Loan Program (SAIL), which annually provides low-interest loans on a competitive basis to affordable housing developers;⁸
- The Florida Homeowner Assistance Program (HAP), which includes the First Time Homebuyer Program, the Down Payment Assistance Program, the Homeownership Pool Program, and the Mortgage Credit Certificate program;
- The Florida Affordable Housing Guarantee Program, which encourages lenders to finance affordable housing by issuing guarantees on financing of affordable housing developments financed with mortgage revenue bonds;
- The State Housing Initiatives Partnership (SHIP) Program, which provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production of affordable housing; and
- The Community Workforce Housing Innovation Pilot Program (CWHIP), which awards funds on a competitive basis to promote the creation of public-private partnerships to develop, finance, and build workforce housing.

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.⁹ Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.¹⁰

SB 360 (2009) amended the Florida Housing and Finance Corporation Act, under Part V, of ch. 420, F.S., to provide a definition for the term "moderate rehabilitation" and to direct the FHFC to provide criteria by rule, establishing a preference for developers and general contractors based in Florida, and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs.¹¹ The bill provided statutory guidelines for the FHFC to use when evaluating whether the developer or general contractor is domiciled in the state and whether he/she has substantial experience.

SB 360 also amended s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds permitted to be issued in the state under the Internal Revenue Code, to the amount of their initial allocation under s. 159.804, F.S. The amendment also provided that after the initial allocation has been provided, the corporation may not receive more than 80 percent of the amount remaining in the state allocation pool on November 16 of each year. The distribution to the corporation of the unused portion of the state allocation pool was not affected.¹²

⁸ Under current law, low interest mortgage loans provided under the SAIL Program are only available for qualifying farm workers, commercial fishing workers, the elderly, and the homeless. *See* s. 420.507(22), F.S.

⁹ Sections 201.15 (9) and (10), F.S.

¹⁰ *See* ss. 420.507 (33), and 159.608, F.S.

¹¹ Chapter 2009-96, L.O.F.

¹² *Id.*

State Apartment Incentive Loan (SAIL) Program

The SAIL program, created in s. 420.5087, F.S., authorizes the corporation to underwrite or make loans or loan guarantees to provide affordable housing to very-low-income persons if:

- The project sponsor uses tax-exempt financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937, as amended;
- The project sponsor uses taxable financing for the first mortgage and at least 20 percent of the units are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, adjusted to family size; or
- The project sponsor uses federal low-income housing tax credits and the project meets the tenant eligibility requirements of s. 42 of the Internal Revenue code.¹³

“SAIL funds provide gap financing that leverages federal mortgage revenue bonds and allows developers to obtain the full financing needed to construct affordable multifamily units.”¹⁴ Under current law, SAIL funds must be reserved for the following tenet groups: commercial fishers and farm workers, families, the elderly, and the homeless.¹⁵ Projects that maintain at least 80 percent of their units for commercial fishing workers, farm workers, and the homeless, are eligible to receive loans with interest rates from 0 to 3 percent. All other projects are eligible for loans with interest rates from 1 to 9 percent.¹⁶

Ten percent of funds set aside to house the elderly must be reserved to provide loans for the purpose of making existing building health and preservation improvements, sanitation repairs or improvements required by federal, state, or local law or regulation, or life safety or security-related repairs and improvements. Loans from the reserved funds may not exceed \$750,000 per housing community, and the sponsor of the housing community must commit to matching at least 5 percent of the loan amount needed to pay for the necessary repairs or improvements.¹⁷

SB 360 (2009) amended s. 420.5087, F.S., to include the following additional criteria the corporation must consider while evaluating and competitively ranking applications for funding under the SAIL program:

- Projects with green building principles, storm-resistant construction, or other elements to reduce long-term costs relating to maintenance, utilities, or insurance.
- Whether the developer and general contractor have substantial experience.
- Domicile of the developer and general contractor.¹⁸

The bill also provided that SAIL loan proceeds may be used for moderate rehabilitation or preservation of affordable housing units.

State Housing Initiatives Partnership (SHIP) Program

¹³ Section 420.5087(2)(a) - (c), F.S.

¹⁴ The Florida Housing Finance Corporation, *Overview of the Florida Housing Finance Corporation's Mission and Programs*, Sept. 2009, on file with the Senate Committee on Community Affairs.

