

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 998

INTRODUCER: Community Affairs Committee and Senator Hutson

SUBJECT: Housing

DATE: January 14, 2020      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	Fav/CS
2.			IS	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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

With respect to zoning, impact fees, and affordable housing, the bill:

- Notwithstanding other laws and regulations, authorizes local governments to approve the development of affordable housing on any parcel zoned for residential, commercial or industrial use.
- Requires local governments to adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use.
- Requires the reporting of impact fee charges data within the annual financial audit report submitted to the Department of Financial Services.
- Requires the evaluation of additional local government contribution criteria within applications submitted for State Apartment Incentive Loan Program funding.
- Transitions the “pilot” features of a workforce housing program into the Community Workforce Housing Loan Program, administered by the Florida Housing Finance Corporation.
- Establishes biannual regional workshops for locally elected officials serving on affordable housing advisory committees to identify and share best affordable housing practices.
- Adds data reporting within a State Housing Initiatives Partnership Program participant’s submissions to Florida Housing on affordable housing applications approved and denied.

- Permits Florida Housing to withhold specified distributions from the Local Government Housing Trust Fund to fund the construction of transitional housing for persons aging out of foster care.

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

- Decreases the applicable sales tax on the sale of a mobile home by calculating the sales tax on 50 percent of the sale price.
- Exempts from the sales tax a mobile home intended to be permanently affixed to the land and intended to be used as residential property.
- Revises requirements on how mobile home dealers offer and display mobile homes at a place of business.
- Revises features of repair and remodeling codes for mobile and manufactured homes.
- Clarifies provisions exempting mobile home park owners from the jurisdiction of the PSC when the park owners provide water and wastewater .
- Permits 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, or built before being damaged or destroyed.
- Revises the rights and obligations of the park owner and the tenant in a mobile home park in a legal action based on nonpayment of rent.

## 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, and 420, F.S., and statutes governing mobile homes within chs. 212, 320 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 and Impact Fees for Affordable Housing (Sections 1, 3 and 4)*

##### *Present Situation*

##### Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>3</sup>

<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>3</sup> FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.

### Comprehensive Plans and Land Use Regulation

Local governments regulate aspects of land development by enacting ordinances which address local zoning, rezoning, subdivision, building construction, landscaping, tree protection<sup>4</sup> or sign regulations or any other regulations controlling the development of land.<sup>5</sup> “Land development regulation” is defined to include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of ch. 553, F.S., on Building Construction Standards.<sup>6</sup>

In 1985, the Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development. Section 163.3177, F.S., governs a locality’s comprehensive plan which lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments.

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. Among the many components of a comprehensive plan is a land use element designating proposed future general distribution, location, and extent of the uses of land.<sup>7</sup> Specified use designations include those for residential, commercial, industry, agriculture, recreation, conservation, education, and public facilities.<sup>8</sup>

State law requires a proposed comprehensive plan amendment to receive public hearings, the first held by the local planning board.<sup>9</sup> 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.<sup>10</sup>

In 2011, the Legislature bifurcated the process for approving comprehensive plan amendments.<sup>11</sup> 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

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<sup>4</sup> Chapter 2019-155, Laws of Fla., prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the tree presents a danger to persons or property, as documented by a certified arborist or licensed landscape architect.

<sup>5</sup> 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.

<sup>6</sup> Section 163.3213(1)(b), F.S.

<sup>7</sup> Section 163.3177(6)(a), F.S.

<sup>8</sup> *Id.* Section 163.3164(4), F.S., specifies the designation of an “agricultural enclave.” Among other features, to be considered an agricultural enclave, a parcel must be owned by a single person, used for bona fide agricultural purposes, and must be surrounded by 75 percent by property that has existing or industrial, commercial, or residential development or property designated by the local government for such purposes.

<sup>9</sup> Sections 163.3174(4)(a) and 163.3184, F.S.

<sup>10</sup> Section 163.3184, F.S.

<sup>11</sup> Chapter 2011-139, s. 17, Laws of Fla.

Process.<sup>12</sup> The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.<sup>13</sup>

Sections 125.66, and 166.41, 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.<sup>14</sup>

### Affordable Housing

Affordable housing is generally defined in relation to the annual area median income of the household living in the housing adjusted for family size. Section 420.0004, F.S., defines affordable to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for:

- Extremely-low-income households, i.e., total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state;<sup>15</sup>
- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income within the state or the area whichever is greater;<sup>16</sup>
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income within the state or the area whichever is greater;<sup>17</sup>
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income within the state or the area whichever is greater.<sup>18</sup>

### Statutory Guidance on County and Municipal Affordable Housing

In 2001, the Legislature created ss. 125.01055<sup>19</sup> and 166.04151, F.S.,<sup>20</sup> 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 (sometimes called inclusionary zoning ordinances) are land use regulations that require affordable housing units to be provided in conjunction with the

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<sup>12</sup> *Id.*

<sup>13</sup> Section 163.3184(3), (4), F.S.