¹⁵ Section 420.5087(3)(a)-(d), F.S.

¹⁶ Section 420.5087(6)(a), F.S., referencing s. 420.507(22)(a)1. and 3., F.S.

¹⁷ Section 420.5087(3)(d), F.S.

¹⁸ Chapter 2009-96, L.O.F.

The SHIP program, created in part VII of ch. 420, F.S., provides funds to counties and eligible cities as an incentive for the creation of local housing partnerships, to:

- Expand the production and preservation of affordable housing,
- Further the housing element in a local government comprehensive plan specific to affordable housing, and
- Increase related employment.¹⁹

SHIP funds are collected from documentary stamp tax revenues and are deposited into the Local Government Housing Trust Fund, which are then distributed on an entitlement basis to counties and Community Development Block Grant cities throughout the state.²⁰ “The minimum allocation per county is \$350,000, of which at least 65 percent of the funds must be used for homeownership.”²¹

To be eligible to receive funding under the SHIP program, a county or an eligible city must complete a three step process: (1) submit a local housing assistance plan to the FHFC, (2) within 12 months of adopting the plan, make amendments to incorporate local housing incentive strategies, and (3) within 24 months after adopting the amended plan, the entity must amend its land development regulations or establish local policies and procedures, as necessary, to implement the adopted strategies.²² A local government seeking approval to receive funding is also required to adopt an ordinance that:

- Creates a local housing assistance trust fund,
- Implements a local housing assistance plan through a local housing partnership,
- Designates responsibility for the local housing assistance plan, and
- Creates an affordable housing advisory committee.²³

The ordinance, adopted resolution, local housing assistance plan, and other related information must then be submitted to the FHFC for review and approval.²⁴

SB 360 (2009) provided new definitions for the following terms under the State Housing Incentives Partnership Act: “annual gross income”; “assisted housing” and “assisted housing development”; “eligible housing”; “local housing incentive strategies”; “preservation”; and “recaptured funds”.²⁵

SB 360 also provided that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure. The one-time relocation grant, in an amount not to exceed \$5,000, may be granted to persons who meet the income eligibility requirements of the SHIP program.

A. Local Housing Distributions

¹⁹ Section 420.9072, F.S.

²⁰ Information obtained from the Florida Housing Finance Corporation, *See supra* note 12.

²¹ *Id.*

²² Section 420.9072(2)(a)1. -3., F.S.

²³ Section 420.9072(2)(b)1. -4., F.S.

²⁴ *See s.* 420.9072(3), F.S.

²⁵ Chapter 2009-96, L.O.F.

SB 360 (2009) amended s. 420.9073, F.S., to provide that local housing distributions under SHIP be disbursed by the FHFC on a quarterly or more frequent basis, subject to the availability of funds.²⁶ The bill also allowed the FHFC to withhold up to \$5 million in funds distributed from the Local Government Housing Trust Fund to:

- Provide additional funding to counties and eligible municipalities in a state of emergency.
- Counties and eligible municipalities to purchase properties subject to a SHIP lien and on which foreclosure proceedings have been initiated by any mortgagee.

SB 360 further clarified that counties and cities receiving SHIP must expend those funds in accordance with statutory requirements, corporation rules, and the local housing assistance plan.

SB 360 repealed s. 420.9078, F.S., which prior to its repeal, addressed the state administration of remaining local housing distribution funds. This section provided that the FHFC shall distribute remaining funds as follows:

- Proportionately under the local housing distribution formula established in s. 420.9073, F.S., to counties and cities where a state of emergency or natural disaster has been declared by executive order, and which have an approved local housing assistance plan for repairing and replacing housing damaged as part of the emergency or natural disaster.
- If no emergency or natural disaster funding is required, then proportionately among the counties and cities who have fully expended their local housing distribution for the preceding state fiscal year, and who have an approved local housing assistance plan.