<sup>14</sup> See sections 125.66(4) and 166.041(3), F.S.

<sup>15</sup> Section 420.0004(9), F.S. Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.

<sup>16</sup> Section 420.0004(17), F.S. ‘Area’ in s. 420.0004, F.S., means within the metropolitan statistical area (MSA) or, if not within an MSA, within the county.

<sup>17</sup> Section 420.0004(11), F.S.(11), F.S.

<sup>18</sup> Section 420.0004(12), F.S.

<sup>19</sup> Chapter 2001-252, s. 16, Laws of Fla.

<sup>20</sup> Chapter 2001-252, s. 15, Laws of Fla.

development of market rate units. The intent of these ordinances is to increase the production of affordable housing in general and to increase the production in specific geographic areas that might otherwise not include affordable housing.”<sup>21</sup>

Chapter 2019-165, L.O.F., amended ss. 125.01055 and 166.04151, F.S., to provide that a local inclusionary housing ordinance requiring a developer to provide a specified number of affordable housing units or requiring a developer to contribute to a housing fund must provide incentives to fully offset all costs to the developer of its affordable housing contribution. The developer offset provision does not apply in areas of critical state concern in Monroe County and the City of Key West.

### Local Government Impact Fees<sup>22</sup>

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,<sup>23</sup> regulatory fees, and special assessments<sup>24</sup> to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities’ costs made necessary by such growth.<sup>25</sup> Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government’s determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

Chapter 2019-165, L.O.F., amended s. 163.31801, F.S., to codify the ‘dual rational nexus test’ for impact fees, as articulated in case law. This test requires an impact fee to be proportional and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the

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<sup>21</sup> 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 Jan. 6, 2020).

<sup>22</sup> Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (last visited Jan. 6, 2020).

<sup>23</sup> Id. Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

<sup>24</sup> Id. Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

<sup>25</sup> See *supra* note 22.

benefits accruing to the proposed new development.<sup>26</sup> Local governments are prohibited from requiring the payment of impact fees prior to issuing a property's building permit.<sup>27</sup>

Additionally, ch. 2019-165, L.O.F, established that impact fee funds must be earmarked for capital facilities that benefit new residents and may not be used to pay existing debt unless specific conditions are met.<sup>28</sup> Provisions also authorized a local government to provide an exception or waiver for an impact fee for affordable housing. If a local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.<sup>29</sup> Impact fee provisions in s. 163.31801, F.S., do not apply to water and sewer connection fees.

### Local Government Financial and Economic Status Reporting

Local governments are accountable for the manner in which they spend public funds, and the submission of financial reports required by state law is one method of demonstrating accountability. Section 218.39, F.S., requires the completion of an annual financial audit of accounts and records within nine months after the end of the fiscal year for counties, district school boards, charter schools, and charter technical career centers and certain municipalities and special districts. The statute requires filing of these annual financial audit reports with the State of Florida's Auditor General.

Section 218.32, F.S., requires counties, municipalities, and special districts to complete and submit to the Florida Department of Financial Services (DFS) a copy of its annual financial report (AFR) for the previous fiscal year no later than nine months after the end of the fiscal year. The AFR is not an audit but rather a unique financial document completed using a format prescribed by the DFS.<sup>30</sup>

The DFS's Bureau of Local Government has created a web-based AFR system called Local Government Electronic Reporting (LOGER) where local government entities complete and electronically submit AFRs.<sup>31</sup> DFS personnel verify an entity's data entered in LOGER by comparing the data to the financial statements included in the submitted audit report, or with other prescribed information from those entities not subject to the audit requirement and contact the entities for clarification when the comparisons yield significant differences.<sup>32</sup>

In addition to the above local government financial reporting, ch. 2019-56, L.O.F., 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

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<sup>26</sup> Section 163.31801(3)(f) and (g), F.S.

<sup>27</sup> Section 163.31801(3)(e), F.S.

<sup>28</sup> Section 163.31801(3)(h) and (i), F.S.

<sup>29</sup> Section 163.31801(8), F.S.

<sup>30</sup> See Department of Financial Services Bureau of Financial Reporting, *Uniform Accounting System Manual for Florida Local Governments* (2014), available at [https://www.myfloridacfo.com/Division/AA/Manuals/2014UASManual-7-31-15\\_FINAL.pdf](https://www.myfloridacfo.com/Division/AA/Manuals/2014UASManual-7-31-15_FINAL.pdf) (last visited Jan. 6, 2020).

<sup>31</sup> LOGER is available at <https://apps.fldfs.com/LocalGov/Reports/> (last visited Jan. 6, 2020).

<sup>32</sup> See Florida Auditor General, *Local Government Financial Reporting System: Performance Audit Report 2019-028* (Sep. 2019), available at [https://flauditor.gov/pages/pdf\\_files/2019-028.pdf](https://flauditor.gov/pages/pdf_files/2019-028.pdf) (last visited Jan. 6, 2020).

local government employee salary, percentage of budget spent on employee salaries and benefits, and the number of taxing districts.

### *Effect of the Bill*

**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.

**Section 3** amends s. 163.31801, F.S., to require the reporting of impact fee charges data within the annual financial audit report items specified under s. 218.32, F.S. The data includes the specific purpose of an impact fee and the associated infrastructure need the fee meets; a description of the impact fee schedule policy and fee calculation methods; the amount assessed for each purpose and type of dwelling; and the total amount of impact fees charged by type of dwelling.

### *Accessory Dwelling Units (Section 2)*

#### *Present Situation*

An accessory dwelling unit (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.<sup>33</sup> 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.<sup>34</sup> Each ADU allowed by an ordinance under s. 163.31771, F.S., shall count towards the affordable housing component of the housing element in the local government's comprehensive plan.<sup>35</sup> 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.<sup>36</sup>

In 2019, the Florida Housing Coalition, the entity that currently provides technical assistance and training for the Catalyst Program under s. 420.531, F.S., published the *Accessory Dwelling Unit Guidebook*.<sup>37</sup> 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 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 accessory dwelling unit in their land development codes; and

<sup>33</sup> 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.

<sup>34</sup> Section 163.31771(3), F.S.

<sup>35</sup> Section 163.31771(5), F.S.

<sup>36</sup> Section 163.31771(4), F.S. The parameters defining the various income designations are specified in s 420.0004, F.S.

<sup>37</sup> 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 Jan. 7, 2020).

- Of the 15 most populous cities in Florida, 11 of them explicitly allow ADUs in single-family districts.

### *Effect of the Bill*

**Section 2** amends s. 163.31771, F.S., to find that it serves an important public purpose to require (rather than encourage) the permitting of accessory dwelling units in single-family residential areas. A local government must (rather than may) adopt an ordinance to allow accessory dwelling units in any area zoned for single family residential use. The required ordinance would not be conditioned upon a finding that there is a shortage of affordable rentals within the local jurisdiction.

### *State Apartment Incentive Loan Program: Local Government Contributions (Section 11)*

#### *Present Situation*

The State Apartment Incentive Loan (SAIL) Program<sup>38</sup> provides low-interest loans on a competitive basis to affordable housing developers. SAIL is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the State Housing Trust Fund. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to 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.

Florida Housing Finance Corporation (Florida Housing) 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.<sup>39</sup>

### *Effect of the Bill*

**Section 11** amends provisions of the SAIL Program in s. 420.5087, F.S., to require the evaluation of additional components within the review and selection process of applications submitted for funding. The additional components relate to criteria surrounding local government contributions, including policies that promote access to public transportation, reduce the need for on-site parking, and expedite permits for affordable housing projects.

### *Community Workforce Housing Innovation Pilot Program (Section 12)*

#### *Present Situation*

Established by ch. 2006-69, L.O.F., 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

<sup>38</sup> 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 Jan. 3, 2020).

<sup>39</sup> Section 420.5087(6)(c), F.S.



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, Florida Housing administered the program in 2006 and 2007.<sup>40</sup>

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 AMI could be served through the program with that provision rising up to 150 percent of AMI in the Florida Keys.<sup>41</sup>

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:

- 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; and
- Projects set aside at least 80% of units for workforce housing and at least 50% for essential services personnel.

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% of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services.<sup>42</sup>

Florida Housing administered two rounds of funding for CWHIP: \$50 million in October of 2006 and \$62.4 million in December of 2007.<sup>43</sup>

### *Effect of the Bill*

**Section 12** 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 Florida Housing. Workforce housing is defined as housing affordable to persons of families whose total annual income does not exceed 80 percent of the area median income or 120 percent of the area median income, adjusted for household size in specified areas of critical concern. Florida Housing shall establish a loan application process pursuant to SAIL Program provisions under s. 420.5087, F.S., and award loans at a 1 percent interest rate for a term not to exceed 15 years. Projects must be given priority if they set aside at least 50 percent of units for workforce housing.

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<sup>40</sup> Section 420.5095(2), F.S.

<sup>41</sup> Section 420.5095(3)(a), F.S.

<sup>42</sup> Section 420.5095(11), F.S.

<sup>43</sup> See Florida Housing Finance Corporation, *2007 Annual Report* and *2008 Annual Report*, 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](http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport_CDfile.pdf) (last visited Jan. 03, 2020).

***Affordable Housing Workshops for Locally Elected Officials utilizing Catalyst and SHIP (Sections 13 and 16)***

***Present Situation***

**Affordable Housing Catalyst Program**

Section 420.531, F.S., directs Florida Housing 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, State Housing Initiatives Partnership Program, and other affordable housing programs.<sup>44</sup> Florida Housing currently contracts with the Florida Housing Coalition to provide Catalyst Program training and technical assistance.<sup>45</sup>

The Florida Housing Coalition's technical assistance team consists of a geographically dispersed network of personnel who provide on-site and telephone/e-mail technical assistance as well as training through workshops and webinars.<sup>46</sup> This technical assistance targets supporting local governments and nonprofit organizations and includes:

- 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 Program (SHIP)**

Administered by Florida Housing, the SHIP Program provides funds to all 67 counties and 52 Community Developments Block Grant entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.<sup>47</sup> The program targets very-low, low, and moderate-income families. SHIP is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund.

Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program.<sup>48</sup> Funds are expended per each local government's adopted Local

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<sup>44</sup> 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.

<sup>45</sup> *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-source/legal/contracts/2019/014-2019---the-florida-housing-coalition-inc---affordable-housing-catalyst-program-services.pdf?sfvrsn=c09dea7b\\_2](https://www.floridahousing.org/docs/default-source/legal/contracts/2019/014-2019---the-florida-housing-coalition-inc---affordable-housing-catalyst-program-services.pdf?sfvrsn=c09dea7b_2) (last visited Jan 5, 2020).

<sup>46</sup> The *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> (last visited Jan. 5, 2020). 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](https://www.flhousing.org/events/list/?tribe_paged=2&tribe_event_display=list) (last visited Jan. 5, 2020).

<sup>47</sup> See ss. 420.907-420.9089, F.S.

<sup>48</sup> Section 420.9073, F.S.

Housing Assistance Plan (LHAP), which details the housing strategies they will use.<sup>49</sup> Local governments submit their LHAPs to Florida Housing for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. Florida Housing must approve an LHAP before a local government may receive SHIP funding for the applicable years.

#### 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.<sup>50</sup> 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.<sup>51</sup>

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.<sup>52</sup> The AHAC is comprised of local citizens representing a range of affordable housing stakeholders.<sup>53</sup> 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 SHIP<sup>54</sup> must perform the initial incentives review but may elect to not perform the subsequent triennial reviews.

#### Statutorily Authorized Affordable Housing Study Groups

In 1986, the Affordable Housing Study Commission (Commission) was statutorily created to evaluate affordable housing policy issues and programs.<sup>55</sup> This standing commission is charged with recommending public policy changes to the Governor and Legislature to stimulate community development and revitalization and promote the production, preservation and maintenance of decent, affordable housing for all Floridians. Section 420.609, F.S., specifies the make-up of 21 members who are appointed by the Governor to the Commission. Florida

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<sup>49</sup> Section 420.9075, F.S.

<sup>50</sup> Section 420.9076(1), F.S.

<sup>51</sup> Section 420.9071(16), F.S.

<sup>52</sup> Section 420.9076(4), F.S.

<sup>53</sup> Section 420.9076(2), F.S.

<sup>54</sup> Pursuant to s. 420.9073(3), F.S., the minimum local housing distribution is \$350,000.

<sup>55</sup> Chapter 86-192 Laws of Fla.

Housing provides administrative support to the Commission, but the Commission has not received funding or gubernatorial appointments since 2008.<sup>56</sup>

The 2017 Legislature created a statewide Affordable Housing Workgroup (Workgroup).<sup>57</sup> The 14-member body consisted of current and previously elected state and local officials as well as stakeholders from the private and non-profit affordable housing community. The Workgroup's final report was submitted to the Governor and Legislature and provided findings and recommendations to address the state's affordable housing needs including strategies and pathways for low-income housing in the state.<sup>58</sup>

### *Effect of the Bill*

**Section 13** amends s. 420.531, F.S., to establish biannual regional workshops for locally elected officials serving on affordable housing advisory committees as provided for by SHIP in s. 420.9076, F.S. The entity providing statewide training and technical assistance for the Catalyst Program authorized in s. 420.531, F.S., will administer and conduct the workshops with the intent of facilitating peer-to-peer identification and sharing of best affordable housing 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 Florida Housing Finance Corporation.

The section also includes SAIL among the programs listed for which Catalyst Program may provide technical support.

**Section 16** amends s. 420.9076, F.S., to modify requirements of SHIP affordable housing advisory committees. The new provisions include ensuring that one locally elected official from each participating SHIP county or municipality serves on the advisory committee. This official, or a locally elected designee, must attend biannual workshops on affordable housing best practices as provided for in section 13 of the bill. If a locally elected official fails to attend three consecutive regional workshops, Florida Housing may withhold the participating SHIP entity's funds pending the person's attendance at the next regularly scheduled biannual meeting.

The section also requires annual, rather than triennial, affordable housing advisory committee reviews of local policies and provisions affecting affordable housing. An annual report of advisory committee reviews and recommendations must be submitted to the local governing body and to the entity providing statewide training and technical assistance for the Catalyst Program. In addition to currently provided information, the report must now also include information on all allowable fee waivers for the development or construction of affordable housing.

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<sup>56</sup> Commission Annual Reports submitted from 1987-2008 are available at <http://apps.floridahousing.org/StandAlone/AHSC/AHSC-AnnualReports.htm> (last visited Jan. 6, 2020).