B. Local Housing Assistance Plans

Section 420.9075, F.S., requires each county or eligible municipality that is participating in the SHIP program to develop and implement a local housing assistance plan that seeks to provide affordable residential units for persons of very low income, low income, or moderate income, and to persons who have special housing needs.²⁷ The purpose of these plans is “to increase the availability of affordable residential units by combining local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce the cost of housing”.²⁸

SB 360 (2009) amended s. 420.9075, F.S., to include persons with disabilities as persons with special needs and to allow counties or eligible municipalities to include strategies to assist persons and households with annual incomes of not more than 140 percent of the area median income. SB 360 further provided that:

- Local housing assistance plans must describe initiatives that encourage or require innovative design, green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- Counties and cities are encouraged to develop local housing assistance plans that provide funding for preservation of assisted housing.
- Not more than 20 percent of funds made available in each county and eligible municipality may be used for manufactured housing.

²⁶ Chapter 2009-96, L.O.F.

²⁷ Section 420.9075, F.S.

²⁸ *Id.*

- SHIP funds may be used for preconstruction activities, and if preconstruction due diligence activities prove that preservation is not feasible, then the costs for those activities are program costs and not administrative costs if such program expenses do not exceed 3 percent of the annual local housing distribution.
- Counties and cities may award construction, rehabilitation, or repair grants as part of disaster recovery, emergency repairs, or to remedy access or health and safety issues.
- Program funds expended for an ineligible activity must be repaid to the Local Housing Assistance Trust Fund and SHIP funds may not be used.²⁹

SB 360 also extended Monroe County's exemption from income restrictions relating to the use of set-aside funds in the local government assistance trust fund from July 1, 2008, to July 1, 2013, so that awards could be made to residents with incomes no higher than 120 percent of the area median income, and applied retroactively.

C. Local Housing Incentive Strategies

Every county or eligible municipality that is participating in the SHIP program, or any municipality receiving SHIP funds through the county or eligible municipality, is required to amend their local housing assistance plan within 12 months of adoption to include local housing incentive strategies.³⁰ The governing body of the county or municipality is responsible for appointing members to the affordable housing advisory committee by resolution. The committee shall be responsible for evaluating the plan and recommending “specific actions or incentives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value”.³¹ The committee must be composed of certain individuals as specified in s. 420.9076(2), F.S.

SB360 (2009) amended s. 420.9076(2), F.S., to allow a local governing body that also serves as a local planning agency to appoint a designee to the local affordable housing advisory committee.³² SB 360 further instructed that the committee submit its final report, evaluation, and recommendations to the FHFC.

Affordable and Workforce Housing Income Requirements

Income requirements for affordable housing and workforce housing are established in ss. 420.0004³³ and 420.5095, F.S., respectively, as follows:

- Extremely-low-income persons: a person or family whose total annual income does not exceed 30 percent of the median annual adjusted gross income for households within the state.
- Very-low-income persons: a person or family whose total annual income does not exceed 50 percent of the median annual adjusted gross income for households within the state.
- Low-income persons: a person or family whose total annual income does not exceed 80 percent of the median annual adjusted gross income for households within the state.

²⁹ Chapter 2009-96, L.O.F.

³⁰ Section 420.9076, F.S.

³¹ Section 420.9076(4), F.S.

³² Chapter 2009-96, L.O.F.

³³ Subsections (8), (10), (11), and (15) of s. 420.0004, F.S.

- Moderate-income persons: a person or family whose total annual income is less than 120 percent of the median annual gross income for households within the state.
- Workforce housing: housing affordable to a person or family whose total annual income does not exceed 140 percent of the area median income, adjusted for household size. In areas of critical state concern, the total annual income may not exceed 150 percent of the area median income.³⁴

Affordable Housing Property Exemptions

SB 360 (2009) extended the affordable housing property ad valorem tax exemption to include property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in ss. 159.603(7) and 420.0004, F.S.³⁵ The property must be owned entirely by a nonprofit entity that is a corporation not for profit, or a Florida-based limited partnership whose sole general partner is a corporation not for profit. The corporation not for profit must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 17. The bill also provided that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

Affordable Housing for Children and Young Adults Leaving Foster Care

SB 360 (2009) created s. 420.628, F.S., relating to affordable housing for children and young adults leaving foster care.³⁶ Section 420.628, F.S., directs the Florida Housing Finance Corporation, the agencies receiving funding under the State Housing Initiatives Partnership Program, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Family Services and their agents and community-based care providers to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

Such young persons are deemed to have met the definitions for eligible persons for affordable housing purposes. In addition, students deemed to be eligible occupants under certain federal requirements³⁷ are also considered eligible for purposes of affordable housing projects.