<sup>57</sup> Chapter 2017-071, s. 46, Laws of Fla. Legislation creating the workgroup designated Florida Housing Finance Corporation as the administering entity.

<sup>58</sup> The Workgroup's Final Report, meeting agendas, research materials and other information is available at <https://www.floridahousing.org/about-florida-housing/workgroup-on-affordable-housing> (last visited Jan. 6, 2020).

## ***Funding Transitional Housing for Persons Aging out of Foster Care (Section 14)***

### ***Present Situation***

#### **Affordable Housing Funding for Special Needs Populations**

Section 420.0004, F.S., defines a person with special needs as:

an adult person 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 s. 409.1451(5); a survivor of domestic violence as defined in s. 741.28; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

Each local government participating in the SHIP Program (see page 10 of the analysis for a summary of the general elements and governance of SHIP) must use a minimum of 20 percent of its local housing distribution to serve persons with special needs as defined above in s. 420.0004, F.S.<sup>59</sup> A local government must certify that it will meet this requirement through existing approved strategies in its LHAP.

Section 420.507(48), F.S., requires Florida Housing to reserve up to 5 percent of certain annual allocations<sup>60</sup> for high-priority affordable housing projects for veterans and their families, and other special needs populations. Florida Housing must reserve an additional 5 percent of each allocation for affordable housing projects that target persons who have a disabling condition.

According to the statewide 2019 Rental Market Study, an estimated 104,273 cost burdened renter households receive disability-related Social Security, SSI, and veterans' benefits statewide.<sup>61</sup> Based on service use, an estimated 7,836 survivors of domestic violence and 2,574 youth exiting foster care are in need of affordable housing.<sup>62</sup>

#### **Services and Support for Persons 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.<sup>63</sup>

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<sup>59</sup> Section 420.9075(5)(d), F.S.

<sup>60</sup> These allocations include those for low-income housing tax credits, nontaxable revenue bonds, and SAIL funds appropriated by the Legislature.

<sup>61</sup> 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](http://www.shimberg.ufl.edu/publications/RMS_2019.pdf) (last visited Jan. 14, 2020). The Rental Market Study defines 'cost burdened' to mean the household is paying at least 40 percent of income toward gross rent.

<sup>62</sup> *Id.*

<sup>63</sup> 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* (Jan. 31, 2019) *available at* <https://www.myflfamilies.com/service-programs/child-welfare/docs/2019LMRs/Independent%20Living%20Services%202018%20Annual%20Report.pdf> (last visited Jan. 14, 2020).

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 the Bill***

**Section 14** amends s. 420.9073, F.S., to authorize Florida Housing to withhold five percent of annual Local Government Housing Trust Fund distributions to eligible SHIP entities for use as additional resources to construct campus-setting transitional housing for persons aging out of foster care. Funds may not be used for design and planning and Florida Housing must consult with the Department of Children and Families on criteria for such housing. Any withheld funds not distributed or committed by the end of the year fiscal year shall be distributed utilizing existing calculation formulas.

***Annual SHIP Entity Reporting Submissions to Florida Housing (Section 15)***

***Present Situation***

Section 420.9075(10), F.S., requires each local government participating in SHIP (see page 10 of the analysis for a summary of the general elements and governance of SHIP) to annually submit a report of its affordable housing programs and accomplishments to Florida Housing. The local government's chief elected official or his or her designee must certify the report as accurate and complete.<sup>64</sup> 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.
- A description of the status of implementation of each local housing incentive strategy.<sup>65</sup>
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If, as a review of the report, Florida Housing determines a violation of the criteria for a LHAP or that an eligible sponsor or eligible person has violated the applicable award conditions, Florida Housing reports the violation to its compliance monitoring agent and the Executive Office of the Governor.<sup>66</sup> 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.<sup>67</sup>

***Effect of the Bill***

**Section 15** amends s. 420.9075, F.S., to include data on the number of affordable housing applications submitted, approved and denied within a SHIP entity's annual program reporting to Florida Housing.

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<sup>64</sup> Section 420.4075(1), F.S., requires availability of the report for public inspection and comment prior to certifying and transmitting it to Florida Housing.

<sup>65</sup> Section 420.5075(10), F.S.

<sup>66</sup> Section 420.9075(13), F.S.