State Office on Homelessness

Section 420.622, F.S., creates the State Office on Homelessness within the Department of Children and Family Services in order to “provide interagency, council, and other related coordination on issues relating to homelessness”. SB 360 (2009) amended s.420.622 (5), F.S., to allow money granted by the State Office on Homelessness to also be used to *acquire* transitional or permanent housing for homelessness persons.³⁸

Charitable Organizations

Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the

³⁴ Section 420.5095(3)(a), F.S.

³⁵ Chapter 2009-96, L.O.F. See above for Affordable Housing Income Requirements .

³⁶ *Id.*

³⁷ 26 USC 42(i)(3)(d), provides conditions under which low-income housing units may not be disqualified as low-income housing because the property is occupied by certain students.

³⁸ Chapter 2009-96, L.O.F.

organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Property entitled to charitable, religious or other exemptions

In determining whether the use of a property qualifies the property for an ad valorem tax exemption under s. 196.196, F.S., the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.³⁹ Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation.

Property used for religious purposes may be exempt if the entity has taken affirmative steps to prepare the property for use as a house of worship. The term "affirmative steps" is defined by statute 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 of the property to a religious use as a house of public worship".⁴⁰

SB 360 (2009), amended s. 196.196, F.S., to provide that property owned by an exempt organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is considered to be used for a charitable purpose if the organization has taken "affirmative steps" to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families.⁴¹ SB 360 also provided penalties for properties granted a charitable exemption under this subsection that are transferred for purposes other than affordable housing, or if the property is not actually used as affordable housing, within 5 years after the exemption is granted.

Community Land Trusts

In an effort to create permanent affordable homeownership opportunities for Florida's workforce, local governments donate land or the money to purchase land to charitable, tax exempt housing organizations known as community land trusts, which then build homes on the property. The community land trust (CLT) sells the home, but not the land, to an income-eligible buyer at a purchase price that is affordable to the homebuyer, in large part because the buyer is not paying for the land. In return, the homeowner receives a 99-year ground lease interest in the land and pays a nominal monthly fee to the community land trust for the use of the land. After the initial acquisition, resale is limited to a formula contained in the ground lease that restricts the market price of the home to ensure continuous affordability.

SB 360 (2009) created s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land owned by a CLT and that is used to provide affordable housing.⁴² The bill defined the term community land trust to mean "a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code

³⁹ Section 196.196(1)(a)-(b), F.S.

⁴⁰ Section 196.196(3), F.S.

⁴¹ Chapter 2009-96, L.O.F.

⁴² Chapter 2009-96, L.O.F.

and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership.”

The bill also codified in statute the responsibility of a CLT to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of s. 420.0004, F.S., or for workforce housing under the income limits of s. 420.5095, F.S. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The CLT retains the first right to purchase at the time of resale.

In addition, the bill provided that in arriving at the just valuation of structural improvements or improved parcels conveyed by a CLT, or land owned by the CLT, the property appraiser must assess the property based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.

Discretionary Sales Surtax

Section 212.055, F.S., authorizes qualifying counties and other special local governmental entities to levy various surtaxes. There are seven different types of authorized local discretionary sales surtaxes (also known as local option taxes). The local discretionary sales surtaxes authorized by this section apply to all transactions subject to the sales and use tax imposed pursuant to Chapter 212, F.S.

Section 212.055, F.S., specifies the rate of each surtax that may be imposed, the manner in which each surtax proposal may be adopted and the use of the funds collected. Local discretionary tax rates vary from county to county. The local surtax applies to the first \$5,000 of the sales price for most items. Procedures for administration and collection of the surtax are established in s. 212.054, F.S. Any discretionary sales surtax must take effect only on January 1 and terminate on December 31.⁴³

SB 360 (2009) amended s. 212.055(2), F.S, relating to local government infrastructure surtaxes, to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families whose household income does not exceed 120 percent of the area median income adjusted for household size, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing.⁴⁴ The bill also provided that the local government or special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.

⁴³ Section 212.054(5), F.S.