<sup>67</sup> *Id.*

## Bill Sections Addressing Mobile Homes

### Mobile Home Act

Chapter 723, F.S., the “Florida Mobile Home Act” (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.<sup>68</sup> 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 10 or more lots offered for rent or lease.<sup>69</sup>

Chapter 723.003, F.S., provides the following relevant definitions:

- “Mobile home park” or “park” means 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.<sup>70</sup>
- “Mobile home owner,” “mobile homeowner,” “home owner,” or “homeowner” means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.<sup>71</sup>

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation. A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of \$4 for each mobile home lot within a mobile home park which he or she owns.<sup>72</sup> If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in court until the amount due, plus any penalty, is paid.<sup>73</sup>

Additionally, a surcharge of \$1 is levied on each annual fee. The surcharge collected must be deposited in the Florida Mobile Home Relocation Trust Fund.<sup>74</sup>

### *Mobile Home Sales Tax (Sections 5 and 6)*

#### *Present Situation*

The sales tax on tangible personal property is six percent of the sales price when sold at retail.<sup>75</sup> Aircrafts, boats, and mobile homes are also assessed a sales tax of six percent of the retail sale price.<sup>76</sup>

A mobile home may be taxed as real property and not as tangible property, if a taxpayer purchases a mobile home that is then affixed permanently to land owned by the taxpayer.<sup>77</sup> The taxpayer must apply to the local property appraiser for a declaration of real property. As part of

<sup>68</sup> Section 723.004, F.S.

<sup>69</sup> Section 723.002(1), F.S.

<sup>70</sup> Section 723.003(12), F.S.

<sup>71</sup> Section 723.003(11), F.S.

<sup>72</sup> Section 723.007(1), F.S.

<sup>73</sup> *Id.*

<sup>74</sup> Section 723.007(2), F.S.

<sup>75</sup> Section 212.05(1)(a)1.a., F.S.

<sup>76</sup> Section 212.05(1)(b)1.b., F.S.

<sup>77</sup> Section 320.015, F.S.

the application for declaration of real property, the taxpayer must have the local property appraiser certify that the mobile home is permanently affixed to land owned by the taxpayer.<sup>78</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) must provide “RP” stickers to tax collectors for use by the registered owner of a mobile home or recreational vehicle to affix to such vehicle when the vehicle is taxed as real property. The “RP” sticker is used in lieu of a license plate.<sup>79</sup>

Improvements to real property may be considered when determining the tax assessed on real property.<sup>80</sup> When determining whether a person has improved real property, the term “fixtures” means:

[I]tems that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property, or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.<sup>81</sup>

### *Effect of the Bill*

**Section 5** amends s. 212.05, F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the six percent sales tax is calculated on 50 percent of the sales price of the mobile home rather than 100 percent of the sales price. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

This section also exempts a mobile home from the sales tax if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a “RP” series sticker pursuant to s. 320.0815(2), F.S.

**Section 6** amends s. 212.06, F.S., to exempt from taxation as tangible property (sales tax) mobile homes intended to be qualified and taxed as real property pursuant to s. 320.0815(2), F.S.

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<sup>78</sup> See ss. 212.06(14)(a) and 320.0815, F.S.

<sup>79</sup> Section 320.0815(2), F.S.

<sup>80</sup> Section 212.06(14)(a), F.S., defines “real property” to mean the land and improvements thereto and fixtures and is synonymous with the terms “realty” and “real estate.”

<sup>81</sup> Section 212.06(14)(b), F.S.



## ***Mobile Home Dealer Display Requirements (Section 7)***

### ***Present Situation***

A mobile home dealer must hold a license issued by the DHSMV.<sup>82</sup> The term “dealer” means “any person engaged in the business of buying, selling, or dealing in mobile homes or offering or displaying mobile homes for sale.” The term includes a mobile home broker.<sup>83</sup> Any person who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of, one or more mobile homes in any 12-month period is prima facie presumed to be a dealer. The term “dealer” does not include banks, credit unions, or finance companies that acquire mobile homes as an incident to their regular business and does not include mobile home rental and leasing companies that sell mobile homes to dealers licensed under this section.<sup>84</sup>

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.<sup>85</sup>

### ***Effect of the Bill***

**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.

## ***Repair and Remodeling Codes for Mobile and Manufactured Homes (Sections 8 and 9)***

### ***Present Situation***

Chapter 320, F.S., relates to the regulation and enforcement of motor vehicle standards and licenses by the DHSMV.

Section 320.01(2)(a), F.S., defines the term “mobile home” to mean:

[A] structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may

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<sup>82</sup> Section 320.77(2), F.S.

<sup>83</sup> See s. 320.77(1)(b), F.S., defining the term “mobile home broker.”

<sup>84</sup> Section 320.77(1)(a), F.S.

<sup>85</sup> Section 320.77(3)(h), F.S.

in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

Section 320.01(2)(b), F.S., defines the term “manufactured home” to mean:

[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.

Section 320.822(2), F.S., defines the term “code” to include the “Mobile Home Repair and Remodeling Code” and the “Used Recreational Vehicle Code.”

Section 320.8232(2), F.S., requires that the provisions of the “Repair and Remodeling Code” ensure safe and livable housing and that the code not be more stringent than those standards required to be met in the manufacture of mobile homes. Such provisions must include, but not be 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.”

Subsection (1) of s. 320.822, F.S., requires compliance with the “Used Recreational Vehicle Code” for recreational vehicles manufactured after January 1, 1968, and sold or offered for sale in this state by a dealer or manufacturer.