⁴⁴ Chapter 2009-96, L.O.F.

Land Development Regulations

Pursuant to 163.3202, F.S., counties and municipalities are required to adopt or amend land development regulations within 1 year after submitting its revised comprehensive plan for review pursuant to s. 163.3167(2), F.S. Section 163.3202(2), F.S., outlines minimum provisions that the counties and municipalities should include in their local governments land development regulations.

SB 360 (2009) amended s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of residential properties or recreational vehicle parks, if the properties are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place to support the use, but are not located within a high coastal hazard are under s. 163.3178, F.S.⁴⁵

Supplemental Powers and Duties of District School Board, Affordable Housing

Section 1001.43(12), F.S., allows district school boards to use portions of school sites that were purchased within the guidelines of the State Requirements for Education facilities, in which the land is not deemed usable for education purposes because of the location or other factors, or the land is declared as a surplus by the board, in order to provide affordable housing for teachers and other district personnel.

SB 360 (2009) amended s. 1001.43, F.S., to expand the purposes for which a district school board could provide affordable housing by providing that in an area of critical state concern, the board may use specified properties and surplus lands to include affordable housing for essential services personnel, as defined by local affordable housing eligibility requirements.⁴⁶

Constitutional Provisions

A. Single Subject Rule

Section 6, Article III of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The subject shall be briefly expressed in the title.⁴⁷ The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.⁴⁸ The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.⁴⁹ The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.⁵⁰ A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.⁵¹ Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject

⁴⁵ *Id.*

⁴⁶ Chapter 2009-96, L.O.F.

⁴⁷ *Franklin v. State*, 887 So.2d 1063, 1072 (Fla.2002).

⁴⁸ *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

⁴⁹ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

⁵⁰ *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

⁵¹ *Ex parte Knight*, 41 So. 786 (Fla. 1906).

limitation,⁵² but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.⁵³

The Florida Supreme Court has held that the adoption of the Florida Statutes as the official statutory law of the state cures any violation of the multiple-subject limitation which is contained in a law compiled in the Florida Statutes.⁵⁴ The litigants in the SB 360 case argued that the three subjects in the bill are: growth management, security cameras, and affordable housing.⁵⁵ During the 2010 regular session SB 1780 reenacted the Florida Statutes. Therefore, the circuit court determined that the single subject challenge to SB 360 was rendered moot.⁵⁶

B. Type A Mandates

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides a number of exemptions. If none of the constitutional exceptions or exemptions apply, and if the bill becomes law, cities and counties are not bound by the law⁵⁷ unless the Legislature has determined that the bill fulfills an important state interest and approves the bill by a two thirds vote of the membership of each house.

At issue in the SB 360 challenge is the exemption for an insignificant fiscal impact. The Legislature interprets insignificant fiscal impact to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.⁵⁸

On a motion for summary judgment, the circuit court of the Second Judicial Circuit decided that SB 360 violated the mandate provision of the Florida Constitution because certain local governments would be required to amend their comprehensive plans within two years to incorporate land use and transportation strategies to support and fund mobility.

⁵² *State v. Lee*, 356 So.2d 276 (Fla. 1978).

⁵³ *Martinez v. Scanlan*, 582 So.2d 1167 (Fla. 1991).

⁵⁴ *State v. Combs*, 388 So.2d 1029 (Fla. 1980) and *State v. Johnson*, 616 So.2d 1 (Fla. 1993).

⁵⁵ *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Jud. Cir. 2010).

⁵⁶ *Id.*

⁵⁷ Although the constitution says “no county or municipality shall be bound by any general law” that is an (a) mandate, the circuit court’s ruling was much broader in that it ordered SB 360 expunged completely from the official records of the State.

⁵⁸ Guidelines issued in 1991 by then Senate President Margolis and Speaker of the House Wetherell (1991); Florida Senate Interim Project Report 2000-24.

III. Effect of Proposed Changes:

Litigation has called into question the constitutional validity of SB 360, which made many changes to Florida's affordable housing and growth management laws. This bill retains the 2010 statutes in their current state and reenacts the provision of SB 360 most closely related to affordable housing. SB 172 and 174 reenact the other parts of SB 360 pertaining to security cameras and growth management. By reenacting these bills separately and clearly adhering to the constitutional requirements, the Legislature hopes to cure any specter of a single subject violation. Additionally, passage by a 2/3 majority would eliminate any question of whether the bill is an unconstitutional unfunded mandate.

Section 1 reenacts s. 159.807(4), F.S., to limit the FHFC's access to the state allocation pool for private activity bonds.

Section 2 reenacts s. 193.018, F.S., to provide for the assessment of structural improvements, condominium parcels, and cooperative parcels on land which is owned by a CLT and used to provide affordable housing.

Section 3 reenacts s. 196.196(5), F.S., to provide that property owned by an exempt charitable organization is considered to be used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing.

Section 4 reenacts s. 196.1978, F.S., to extend the affordable housing property ad valorem tax exemption to property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in s. 159.603(7), F.S.,⁵⁹ and s. 420.0004, F.S.⁶⁰ The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation.

Section 5 reenacts s. 212.055(2)(d), F.S., to provide that an expenditure to acquire land to be used for a residential housing project in which at least 30 percent of the units are affordable to specified individuals and families, is an authorized use of the local infrastructure surtax if the land is owned by a local government or a special district that has entered into an interlocal agreement with the local government to provide such housing.

Section 6 reenacts s. 163.3202(2), F.S., to provide that certain land development regulations must maintain the existing density of specified properties if they are intended for residential use, and are located in an unincorporated area with sufficient infrastructure in place.

Section 7 reenacts s. 420.503(25), F.S., to provide a definition for "moderate rehabilitation".

⁵⁹ Section 159.603(7), F.S., provides that "eligible persons" means one or more natural persons or a family, determined by the housing finance authority to be of low, moderate, or middle income. The determination does not preclude any person or family earning up to 150 percent of the state or county median income from participating in a housing financing authority program. Persons 65 years of age or older are eligible regardless of income.

⁶⁰ Income limits for extremely-low, very-low, low, and moderate-income persons or families are defined in s. 420.0004, F.S.

Section 8 reenacts s. 420.507(47), F.S., which directs the FHFC to provide criteria establishing a preference for developers and general contractors based in Florida, or who have substantial experience in developing or building affordable housing through the FHFC.

Section 9 reenacts s. 420.5087, F.S., to include projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs as projects eligible to apply for and receiving consideration for funding from the SAIL program.

Section 10 reenacts s. 420.622(5), F.S., to allow money granted by the State Office on Homelessness to be used to acquire transitional or permanent housing for homeless persons.

Section 11 reenacts s. 420.628, F.S., to direct the FHFC and other state and local agencies receiving funding under SHIP to coordinate with the Department of Children and Family Services to develop and implement strategies and procedures to increase affordable housing opportunities for young adults who are leaving the child welfare system.

Section 12 reenacts s. 420.9071, F.S., to provide definitions for the following terms under the State Housing Incentives Partnership Act: “annual gross income”; “assisted housing” and “assisted housing development”; “eligible housing”; “local housing incentive strategies”; “preservation”; and “recaptured funds”.

Section 13 reenacts s. 420.9072, F.S., to delete a cross-reference to s. 420.9078, F.S., which is being repealed in the bill, and to provide that counties and eligible municipalities are authorized to use SHIP dollars to provide relocation grants to persons who have been evicted from rental housing due to the property being in foreclosure.

Section 14 reenacts s. 420.9073, F.S., relating to Local Housing Distributions, to modify the distribution of funds from the Local Government Housing Trust Fund by authorizing set-asides for specified purposes.

Section 15 reenacts s. 420.9075, F.S., relating to local housing assistance plans.

Section 16 reenacts s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies.

Section 17 repeals s. 420.9078, F.S., which used to provide statutory requirements for the FHFC’s distribution of funds remaining in the Local Government Housing Assistance Trust Fund, after all appropriations have been made.

Section 18 reenacts s. 420.9079, F.S., to correct cross-references.

Section 19 reenacts s. 1001.43, F.S., to expand the purposes for which a district school board may providing affordable housing, to include essential services personnel in areas of critical state concern.

Section 20 provides that the act shall take effect upon becoming law, and that those portions of this act which are amended, created, or repealed by chapter 2009-96, Laws of Florida, shall

operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