### *Effect of the Bill*

**Section 8** 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 9** amends s. 320.8232, F.S., to require the Mobile and Manufactured Home Repair and Remodeling Code to be a uniform code. The term “uniform code” is not defined by statute. The bill does not specify that the code must be a statewide uniform code. However, the bill requires that all repairs and remodeling of mobile and manufactured homes must be performed in accordance with rules of the DHSMV.

### *Jurisdiction of the Public Service Commission: Mobile Home Parks and Water and Wastewater Systems (Section 10)*

#### *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,” or “IOUs.”<sup>86</sup>

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<sup>86</sup> 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 which serve tens of thousands of customers in multiple Florida counties.

For IOUs 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.<sup>87</sup> Currently, the PSC has jurisdiction over 150 water and wastewater IOUs in 38 of 67 counties in Florida.<sup>88</sup>

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).<sup>89</sup>

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 service plus the actual cost of meter reading and billing, not to exceed nine percent of the actual cost of service.

Chapter 723.003, F.S., provides the following relevant definitions:

- “Mobile home subdivision” means a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.<sup>90</sup>
- “Mobile home lot rental agreement” or “rental agreement” means any mutual understanding or lease, whether oral or written, between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his or her mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.<sup>91</sup>
- “Lot rental amount” means all financial obligations, except user fees, which are required as a condition of the tenancy.<sup>92</sup>
- “User fees” means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner under a separate written agreement between the mobile home owner and the person furnishing the optional service or services.<sup>93</sup>

### ***Effect of the Bill***

**Section 10** amends s. 367.022, F.S., to add an exemption to regulation by the PSC as a utility for 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.

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<sup>87</sup> Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.

<sup>88</sup> *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission (June 2019), available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/June%202019.pdf> (last visited Jan. 3, 2020).

<sup>89</sup> See s. 367.022, F.S.

<sup>90</sup> Section 723.003(14), F.S.

<sup>91</sup> Section 723.003(10), F.S.

<sup>92</sup> Section 723.003(6), F.S.

<sup>93</sup> Section 723.003(21), F.S.

### ***Replacing Mobile Homes in a Mobile Home Park (Section 17)***

#### ***Present Situation***

Except as expressly preempted by the requirements of the DHSMV, a mobile home owner or the park owner may not “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.”<sup>94</sup>

#### ***Effect of the Bill***

**Section 17** amends s.723.041, F.S., to provide that a mobile home park that is damaged or destroyed due to wind, water, or other natural force may be rebuilt on the same site with the same density as was approved, permitted, or built before being damaged or destroyed. This section also provides that the regulation of the uniform firesafety 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.

### ***Mobile Home Park Lot Termination of Tenancy (Sections 18 and 19)***

#### ***Present Situation***

Section 723.061, F.S., provides grounds for the termination of a mobile home park lot rental agreement on the basis of:

- Nonpayment of rent;
- 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;
- A violation of the park rules or of the rental agreement;
- A change in land use; or
- 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.

Notices to a mobile home owner and tenant or occupant under s. 723.061, F.S., must be in writing and sent by certified or registered mail, return receipt requested, addressed to the mobile home owner and tenant or occupant at her or his last known address.<sup>95</sup> Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

Section 723.063, F.S., provides the process for a court action based upon nonpayment of rent or seeking to recover unpaid rent, or a portion thereof. The mobile homeowner may defend upon the grounds of a material noncompliance with any portion of ch. 723, F.S., or may raise any other defense, whether legal or equitable, which he or she may have.<sup>96</sup>

If a park owner or a mobile home owner files a lawsuit based on the homeowner’s nonpayment of rent, the mobile home owner must pay into the registry of the court that portion of the accrued

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<sup>94</sup> Section 723.041(4), F.S.

<sup>95</sup> Section 723.061, F.S. Requirements differ for notices sent to the officers of the homeowners’ association in the event of a change in use of the land comprising the mobile home park.

<sup>96</sup> Section 723.063(1), F.S.

rent, if any, relating to the claim of material noncompliance as alleged in the complaint, or as determined by the court. The court must notify the mobile home owner of this requirement. If the mobile home owner fails to pay the rent, or portion thereof, into the registry of the court, the mobile home owner waives the right to all defenses other than payment, and the park owner is entitled to an immediate default.<sup>97</sup>

The court must advance a hearing on a park owner's claim of nonpayment of rent, if the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises. After a preliminary hearing, the court may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.<sup>98</sup>

### *Effect of the Bill*

**Section 18** amends s. 723.061, F.S., to have mobile home park owners send notices to a mobile home owner and tenant or occupant by U.S. Mail rather than by certified or registered mail, return receipt requested.

This section also 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 nonpayment of rent, conviction of a violation of a federal or state law or local ordinance that is detrimental to the health, safety, or welfare of other residents of the mobile home park, a violation of the park rules or of the rental agreement, or 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.

However, a park owner's acceptance of any portion of a lot rental amount may constitute a waiver of the right to terminate the rental agreement or the right to bring a civil action for the noncompliance for any subsequent or continuing noncompliance. Any rent so received by the park owner must be accounted for at the final hearing.

This section also amends s. 723.061, F.S., to require a tenant who intends to defend against an action by the landlord for possession to comply with s. 723.063(2), F.S.

**Section 19** amends s. 723.063, F.S., to require a mobile home owner to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes. If the motion is not timely filed by the homeowner, the homeowner tenant is deemed to have waived all defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing. If a motion to determine rent is filed, sworn documentation is required to support a tenant's allegation that the rental amount alleged in the complaint is erroneous.

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<sup>97</sup> Section 723.063(2), F.S.

<sup>98</sup> Section 723.063(3), F.S.

This section also removes the condition that the park owner must be in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises before the park owner may apply to the court for disbursement of all or part of the funds or for a prompt final hearing. Under the bill, a park owner may file such a motion with the court when the home owner deposits the contested rent into the registry of the court.

### **Bill Sections Addressing Reenacting Issues and Effective Date**

#### ***Effects of the Bill***

**Section 20** reenacts a portion of s. 420.507, F.S., to incorporate the amending language in section 11 of the bill.

**Section 21** reenacts a portion of s. 193.018, F.S., to incorporate the amending language in section 12 of the bill.

**Section 22** provides an effective date of July 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

State mandates on local governments are generally described in the Florida Constitution as general laws requiring counties or municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state-shared tax revenue. In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.<sup>99</sup>

Article VII, Section 18(a) of the Florida Constitution, provides that counties and municipalities are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2019-2020 is forecast at approximately \$2.2 million.<sup>100,101,102</sup>

The bill will require counties and cities to incur costs to adopt an ordinance to allow accessory dwelling units. If the cumulative cost for counties and cities to adopt accessory

<sup>99</sup> Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate, and T.K. Wetherell, Speaker of the House, *County and Municipal Mandates Analysis*, (March 7, 1991) (on file with the Senate Committee on Community Affairs).

<sup>100</sup> FLA. CONST. art. VII, s. 18(d).

<sup>101</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 7, 2020).

<sup>102</sup> Based on the Florida Demographic Estimating Conference's July 8, 2019 population forecast for 2020 of 21,555,986. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 7, 2020).

dwelling unit ordinances is determined to exceed \$2.2 million, paragraph (a) of section 18 would require the bill to contain a finding of important state interest and meet one of the exceptions specified in that paragraph: provision of funding or a funding mechanism, or enactment by vote of two-thirds of the membership in each house.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

As of this date, the Revenue Estimating Conference has not met to consider the proposed fiscal impact of the bill.

The bill amends s. 212.05(1)(a)1.b., F.S., to decrease the applicable sales tax on the sale of a mobile home by revising the method for calculating the sales tax. Under the bill, the 6 percent sales tax is calculated on 50 percent of the sales price of the mobile home. The bill does not limit the reduced tax rate to the initial sale of a mobile home.

The bill exempts a mobile home from the sales tax, if the mobile home is intended to be permanently affixed to the land and the purchaser signs an affidavit stating that he or she intends to seek a "RP" series sticker pursuant to s. 320.0815(2), F.S.

**B. Private Sector Impact:**

A purchaser of a mobile home would pay a reduced sales tax. Mobile home park owners may experience savings because the bill allows certain noticing by U.S. mail rather than certified mail.

**C. Government Sector Impact:**

General revenue collections from the state sales tax will decrease because of the revised method for calculating the sales tax on mobile home sales.

Local governments currently collecting impact fees and certain other fees for the development or construction of affordable housing will no longer receive these revenues.

The Affordable Housing Catalyst Program will incur new costs related to the administration of regional affordable housing workshops for locally elected officials as specified in sections 15 and 18 in the bill. These costs will be dependent on whether the method of delivery is in person or by teleconference.

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

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

A Department of Revenue analysis of the bill opined that allowing a purchaser of a mobile home to avoid paying sales tax by signing an affidavit indicating they intend to have the mobile home declared as real property taxes after the initial purchase potentially raises administrative difficulties.<sup>103</sup> Specifically, the bill provides no process for verification that the purchaser completes the required process necessary for the mobile home to be declared as real property. Also, if the mobile home is not declared as real property, and remains tangible personal property, then the purchaser has failed to remit sales/use tax on the mobile home. Additionally, the mobile home may not be properly assessed for local property taxes.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 125.01055, 163.31771, 163.31801, 166.04151, 212.05, 212.06, 320.77, 320.822, 320.8232, 367.022, 420.5087, 420.5095, 420.531, 420.9073, 420.9075, 420.9076, 723.041, 723.061, 723.063, 420.507, and 193.018.

## **IX. Additional Information:**

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

#### **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.

<sup>103</sup> Department of Revenue, *Agency Bill Analysis of SB 998* (Dec. 17, 2019) (on file with the Senate Committee on Community Affairs).



- 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 Florida Housing 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 Florida Housing 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 Florida Housing 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.